

# **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

## **Civil Revision No. S – 60 of 2000**

(Syed Karam Ali Shah vs. Syed Mazhar Hussain & others)

Date of hearing: 07-02-2022

Date of judgment: 07-02-2022

M/s Abdul Qadir Shaikh and Abdul Aziz Shaikh,  
Advocate for the Applicant

Mr. Nishad Ali Shaikh, associate of Mr. A. M Mobeen Khan, Counsel for  
private Respondents

Mr. Mehboob Ali Wassan, Assistant Advocate General

### **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicant has impugned judgment dated 21-06-2000 passed by 1<sup>st</sup>. Additional District Judge, Khairpur in Civil Appeal No.32 of 1986, whereby, judgment dated 23-10-1986 passed by the 2<sup>nd</sup> Senior Civil Judge, Khairpur, in Civil Suit No.110 of 1975 (New No.225 of 1982), has been maintained through which the Suit of Respondent No.1 was decreed.

2. Learned Counsel for the Applicant has argued that the two Courts below have erred in law and facts and have failed to appreciate the evidence on record; that the Applicant was a bona fide purchaser for valuable consideration; that fraud, if any, was committed by Respondent No.2; that a registered sale deed is in favor of the Applicant which is protected in law; that in criminal proceedings initiated at the behest of Respondent No.1, the Applicant and Respondent No.2 have been acquitted up to the level of the Hon'ble Supreme Court vide judgment dated 6.5.1991 in Criminal Appeal No.99 of 1985; that in view of the evidence on record which he has also read out before the Court, the Applicants case merits consideration; hence, this Revision Application be allowed; in support he has also relied upon the case reported as Muhammad Bakhsh v Ellahi Bakhsh (2003 SCMR 286). I have heard the learned Counsel for the Applicant whereas, written arguments filed on behalf of Respondent No.1 have been perused.

3. It appears that Respondent No.1 had filed a Suit for declaration, injunction, possession and mesne profits, wherein he sought a declaration

that registered sale deed dated 20-02-1975 executed by Respondent No.2 (Defendant No.2 in Suit) in favour of the Applicant (Defendant No.1 in Suit) is void as it has been registered on the basis of a forged power of attorney of the original owner; with a further prayer of mesne profits and handing over of the possession of the Suit property. After exchange of pleadings, the Trial Court settled various issues whereafter evidence was led by the parties, and the Suit was decreed, as prayed except to the extent of mesne profits. In Appeal the judgment of the Trial Court has been maintained through the impugned judgment, against which the Applicant has come before this Court against two concurrent findings of the Courts below.

4. The Applicant's case as per the written statement and the evidence so led by him appears to be that the Suit property was sold to him by Respondent No.2, who was then acting under a power of attorney on behalf of the actual owner of the property namely Mst. Hapurwali; hence the Applicant was a bonafide purchaser, whereas, a registered sale deed has been executed in his favour. On the other hand, the case of Respondent No.1 / plaintiff before the Trial Court was that he is one of the legal-heirs of Hapurwali, who expired in India even before partition and in satisfaction of claim of certain land owned by her, the Suit land was allotted in her name in the year 1957, whereas, the inheritance issue of Mst. Hapurwali was also decided and finally the khata was mutated in the year, 1974. His further case was that the Applicant in connivance with a gang of fraudsters had managed the power of attorney and as soon as it came to his knowledge, the concerned authorities were notified and a hold was put on the said registration; however, it was managed by them before another Sub-Registrar. Lastly, as per the case of Respondent No.1, an FIR was lodged against these person's proceedings in respect of which are pending.

