

THE HIGH COURT OF SINDH, KARACHI

Suit No. 2249 of 2018

[Saeed Ibrahim Veera versus Muhammad Iqbal and others]

Plaintiff : Saeed Ibrahim Veera through
Mr. Hamza H. Hidayatullah,
Advocate.

Defendant 1 : Muhammad Iqbal through
Mr. Ahmed Raza Shah, Advocate.

Defendants 2-3 : Sub-Registrar-II and another through
Chaudhry Rafiq Rajouri, Additional
Advocate General, Sindh.

Date of hearing : 17-12-2020

Date of decision : 10-03-2021

ORDER

Adnan Iqbal Chaudhry J. - This order decides CMA No. 17107/2018 whereby the Plaintiff prays for a temporary injunction to restrain the Defendant No.1 and the Defendants 2 and 3 (Sub-Registrar II, Saddar Town, and District Registrar) from creating third-party interest in certain premises in the building constructed on Survey No. 6/20, and in the entire building constructed on Survey No.6/21, both said plots situated at Sheet No. PR-2, Preedy Quarters, Karachi, and hereinafter referred to as 'the suit properties'.

2. To claim ownership of 419.13 square yards out of 470 square yards of the building on Survey No.6/20, the Plaintiff relies on a conveyance deed dated 08-11-2004 registered in his favor. To claim ownership of the building on Survey No.6/21, the Plaintiff relies on a registered irrevocable General Power of Attorney dated 03-07-2003 executed in his favor by the previous owners, authorizing him to sell/transfer the property.

3. The Plaintiff has pleaded that on 22-01-2018 he had executed two power of attorneys in respect of the suit properties in favor of Danish and Qurat-ul-Ain; but the Defendant No.1 committed fraud and manipulated two '*other*' power of attorneys in favor of the Defendant No.1 for '*two different plots*' (with the authority to

sell/transfer) which power of attorneys were bogus and forged; thus the Plaintiff made a complaint to the Sub-Registrar where the disputed power of attorneys were presented for registration and sent him a legal notice dated 15-10-2018; and that the Plaintiff also published notices on 18-10-2018 warning the public that no transaction should take place on the basis of the disputed power of attorneys. At the same time, it is pleaded in paras 12 to 14 of the plaint that the Plaintiff made a deal with the 'Defendants' in respect of the suit properties and obtained a loan to make payment to the Defendants, but the Defendants resiled from the agreement. The Plaintiff prays for a declaration of his title to the suit properties and for cancellation of the Power of Attorneys dated 22-01-2018 held by the Defendant No.1.

4. Per the Defendant No.1, the Plaintiff is his son-in-law. It is the case of the Defendant No.1 that the suit properties had been purchased by him in the name of the Plaintiff as his *benamidar* and the Defendant No.1 has been in possession all along; that subsequently, the Plaintiff became greedy and refused to recognize the Defendant No.1 as owner of the suit properties; that in order to save his daughter's marriage with the Plaintiff, the Defendant No.1 paid the Plaintiff a total of Rs. 21,000,000/- for executing two sale agreements dated 19-01-2018 coupled with two Power of Attorneys dated 22-01-2018 in favor of the Defendant No.1 authorizing him *inter alia* to sell/transfer the suit properties; hence the two Power of Attorneys dated 22-01-2018 were executed by the Plaintiff for consideration received; that on the instructions of the Defendant No.1, the Plaintiff also executed at the same time two other power of attorneys in favor of Danish Farooq and Qurant ul Ain, the latter being the daughter of the Defendant No.1 and the wife of the Plaintiff; and that the suit is *malafide*, filed to extort more money from the Defendant No.1.

5. Learned counsel for the Plaintiff conceded that the Plaintiff had signed/executed the Power of Attorneys dated 22-01-2018 held by the Defendant No.1 in respect of the suit properties; but he

submitted that the Plaintiff's signatures thereon had been obtained by misrepresenting to him that he was signing two other power of attorneys. Learned counsel then submitted that at best the disputed power of attorneys constituted an agency, which could, and was revoked by the Plaintiff under section 201 of the Contract Act, 1872 by way of a public notice dated 18-10-2018. Learned counsel relied on *Raza Munir v. Mst. Sardar Bibi* (2005 SCMR 1315) and *Muhammad Iqbal v. Mehmood Hasan* (2016 MLD 1243) to submit that a registered deed was not necessary to revoke registered power of attorneys.

