

# HIGH COURT OF SINDH KARACHI

## II<sup>nd</sup> Appeal No.179 of 2021

[Syed Pervaiz Hussain & another versus Zikr-ur-Rehman & Ors.]

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Appellants : Through M/s Badar Alam & Kashif Badar advocates

Respondents No.1to10: Through Mr. Pervaiz Iqbal Butt advocate

Respondent No.11 : Through Mr. M Aqil Zaidi advocate

Respondents No.12&13: None present

M/s Jan Muhammad Khuhro Additional A.G and Kamran Khan Assistant A.G Sindh

Date of hearing : 11.12.2023, 14.12.2023 & 21.12.2023

Date of decision : 02.05.2024

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### J U D G M E N T

**KAUSAR SULTANA HUSSAIN J.-** This second appeal has been filed against the concurrent findings of two Courts below. The predecessor-in-interest of respondents No.1 to 10 had instituted Suit No. 322 of 1983 (old) new 673 of 1996 [*Re: Fazalur Rehman versus Karachi Development Authority & Ors.*] for declaration, cancellation of the conveyance deed and damages against predecessor-in-interest of appellants and others in respect of Plot No.A-321 admeasuring 200 sq. yards situated at Block-N, North Nazimabad, K.D.A Scheme No.2 Karachi (**Subject Plot**) before learned V<sup>th</sup> Senior Civil Judge Karachi Central (**Trial Court**), which was decreed on merit vide Judgment dated 15.03.2021 and Decree dated 19.03.2021, against which appellants preferred Civil Appeal No.104 of 2021 before learned District Judge Karachi Central (**1<sup>st</sup> Appellate Court**) but same was dismissed vide Judgment dated 02.08.2021 and Decree dated 09.08.2021. For sake of reference the Judgments and Decrees passed by learned trial Court as well as 1<sup>st</sup> Appellate Court are hereinafter referred to as impugned Judgments and Decrees.

2. Facts of the matter, which have given rise to present second appeal, are that predecessor-in-interest of respondents No.1 to 10 namely Fazal-ur-Rehman had instituted a Suit bearing No.322 of 1983 before this Court in respect of subject property, which later on was transferred to learned trial Court on account of change in pecuniary jurisdiction and the said suit was accordingly renumbered as Suit No.673 of 1996 (**subject suit**). In the suit it was claimed by the predecessor-in-interest of respondents No.1 to 10 that he had filed an application dated 02.10.1955 for allotment of occupancy right in respect of subject plot,

which after payment and completion of other codal formalities was allotted in his favour vide allotment order dated 28.06.1960 and then formal registered lease alongwith site plan was also issued in his favour at Sr. No.2286, pages 123 to 126 volume 309 of Book No.1 additional by the office of Sub-Registrar Camp Liaquatabad Karachi on 26.06.1966 and building plan for construction of house was also approved by the concerned authority vide letter dated 28.04.1967, but due to shortage of funds he could not able to construct house thereon; that on 02.11.1982 he came to know from KDA office that subject plot had been sold to someone by some person on the basis of power of attorney, he then moved an application to KDA and other concerned authorities for correction in record wherefrom he was informed that it is civil matter and could only be adjudicated by a Civil Court. Finally, as stated above, he preferred suit before this Court, which was later on transferred to trial Court on account of change in pecuniary jurisdiction, where the said suit was decreed on merit and appeal filed there-against by the appellants met with fate of dismissal, hence this second appeal.

3. Learned counsel for the appellants/legal heirs of defendant No.4 Mst. Abida Begum argued that impugned judgments and decrees are not sustainable being based on whims, conjectures and contrary to law; that Courts of law while deciding the matter of rights have to see the conduct of party approaching the Court; that in present case the predecessor-in-interest of respondents No.1 to 10 though had alleged he did not execute any such power of attorney and subject plot was occupied by the predecessor-in-interest of appellants and construction was being raised thereon on the basis of forged power of attorney, but he did not file any complaint/FIR before the competent forum and directly filed civil suit and the same was ignored by both the Courts below; that when the predecessor-in-interest of respondents No.1 to 10 claimed that he did not execute any irrevocable power of attorney in favour of Muhammad Shafi/defendant No.2, then he should have with him original documents of subject plot but he failed to produce/exhibit the same before the learned trial Court and that both Courts below have also failed to appreciate that why the first attorney Shafi Muhammad/defendant No.2 had executed the sub-power of attorney in favour of Agha Ahmed/defendant No.3 and why the Sub-Registrar had registered the sub-power of attorney but all these important questions have been ignored by both the Courts below. He prayed for setting aside of impugned judgments and decrees. In support he relied upon the cases reported in (i) PLD 2015 SC 212, (ii) 2003 SCMR 1011-1012-A, (iii) 1993 MLD 1817 Karachi (iv) 1993 CLC 2511, (v) PLD 1977 933 Karachi, (vi) 2004 SCMR 1859, (vii) PLD 2001 SC 158-166-C, (viii) 1992 SCMR 2182, (ix) PLD 2003 Karachi 148, (x) 2011 CLC 1325, (xi) PLD 2011 SC 241, (xiii) PLD 1987 Lahore 04, (xiv) 2006 CLC 1804, (xv) 1992 CLC 1304 and (xvi) 2009 CLC 1295.