5. As to the case of the Applicant that he was a bonafide purchaser for consideration<sup>1</sup> and if at all any fraud has been committed, it was by Respondent No.2 who acted as an attorney of the original owner and, therefore, his registered sale deed is protected and cannot be disturbed is concerned, it may be observed that it is not so simple to say that the Applicant was a bonafide purchaser. There is an issue here that the executant of the attorney had expired even before creation of Pakistan and

---

<sup>1</sup> Para 4 of Written Statement....."If at all the General Power of Attorney is proved to be forged, the answering defendant who acted under bonafide belief has himself been cheated by the defendant No.2 and thus answering defendant reserves the right of legal action."

notwithstanding the fact and as to how the land was granted in her favour against the settlement; but nonetheless, the Applicant was required to prove not only that she was alive when the power of attorney was executed but so also that the power of attorney was otherwise proved through evidence. Admittedly, Respondent No.2 after filing of written statement never turned up in evidence nor the Applicant made any efforts to summon him as a Court witness. While confronted, the Applicants Counsel stated that it was for the Plaintiff / Respondent No.1 to summon him. However, this stance does not appear to be appropriate as in that case nothing prevented the Applicant from having him summoned as a Court witness. When the Applicant pleads being a bona fide purchaser against consideration, and also reserved his right to seek remedy against such cheating and fraud by Respondent No.2 then, in fact, Respondent No.2 ought to have been as the first witness in the list of witnesses of the Applicant. This appears to be a case of withholding of one's best evidence, and in that case it is always an adverse inference which is to be drawn against such person. Secondly, if the entire case of the Applicant was dependent on a sale deed registered pursuant to a power of attorney, then the execution of the power of attorney was also required to be proved with confidence inspiring evidence, including the presence of the executant at the time of executing the said power of attorney which has not been done. It is also a matter of record that various proceedings were held before the Settlement authorities as well as the Revenue authorities, including the Deputy Commissioner, and in none of the proceedings it has come on record from the Applicants' side that as to how a power of attorney was executed by Mst. Hapurwali who had since expired long ago.

6. It has further come on record that after the purported execution of sale deed, Respondent No.1 got information about the same and immediately made a complaint to the concerned Deputy Commissioner and Sub-Registrar, Khairpur not to register sale deed in respect of the Suit property and sensing this impediment, the Applicant and Respondent No.2 got their sale deed registered before the Sub-Registrar Kotdiji. In response, it has been stated in the written statement that there is no bar in getting the sale deed registered before any Sub-Registrar. In law that may be so, but since here, a complaint was already lodged before the concerned Deputy Commissioner and Sub-Registrar, propriety demanded that the sale deed in question ought not to have been got registered from any other Sub-

Registrar. This creates serious doubt as to the correctness of the statement of the Applicant.

7. Lastly as to having possession of the Suit property for the last 15 years by the Applicant as stated in the written statement; it may be noted that the same is completely silent as to where, and from whom, such possession was given to the Applicant. There is nothing on record; nor any supporting document has come in the evidence in this regard. This again does not support the stance of the Applicant that he was holding possession of the suit land for the last 15 years, whereas, admittedly as per his own case the sale deed was executed in 1975 when the Suit was filed.

8. Reliance of the Applicants Counsel on the judgment of the Hon'ble Supreme Court as above is also not justified to seek support in this case, as per settled law, criminal and civil proceedings go together and are not linked with each other; nor are to be decided on the basis of any observations in one case or vice versa. Moreover, the acquittal of the Applicant in that case is also not on merits but is an acquittal under Section 249-A, Cr.P.C., which had been arrived at by the trial court and maintained by the Hon'ble Supreme Court was only one ground that the power of attorney was never produced in the trial; hence, the same cannot be pending. Therefore, even otherwise, it has no bearing on the merits of this civil case which is based on the evidence led by the parties.

9. In view of hereinabove facts and circumstances of this case, there appears to be no justifiable reason to interfere with the concurrent findings of the two Courts below which appear to be correct and in accordance with law and facts, whereas, the Applicant has failed to bring on record any such material so as to bring this case within the exception rule of interfering with such concurrent findings so as to exercise jurisdiction in his favour under section 115 CPC; therefore, this Civil Revision Application being misconceived is hereby dismissed.

**Judge**