6. Learned counsel for the Defendant No.1 submitted that the suit properties were purchased by the Defendant No.1 in the name of his son-in-law, the Plaintiff, as the Defendant No.1 used to work abroad at that time. Learned counsel drew attention of the Court to the Plaintiff's legal notice dated 15-10-2018 to submit that when the Plaintiff acknowledges that he had gone to the office of the Sub-Registrar to execute power of attorneys of the suit properties in favor of the Defendant No.1, the question of being defrauded into executing the same does not arise; that the delay in filing suit shows that the allegation of fraud is an afterthought; that since the Power of Attorneys dated 22-01-2018 were executed by the Plaintiff for consideration received, these cannot be revoked by the Plaintiff in view of section 202 of the Contract Act, 1872 and the case of *Fospak (Pvt.) Ltd. v. Fosroc International Ltd.* (PLD 2011 Karachi 362).

7. The submissions of learned counsel for the Plaintiff made in rebuttal are discussed infra.

8. Heard the learned counsel and perused the record.

9. The fact that the Plaintiff is the son-in-law of the Defendant No.1 was accepted by the Plaintiff's counsel. In paras 1 to 3 read with 15 of the plaint, the Plaintiff acknowledges that on 22-01-2018 he had gone to the office of the Sub-Registrar to execute power of attorneys in respect of the suit properties *albeit* in favor of Danish and Qurat-ul-Ain. Though the Plaintiff does not deny his signatures on the Power of Attorneys held by the Defendant No.1, he alleges

that he was duped by the Defendant No.1 into executing them. On the other hand, in his legal notice dated 15-10-2018 sent to the Sub-Registrar just before filing suit, it was stated on the Plaintiff's behalf that :

"1. That my client came to your office for execution of General power of attorney in the name of MUHAMMAD IQBAL S/O ABDUL LATEEF against property/plot it is commercial plot of land bearing survey No.6/21, sheet No. PR-2 measuring 470 square yards situated at Preedy quarters Karachi and said plot after having a suit bearing No. 851/1990, before IST SCJ SOUTH AT KARACHI dated 23-06-2000,

2. That my client only executed two general power of attorney but it came to my knowledge that there are four general power of attorney has been executed without prior knowledge of my client the serial number 237 and 240 are forge general power of attorney same has been executed without the permission and knowledge of my client and it is totally against the law whenever my client has sent a notice with his signature on 14-07-2014, that both above mentioned serial number are forge and fabricated so it would be cancelled if so, my client has right to initiate constitutional proceeding before Honorable High Court of Sindh."

Thus, in his legal notice dated 15-10-2018, the Plaintiff had acknowledged that he had gone to the office of the Sub-Registrar to execute two power of attorneys in respect of the suit properties "in the name of Muhammad Iqbal", the Defendant No.1, albeit he alleged that his signatures on two other power of attorneys were forged. Therefore, learned counsel for the Defendant No.1 is correct to submit that once the Plaintiff acknowledges that he had willingly gone to the office of the Sub-Registrar to execute power of attorneys in favor of the Defendant No.1, his allegation in the plaint that he was duped into executing those very power of attorneys is belied. Reliance placed by the Plaintiff on his letter dated 14-07-2017 addressed to the Sub-Registrar is of no help to him. That letter only alleged that he had lost the title documents of the suit properties. It did not, and could not have anything to do with the Power of Attorneys which were executed subsequently on 22-01-2018. The delay in filing suit, i.e., after 9 months of executing the Power of Attorneys also supports the version of the Defendant No.1.

10. The fall-back argument of the Plaintiff's counsel was that the Plaintiff had nonetheless revoked the disputed Power of Attorneys by a public notice dated 18-10-2018. But that public notice does not state that the Power of Attorneys dated 22-01-2018 are revoked; rather it states that said Power of Attorneys were obtained fraudulently. Needless to state that to revoke the Power of Attorneys the Plaintiff must be taken to have willingly executed them, which is not the case set-up or pleaded by him. Nonetheless, since the suit itself can be taken as notice to revoke the disputed Power of Attorneys, it is worthwhile to examine the argument of revocation.

11. It is settled law that a power of attorney creates an agency, and under section 201 of the Contract Act, 1872, an agency can be terminated by the principal revoking the authority of his agent. However, section 202 of the Contract Act provides that :

“202. Termination of agency where agent has an interest in subject-matter.-Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest”.

The Defendant No.1 has pleaded that since the Power of Attorneys dated 22-01-2018 were executed by the Plaintiff for consideration received for the suit properties (the plea of 'agency coupled with interest'), the said Power of Attorneys are irrevocable by virtue of section 202 of the Contract Act.

12. The case-law on when an agency can be said to be coupled with an interest, can be broadly classified into cases dealing with commercial agency contracts, and cases dealing with power of attorneys. With regards to the latter, following are the leading authorities:

In *Abdul Rahim v. Mukhtar Ahmed* (2001 SCMR 1488) it was held that the proposition that the agent shall have to consult the principal before selling the property to a close relative, would not be applicable where the power of attorney was executed in lieu of

consideration with a clear understanding that the property had been sold to the attorney.

