

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Athar Minallah
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.2565 of 2023

[Against the Judgment dated 08.03.2023 passed by Lahore High Court in Civil Revision
No.20993 of 2021]

Allah Bakhsh deceased through L.Rs & others ...Petitioner(s)
Versus
Muhammad Riaz & Others. ...Respondent(s)

For the Petitioner(s) : Mr. Afrasiab Khan, ASC

For the Respondent No.1-2 : Nemo

For the Respondent No.3-5 : Hafiz Zaheer Iqbal, AHC (with
permission)

Date of Hearing : 11.09.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J. Through this petition, the petitioners have called in question the judgment dated 08.03.2023 ("**Impugned Judgment**") passed by the Lahore High Court ("**the High Court**") in Civil Revision No.20993 of 2021 whereby the Revision Application was dismissed.

2. The brief facts are that Respondents No. 3 to 5 (*Manzoor Hussain, Muhammad Siddique, and Muhammad Rafique, respectively*) filed a civil suit for declaration, specific performance, and injunction, asserting that Respondents No. 1 and 2 (**Sellers**) were the owners of 55 kanals of land in Dhool Bala, Sahiwal, District Sargodha (**the suit land**). Respondent No.1 and 2 sold the suit land to Respondents No. 3 to 5 and Petitioners No. 1 and 2, who are real brothers, for a sum of Rs. 24,000/- by means of an oral agreement. After taking possession from the sellers,

Respondent No.3-5 and Petitioners No.1-2 jointly cultivated the land. It is alleged that according to conditions of oral agreement, Respondents No. 1 and 2 were bound to transfer the suit land to Respondents No. 3 to 5 and Petitioners No. 1 and 2 according to their respective shares. It has been alleged that Petitioner No. 1 prepared a General Power of Attorney dated 09.03.1981 in his favor, in connivance with the sellers, and transferred the suit land to his sons (Petitioners No. 3 and 4) and the sons of Petitioner No. 2 (Petitioners No. 5 to 8) vide a registered sale deed dated 28.04.2008. A mutation No.445 dated 30.05.2008 was also recorded in the record of rights based on this alleged sale deed.

After framing of issues and recording of the evidence, Trial Court decreed the suit *vide* judgment & decree dated 07.12.2017. Against this decision, petitioners preferred an appeal and the same was also dismissed *vide* judgment dated 19.03.2019. Being aggrieved, petitioners filed a Civil Revision before the High Court that too met the fate of dismissal *vide* impugned judgment. Hence, this petition.

3. The learned counsel for the petitioners submits that the impugned judgment suffers from illegality, infirmity, misreading and non-reading of the evidence; that the sellers never instituted any suit to seek cancellation of the registered sale deed and the mutation No.445 or the registered power of attorney executed by them before Sub-Registrar Lahore till date; that the oral agreement to sell of the suit land of 1981 was not proved in accordance with law, thus, prays for setting aside the impugned judgment.

4. On the contrary, the learned counsel for Respondent No.03 to 05 contends that concurrent findings recorded by the court below were affirmed by the learned High Court after careful consideration of the evidence; that the concurrent findings by three courts below are based on a proper appreciation of evidence and law; that the petitioners acted with *malafide* and fraud was committed to deprive them of the legal rights in suit land.

5. We have heard the learned counsel for the parties at length and scanned the material available on the record with their able assistance.

6. The primary contention raised by the learned counsel for the petitioners is that Respondents No. 1 and 2 (Sellers) never instituted any suit for the cancellation of the registered sale deed, mutation entry, or General Power of Attorney. However, this contention holds no legal significance, as the sellers no longer had any right or interest in the suit land after alienating it in favor of the purchasers. It is always the aggrieved party, whose rights and interests have been prejudiced, that must invoke the law.

7. Moreover, perusal of the record reveals that the Respondents No. 1 and 2 (sellers) filed a conceding statement, expressly affirming that the suit land was sold to Respondents No. 3 to 5 and Petitioners No. 1 and 2. Respondent No.1 and 2 did not support the General Power of Attorney in favor of Petitioner No. 1 (Allah Bakhsh) for the purpose of conferring absolute rights, as the suit land was collectively purchased by all five brothers. Respondents No. 3 to 5 produced two eyewitnesses to prove that the suit land was sold to the five brothers, in addition to the

consenting written statement of Respondents No. 1 and 2 and the testimony of DW-1.

8. Record further reveals that based on forged power of attorney the Petitioner No.01 allegedly sold a portion of the disputed land to his sons (Petitioners No.1-A & 1-B). It is established law that holder of a general power of attorney must obtain special permission from the principal when alienating the principal's property, either in their own favor or in the name of their relatives. In the present case, there is no evidence on record to suggest that Petitioner No. 01 sought special permission from the principal to alienate the suit land in favor of his sons and the sons of his brother. In the absence of such permission, the legality and propriety of the alleged sale deed in favor of these individuals is highly doubtful.

9. In the case of Maqsood Ahmad and others vs. Salman Ali (PLD 2003 SC 31), this Court has held that: -

“13. With reference to the context of power of attorney we have pointed out to the learned counsel for appellants that as appellant Maqsood Ahmad had been authorized to deal with the affairs of the property including the financial powers, therefore, if he wanted to transfer the land in respect whereof allegedly respondent appointed him as attorney to deal with his property, it was incumbent upon him to have sought prior approval of the Principal before transferring the land on the name of his brother Muhammad Ayub being the close relative of the attorney in order to make it a valid transaction in terms of section 211 read with section 215 of the Contract Act..”.

In the case of Jamil Akhtar and others vs. Las Baba and others (PLD 2003 SC 494), it was observed by this Court that:

“8. It is a settled principle of law that whenever a general attorney transfers the property of his principal in his even name or in the name of his close fiduciary relations, he has to take special permission from the principal.”

10. Thus, it has been consistently ruled that the attorney would require prior permission, approval and consent of the

principal when he wants to transfer the property in the name of his close relatives. In the case at hand, entire evidence was scrutinized by the trial court and appellate court but not even an *iota* of evidence is available on record to demonstrate receipt of any such prior permission.

11. As far as question of disputed sale deed is concerned, record reveals that disputed sale deed is not even properly signed by the alleged attorney in accordance with settled principles of law. In this regard, learned High Court has rightly observed in the impugned judgment that:-

“The petitioners/defendants No.03 to 10 produced sale deed containing six pages and out of six pages, first five pages have neither been signed by the alleged attorney/defendant No.03 nor the alleged purchaser/defendant no.03 to 10 and even the two attesting witnesses, who have signed sixth page, have not signed first five pages wherein terms and conditions of the disputed sale deed are written. It is settled principle of law that if the document is written on more than one page, then the parties must sign or put their thumb impressions on each page of document or otherwise the defendant are/were under legal obligation to connect the unsigned pages with signed/thumb marked page by producing evidence to prove the terms and conditions of disputed sale deed.

Thus, High Court has elaborately and comprehensively considered all the aspects of matter, legal as well factual. Normally, this Court does not interfere in the concurrent findings unless those are perverse, arbitrary, fanciful or capricious which, in our candid view, is not the position in the instant case.

12. In view thereof, we find the impugned judgment to be well-reasoned. Neither any misreading and non-reading nor any infirmity or illegality has been noticed on the record which could make a basis to take a contra view. Learned counsel for the petitioner has failed to make out a case for interference.

13. Consequently, this petition, being devoid of merit, is dismissed and leave refused.

JUDGE

JUDGE

Bench-II
Islamabad
11.09.2024
APPROVED FOR REPORTING
Paras Zafar, LC*

JUDGE