

# IN THE HIGH COURT OF SINDH, KARACHI

## *IIInd Appeal No. 60 of 2012*

Muhammad Ahmed and six others.....Appellants.

*Versus*

Mst. Nargis Nawaz and three others.....Respondents.

### **JUDGMENT**

Date of hearing : 11.01.2021 & 15.03.2021.  
 Date of Judgment : 15.03.2021.  
 Appellants : Mr. Fazal-ur-Rehman, advocate  
 Respondent No.4 : Mr. Muhammad Aqil Zaidi, advocate.

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**Kausar Sultana Hussain, J:-** This Second Appeal under Section 100 of C.P.C. assails judgment and decree dated 05.03.2012 and 22.03.2012 respectively, passed by the learned IIIrd Additional District Judge Karachi East in Civil Appeal No. 153 of 2011, whereby the appeal of the appellants was dismissed and the impugned judgment and decree dated 04.05.2011, passed in Civil Suit No. 1032 of 2010 by the learned Ist Senior Civil Judge, Karachi East were maintained.

2. Short factual background of the case is that the Civil Suit No. 1032 of 2010 was filed by the appellants/plaintiffs against the respondents/defendants for Declaration, Injunction and Cancellation of documents, stating therein that the father of appellants/plaintiffs acquired a Plot No. A-3, Sector 8-A, measuring 240 square yards, Korangi Township, Karachi from one Javed Iqbal Abbasi, the original allottee and subsequently on 15.11.1989 lease deed was executed by the respondent No.4/defendant No.4 in favour of the father of appellants/plaintiffs, who expired on 02.10.2007 at Karachi leaving behind the appellants No.1-7/plaintiffs No. 1-7 as his legal heirs; they decided to get the said plot transfer in the name of plaintiff No.3 namely Amin Pasha by executing relinquishment deed; on 13.12.2009 for the purpose of registration of such relinquishment deed they visited the office of respondent No.3/defendant No.3, (Sub-Registrar, Korangi

Town, Karachi) where they came to know that the plot in question is also leased in the name of respondent No.2/defendant No.2, vide transfer letter No. 596 dated 30.11.2005 through registered power of attorney dated 25.03.1992 purported to be executed by the father of appellants/plaintiffs in favour of respondent No.1/defendant No. 1 namely, Nargis Nawaz, who illegally got transferred the plot in question in the name of respondent No.2/defendant No.2 namely Asad Nazir, hence they filed a suit No. 1032 of 2010 before learned trial Court for Declaration, Injunction and Cancellation of Documents against the respondents/defendants.

3. After admission of the suit, process were issued against the respondents/defendants through all modes of service by the learned trial Court as provided under Order V, C.P.C. Notices issued by the learned trial Court against the respondents/defendants were served upon them, therefore, service was ordered to be held good upon them and accordingly, the respondents/defendants were provided opportunities to submit their respective written statements but they all avoided to appear before the learned trial Court to contest the matter, eventually, they were debarred by the Court from filing their written statements vide order dated 11-01-2011 and matter was ordered to be proceeded as Ex-parte against all the respondents/defendants. The appellants/plaintiffs filed their affidavit in Ex-parte proof through their constituted attorney namely Muhammad Ahmed (appellant No.1/plaintiff No.1). The said attorney of the appellants/plaintiffs while leading his evidence before the learned trial Court had produced following original title documents of the property in question (i) transfer letter (Ex-P/1), (ii) lease deed dated 15.11.1989, in the name of his father (Ex.P/2), (iii) power of attorney (Ex-P/3); (iv) relinquishment deed in favour of appellant No.3/plaintiff No.3 (Ex-P/4) and (v) legal notice dated 12.02.2010 alongwith couriers receipt (Ex-P/5 & P/6). During proceedings, the appellants/plaintiffs moved an application before the learned trial Court under Order XI Rule 14 read with section 151 C.P.C for calling the defendants No.1, 2 and 4 in order to produce original title documents of the suit property

allegedly in their possession. The learned trial Court vide order dated 03.02.2011 had allowed the said application of the appellants/plaintiffs and after that notices were issued against said respondents/defendants for their appearing and producing alleged title documents before the Court. On 26.03.2011, Assistant District Officer, Land Management-1, CDGK, namely Abdul Raheem Solangi duly authorized representative of the respondent No.4/defendant No.4, had appeared and produced following original title documents of the property in question, registered in the name of respondent No.2/defendant No.2 Asad Nazeer, (i) transfer letter dated 30.11.2005 (Ex-D/3), (ii) lease deed dated 04.02.2006 (Ex-D/4) and (iii) letter of mortgage dated 20.05.2006 (Ex-D/5). It is noticed by this Court that the learned trial Court neither provided chance to the appellants/plaintiffs, nor their counsel to cross-examine the said representative of official respondent No.4/defendant No.4, and no reason for doing so is mentioned in the impugned judgment of learned trial Court.