4. On the other hand learned counsel for the respondents No.1 to 10/legal heirs of the plaintiff state that basic alleged irrevocable power of attorney executed in favour of Shafi Muhammad/defendant No.2 was forged and managed as such the subsequent alleged sub-power of attorney executed by Shafi Muhammad in favour of Agha Ahmed/defendant No.3, on the basis of which appellants claiming their rights, cannot be relied upon; that even otherwise appellants/legal heirs of defendant No.4 had neither produced attesting witnesses of alleged irrevocable power of attorney nor Notary Public before whom allegedly the said irrevocable power of attorney was executed. He while supporting the concurrent findings prayed for dismissal of this appeal. In support he relied upon the cases reported in (i) PLD 2010 SC 604, (ii) 2004 SCMR 620, (iii) 2008 SCMR 1639, (iv) PLD 2003 SCMR 31 (a) & (c) and (v) PLD 2018 Lahore 803.

5. Whereas learned counsel for respondent No.11/KDA had not disputed the allotment of subject plot in favour of Fazal-ur-Rehman, the predecessor-in-interest of respondents No.1 to 10. While despite of service of notice no one effected appearance on behalf of respondents No.12 and 13/defendants No.2 and 3. Perusal of record shows that both these respondents/defendants also remained absent before the Courts below.

6. I have heard the learned counsel for the parties and have perused the material available on record.

7. Allotment of subject plot bearing No.A-321 admeasuring 200 sq. yards situated at Block-N, North Nazimabad, K.D.A Scheme No.2 Karachi in favour of predecessor-in-interest of respondents No.1 to 10/plaintiff is not disputed by any of the parties. However, the root point involved in the matter is the irrevocable power of attorney. The predecessor-in-interest of appellants/legal heirs of defendant No.4 namely Mst. Abida Begum (late) claimed that predecessor-in-interest of respondents No.1 to 10/plaintiff namely Fazal-ur-Rehman being owner of subject plot had executed irrevocable general power of attorney dated 19.02.1977 in favour of respondent No.12 Shafi Muhammad, who subsequently on the basis of said irrevocable general power of attorney executed sub-general power of attorney in favour of respondent No.13 Agha Ahmed, from whom Mst. Abida Begum/defendant No.4 had purchased the subject plot on payment of sale consideration and such conveyance deed was registered in her favour on 15.01.1980. However, predecessor-in-interest of respondents No.1 to 10/plaintiff had challenged the said conveyance deed on the ground that he had not executed any general power of attorney in favour of Shafi Muhammad/defendant No.2, as such any sub-general power of attorney executed by Shafi Muhammad has no values in the eyes of law.

8. Admittedly the predecessor-in-interest of respondents No.1 to 10/plaintiff was the owner of subject plot, as such in my view the predecessor-in-interest of appellants/defendant No.4 prior to purchase of subject plot on the basis of sub-general power of attorney had to first verify regarding irrevocable power of attorney from the owner, but she failed to do so. It appears that on coming to know about conveyance deed registered in favour of predecessor-in-interest of appellants/defendant No.4 on the basis of alleged irrevocable general/sub-general power of attorney, the predecessor-in-interest of respondents No.1 to 10/plaintiff immediately approached the concerned authorities and then Civil Court by filing subject suit and denied his signatures and execution of said power of attorneys, as such burden of proving power of attorneys shifted upon predecessor-in-interest of appellants/defendant No.4 being beneficiary and though specific Issue was framed in this regard by the learned trial Court but neither she (*predecessor-in-interest of appellants*) produced attesting witnesses of alleged general/sub-general power of attorney nor Notary Public, who allegedly attested the said power of attorney. Even the respondents No.12 and 13 (*alleged attorney and sub-attorney*), from whom the predecessor-in-interest of appellants/defendant No.4 allegedly purchased the subject plot on the basis of general power of attorney, did not effect appearance before the Courts below to depose in favour of predecessor-in-interest of appellants/defendant No.4.

9. It also appears that in order to meet end of justice the learned trial Court sent the basic general power of attorney dated 19.02.1977 to handwriting expert, who vide his report dated 21.06.2006 opined that signature available on basic general power of attorney is dissimilar from the routine signature of predecessor-in-interest of respondents No.1 to 10/plaintiff. The said opinion of handwriting expert, in my view, is helpful to prove that basic general power of attorney in favour of Shafi Muhammad/defendant No.2 was fake and managed one. The appellants are claiming their rights, allegedly accrued to them, on the basis of sub-general power of attorney allegedly executed by attorney Shafi Muhammad/defendant No.2 in favour of sub-attorney Agha Ahmed/defendant No.3, however, as mentioned above appellants and/or their predecessor-in-interest had failed to prove that basic general power of attorney, which even is un-registered, was genuine. It is well settled principle of law that if base/foundation of any order or action is illegal then whole superstructure built thereupon cannot be sustained. Reliance in this regard is place on the case reported in PLD 1958 SC 104.

10. Perusal of impugned judgments and decrees shows that both Courts below had taken into consideration the whole evidence on file and had discussed it in detail. The decisions arrived at by both the Courts below are neither contrary to law nor had failed to determine any material issue. There is also no substantial

error or defect in the procedure followed by them and under these circumstances their judgments and decrees are not open to appeal under Section 100 CPC. Reliance in this regard is place on the case reported in 1977 SCMR 280.

11. In view of the above discussion captioned appeal is dismissed having no merits.

**JUDGE**

Faheem/PA