

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Saman Rafat Imtiaz

II Appeal No.199 of 2022

Choudhry Muhammad Yaseen

Versus

Naseer Ahmed & Others

Appellant: through Syed Abid Hussain Shirazi, advocate
Respondents: None for respondent No.1
Respondents 2 to 4 through Mr. Mehran Khan, A.A.G
Date of hearing: 21.05.2026
Date of Judgment: 19.08.2026

J U D G M E N T

Saman Rafat Imtiaz, J.- Through this II Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant has impugned (i) the Order dated 29.07.2021 passed by the Senior Civil Judge-I, Malir, Karachi, whereby the plaint filed by the Appellant in Civil Suit No. 811 of 2020 was rejected under Order VII, Rule 11, CPC; and (ii) the Judgment dated 15.08.2022 passed in Civil Appeal No.143/2021 by the Additional District Judge-II, Malir, Karachi, whereby the appeal filed by Appellant against the impugned Order was dismissed.

2. The facts of the case as per the memo of appeal, briefly stated, are that the Appellant [Choudhry Muhammad Yaseen] purchased land measuring 71 acres bearing Survey Nos. 2,3,4,5,6 and 7 (herein after referred to as the "**Subject Property**") from one named, Ms. Mobeena Begum vide Irrevocable Power of Attorney dated 16-11-1985 whereafter possession was taken over. The Appellant appointed Respondent No.1 [Naseer Ahmed] as Sub-Attorney vide Sub-Power of Attorney registered on 24-06-1998. However, due to failure of the Respondent No. 1 to safeguard the interests of the Appellant, the Appellant issued a notice and also issued public notice for the revocation of the said registered Sub-Power of Attorney dated 24-06-1998. Since it was a registered document, the Appellant also filed Suit for Permanent and Mandatory Injunction for cancellation. The Respondent No. 1 failed to file his written statement in time and as such his right to file written statement was struck off on 06.03.2021. Thereafter, Respondent No.1 appeared and filed an application under Order IX, Rule 7, CPC, seeking setting aside of the said order. Before the said application could be decided, the Respondent No.1 filed another application under Order VII, Rule 11, CPC, seeking



rejection of the plaint purportedly on account of being barred under Sections 8, 9, 12, 39, 42 and 54 of the Specific Relief Act, which was allowed vide the impugned Order which was upheld vide the impugned Judgment, hence the instant second appeal.

3. The learned counsel for the Appellant argued that although the Trial Court found that the Appellant had properly valued his suit based on the sale consideration he paid for the suit property nevertheless the Trial Court reached the erroneous conclusion that he had arbitrarily valued the plaint in view of valuation of another suit filed by the builder against the predecessor-in-interest of the Appellant in an altogether different matter. Consequently, he argued that both the forums have erred in rejecting the plaint under Sections 42 and 56 of the Specific Relief Act as on the one hand it has been concluded that the registered irrevocable General Sub Power of Attorney dated 26.04.1998 in favour of the Respondent No. 1 is a nullity in the eyes of law and yet on the other hand the plaint has been rejected with the result that such power of attorney which the Court has found to be a nullity continues to remain in the field. He further submits that the Courts have taken into consideration that mutation entry in favour of the predecessor-in-interest of the Appellant has already been cancelled by this Court vide order dated 30.11.2016 in Suit No.1041/2008 which is not denied by the Appellant. He argued that since the basic mutation entry is no longer in existence, no power of attorney whether in favour of the Appellant or special power of attorney in favour of Respondent No.1 can exist yet the result of the erroneous impugned Judgment and Order is that the registered sub power of attorney continues to remain in the field as the plaint of the plaintiff seeking its cancellation has been set aside, exposing the Appellant, who is the principal, to liability against third parties in case of misuse. He further argued that his title to the Subject Property was not at issue in the Suit to begin with.

4. None appeared for the Respondent No. 1. Same was the position on the last date i.e. 21-04-2026 on which date it was specifically noted by order that in case no one appears on behalf of the Respondent No. 1 on the next date, appropriate orders shall be passed on the basis of record and with the assistance of the learned counsel present. In view of the foregoing, the matter is proceeded against the Respondent No. 1 ex-parte.

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

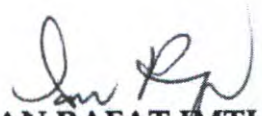
6. Admittedly, vide Order dated 30-11-2016 this Court had already declared in Suit 1041 of 2008 that Ms. Mobeena has no right, title or interest in the Subject

Property and further declared the entry No. 320 in her favour in the record of rights as null and void. Long thereafter, the Appellant filed Suit No. 811 of 2020 praying *inter alia* for revocation/cancellation of the General Power of Sub-Attorney dated 24-06-1998 and permanent injunction to restrain the Respondent No. 1 from creating third party interest in the Suit Property and from interfering in the possession of the Appellant. In view thereof, both the Courts below have held that the Appellant being the attorney of the said Ms. Mobeena has no title under Section 42 of the Specific Relief Act, 1877 to bring forth a suit seeking cancellation of the registered sub-power of attorney executed by the Appellant in respect of the Subject Property in favour of the Respondent No. 1 as it is also a nullity in the eyes of the law.

7. The learned counsel for the Appellant failed to satisfy this Court why cancellation of General Power of Sub-Attorney dated 24-06-1998 he executed as attorney of the principle, namely Ms. Mobeena in respect of the Subject Property is required when the entry in favour of the principle has already been declared null and void. One cannot claim to have acquired a better title than the transferor. Where the foundation is found defective the superstructure raised upon shall collapse. The Appellant's ability to appoint sub-attorney in respect of the Subject Property was dependent on the title of his principle namely, Ms. Mobeena. The Appellant was to sink or sail with Ms. Mobeena. When Ms. Mobeena's title is undisputedly null and void, it goes without saying that all subsequent transfers by or on behalf of Ms. Mobeena must also fail.¹

8. Therefore, the impugned Judgments do not warrant any interference in respect of the Appellant's prayer for cancellation of the sub-power of attorney. Similarly, as far as prayers for permanent injunction is concerned, the Appellant cannot seek any declaration under Section 42 of the Specific Relief Act, 1877 and consequently injunction in respect thereof as he admittedly lacks title to the Suit Property.

9. In view of the foregoing, the instant appeal stands dismissed along with all pending applications.


(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 19th of August, 2026

¹ *Shamshair Ali Vs Mukhtiarkar (Revenue) and City Survey Officer & 2 Others*, 2016 CLC Note 22