3. The learned trial Court after concluding the trial, heard the learned counsel for the appellants/plaintiffs and passed the impugned judgment dated 04.05.2011, whereby the suit of the appellants/plaintiffs was dismissed being not maintainable as it was not only time barred but also barred under Section 56(d) of Specific Relief Act, as opined by the learned trial Court.

4. Being aggrieved with the judgment and decree of the trial Court, the appellants/plaintiffs preferred Civil Appeal No. 153 of 2011 before the learned IIIrd Additional District Judge, Karachi-East. The learned appellate Court after hearing arguments of learned counsel appearing for appellants/plaintiffs, dismissed the said appeal, vide judgment dated 05.03.2012 whereby the impugned judgment of learned trial Court dated 04.05.2011 was maintained. The appellants/plaintiffs then filed this IInd appeal on 26.04.2012 against the said judgment of the appellate Court dated 05.03.2012 before this Court. After service of notice of this Court, the respondent No.3/defendant No.3 (sub-Registrar) has submitted his Counter

Affidavit, whereby he being official formal respondent, undertook that they would make compliance of Court's order. The other respondents/defendants No. 1 & 2 did not appear before this Court. The respondent No. 4 being official respondent/defendant has been represented by Mr. Mohammad Aqil Zaidi, Advocate.

5. The learned counsel for the appellants/plaintiffs Mr. Fazal-ur-Rehman has advanced his arguments and submitted that the case of the appellants is based on the fact that the General Power of Attorney(Ex-D/2) dated 10.03.1992 allegedly executed by the father of the appellants/plaintiffs in favour of the respondent No.1 in respect of residential plot No. A-3, Sector No. 8-A, Korangi Township, Karachi is a forged document, which stood proved for the reason that according to the contents of letter of Microfilming Officer and Photo Registrar, Government of Sindh, Karachi dated 24.05.2011, (original of which was seen and returned by the first appellate Court on 10.02.2012 and copy of which was kept on record), the said General Power of Attorney (Ex-D/2) is not Microfilmed in their office and the seal and signature of Microfilming Officer thereon are forged. It is further argued that burdon to proof the said Power of Attorney (Ex-D/2) as genuine one is on the respondent No.1 and 2, as they are the beneficiary of the said document but they failed to appear and prove it before the Court; that both the Courts below failed and/or neglected to follow the mandatory provision of Article 84 of Qanoon-e-Shahadat Order, 1984, according to which disputed signature or writing or seal should be proved by adducing evidence of a person conversant or acquainted with such signature or writing or examine by the expert of disputed signatures or writing by making comparison with admitted one or Court itself can compare it; that both he Courts below have failed and neglected to compare the signature of the executant on the fake and forged power of attorney dated 10.03.1992 (Ex-D/2) with admitted signature of the deceased father of the plaintiffs/appellants available in the Lease Deed dated 15.11.1989 (Ex-P/2). He further argued that signature of executant on the fake and forged General Power of Attorney dated

10.03.1992 (Ex-D/2) is in Urdu, whereas the admitted signature of executant in Lease Deed dated 15.11.1989 (Ex-P/2) is totally different and in English; that the learned trial and appellate Courts have failed and neglected to observe that no thumb impression of the executant is available on the forged General Power of Attorney dated 10.03.1992 (Ex-D/2), which is sufficient prove that the same is a forged and fake document. It is further argued that the learned trial Court in the impugned judgment and decree dated 04.05.2011 has erroneously observed and mentioned that “the deceased father of the plaintiffs executed registered General Power of Attorney in favour of defendant No.1 on 17.02.1992. It is pointed out by Mr. Fazal-ur-Rehman, Advocate that both the Courts below have also failed and neglected to note and observe that the date of issuance of stamp paper of the said fake and forged General Power of Attorney (Ex-D/2) is 10.03.1992, while the alleged executant of said power of attorney (Ex-D/2) had signed it on 17.02.1992, how a document could be executed and signed prior to the date of issuance of stamp paper, which is also a valid proof that the General Power of Attorney (Ex-D/2) is a fake, forged and invalid document. He further argued that the learned trial Court and first appellate Court failed and/or neglected to presume as to genuineness of certified copy of Lease Deed dated 15.11.1989 in the name of appellant’s father (Ex-P/2) issued by the Microfilming Officer and Photo Registrar, Karachi, Registration Department Government of Sindh, as such both the Courts below had violated the mandatory Provision of Article 90 of Qanoon—Shahadat Order, 1984, which reads as follows:-