In *Hajran Bibi v. Suleman* (2003 SCMR 1555) it was observed that where the registered power of attorney was coupled with an agreement to sell where-under consideration of the property was paid by the attorney to the principal, such power of attorney was coupled with interest and therefore the same was irrevocable by virtue of section 202 of the Contract Act, 1872.

In *Muhammad Yousaf v. Azra Parveen* (2012 SCMR 380) it was held that where a power of attorney was executed on receipt of sale consideration, the agent did not require the consent of the principal for effecting transfer of property as the authority of the agent was coupled with an interest in the property falling within the purview of section 202 of the Contract Act, 1872.

13. Adverting to facts of the instant suit, the Power of Attorneys dated 22-01-2018 held by the Defendant No.1 in respect of the suit properties are admittedly registered. The said Power of Attorneys empower the Defendant No.1 to sell or transfer the suit properties. To demonstrate that said Power of Attorneys were executed by the Plaintiff for consideration, the Defendant No.1 has filed copies of two sale agreements dated 19-01-2018, one each for the two suit properties, said to have been executed by the Plaintiff as vendor along with two receipts of Rs. 10,500,000/- each, totaling Rs. 21,000,000/-. Per the said sale agreements and accompanying receipts, the Plaintiff has received the sale consideration full and final for the sale of the suit properties to the Defendant No.1. The said sale agreements also expressly recite that the Plaintiff is simultaneously executing irrevocable power of attorneys in favor of the Defendant No.1 to divest himself of all rights and interest in the suit properties. The Defendant No.1 has also filed copies of pay-orders and cross-cheques bearing the name of the Plaintiff as payee whereby payment was made to the Plaintiff. The sale agreements and receipts are dated 19-01-2018; the pay-orders and cheques are dated 20-01-2018 and 22-01-2018; thus all are dated on or about the date of the said Power of Attorneys to show a

composite transaction intending sale of the suit properties. Learned counsel for the Plaintiff had submitted that the sale agreements are forged; that the pay-orders and cheques filed with the written statement do not add up to Rs. 21,000,000/-, and that most of the pay-orders and cheques are drawn on bank accounts not of the Defendant No.1. But such submissions do not build a *prima facie* case for the Plaintiff when he has never set-up such a case in the plaint, nor has he taken any step, by amending the plaint or otherwise, to challenge/dispute the said sale agreements, receipts, pay-orders and cheques which *prima facie* show him as a party thereto. In fact, the Plaintiff's acknowledgement in paras 12 to 14 of the plaint that he made a deal with the 'Defendants' in respect of the suit properties which did not go through, goes to show that he has not disclosed the entire facts to the Court. Therefore, *prima facie*, it appears that the Power of Attorneys dated 22-01-2018 were executed by the Plaintiff in favor of the Defendant No.1 for consideration for sale of the suit properties. In such circumstances, and relying on the cases of *Abdul Rahim*, *Hajran Bibi* and *Muhammad Yousaf* discussed above, the said Power of Attorneys appear to be irrevocable by virtue of section 202 of the Contract Act.

14. To support his version, the Defendant No.1 has filed a letter issued by the Secretary, Karachi Electronic Dealers Association, which has its office in the vicinity of the suit properties, which states that the suit properties belong to the Defendant No.1. He has also filed copies of affidavits of the previous owners of one of the suit properties, stating that they had sold the same to the Defendant No.1 and on his request they had executed an irrevocable General Power of Attorney in favor of the Plaintiff who was his son-in-law. While said documents may not be conclusive evidence at this stage, the Plaintiff has not filed any material to show that he was or is in possession of the suit properties. Learned counsel for the Plaintiff had submitted that the Defendant No.1 has contradicted himself by pleading on the one hand that the Plaintiff was his *benamidar* and then on the other hand relying on sale agreements from the Plaintiff. That submission is a misreading of the written statement. What the

Defendant No.1 has pleaded is that he was compelled to enter into the sale agreements when his son-in-law, the Plaintiff, refused to recognize the Defendant No.1 as owner of the suit properties. I see no contradiction in that. Regards the Plaintiff's submission that said Power of Attorneys are deficient in stamp duty, that submission is not germane to the listed application and can be examined subsequently.

15. Since the primary contention of the Plaintiff that he was duped into executing the Power of Attorneys dated 22-01-2018 in favor of the Defendant No.1, is belied by his own legal notice, and since the plaint manifests that the Plaintiff has not disclosed complete facts to the Court, I am not inclined to grant him discretionary relief. As discussed above, the fact that the Defendant No.1 has yet to prove in evidence that the Power Attorneys dated 22-01-2018 were coupled with sale consideration duly paid to the Plaintiff, does not create a *prima facie* case for the Plaintiff when he has never pleaded that. In such circumstances I am not swayed by the argument that a temporary injunction is essential if only to preserve final relief for the Plaintiff. CMA No. 17107/2018 is dismissed.

JUDGE

Karachi
Dated: 10-03-2021