**“Presumption as to genuineness of certified copies, (1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purpose to be certified by any officer of the Federal Government or Provincial Government to be genuine.”**

6. It is further argued that both the trial and first appellate Courts failed and/or neglected to frame issue in the matter regarding alleged genuineness of General Power of Attorney dated 10.03.1992 (Ex-D/2) and to give their findings thereon; on the contrary both the Courts below validated the fake and forged General Power of Attorney (Ex-D/2); that the first appellate Court ought to consider the instant case of the appellants/plaintiffs in the light of decision of the Hon'ble Supreme Court, reported in PLD 1971 Supreme Court 82, wherein it has been held that ***"if no issues are framed at all and the parties are prejudiced, it will be material irregularity"***; that the trial Court seriously erred in holding that the suit was time barred and also failed to examine the relevant provision of law. The learned counsel for the appellants submitted that objection regarding filing time barred suit by the appellants/plaintiffs was earlier raised by the learned trial Court at the initial stage and after satisfying the Court on this point by the plaintiff's counsel by relying on Articles 91 and 92 of Limitation Act, 1908, which articles deal with the time runs in such cases from the date of knowledge, the suit was duly admitted; that the learned trial Court has erroneously held that the suit is barred under Section 56(d) of the Specific Relief Act, 1877 and failed to give reason thereof. It is also submitted that before the first appellate Court proof of forgery was produced by the appellants/plaintiffs on 10.02.2012 by producing a letter dated 24.5.2011 before the trial Court issued by the Photo Registrar Microfilming Department, Government of Sindh, Karachi, whereby they confirmed that the power of attorney dated 10.03.1992 (Ex-D/2) is forged document and no record of it is available in their office but the same was ignored; that the finding of both the trial and appellate Courts in the impugned judgments and decrees are based on conjecture and surmises and have resulted due to non-reading, misreading and misinterpretation of relevant provisions of law; that the representative of official respondent No.4/defendant No.4 in his examination-in-chief recorded by the learned trial Court on request of the appellants/plaintiffs had neither denied the averments made by the appellants/plaintiffs in the plaint, nor he made any

such statement regarding genuineness of the alleged General Power of Attorney (Ex-D/2) produced by him before the learned trial Court; that both the trial and appellate Courts seriously erred by presuming the execution of alleged General Power of Attorney (Ex-D/2) by the deceased father of the appellants/plaintiffs in favour of respondent No.1/defendant No.1 without any reason as no written statement, objections or any piece of evidence ever come on record even no any denial of the plaintiff's averments made in the plaint was before both the Courts below for disbelieving the appellants/plaintiffs version; that both the trial and appellate Courts have miserably failed and/or neglected to hold that in presence of an earlier registered lease deed dated 15.11.1989 (Ex-P/2), how the subsequent lease deed dated 04.02.2006 (Ex-D/4) could have been a valid document. In support of his version the learned counsel for the appellants has relied upon the judgment passed in the case of **Mst. Bushra Sadiq, by the learned Division Bench of this Court reported in 2001 MLD 1295**; that both the trial and appellate Courts did not consider the unchallenged and un-rebutted statement of the appellants/plaintiffs and the averments made in the plaint which were duly corroborated by an Affidavit of ex-parte proof and the documents exhibited by the appellants/plaintiffs before the learned trial Court. The learned counsel for the appellants relied on the case of **Abdul Majeed, reported in 1999 SCMR 1245**. He prayed that present appeal may be allowed and the judgments passed by both learned Courts below may be set aside and suit of the appellants/plaintiffs may be decreed as prayed.

7. On the contrary none has appeared before this Court on behalf of the private respondents No.1 and 2 /defendants No.1 and 2 in spite of service of notice upon them through different modes of service of notice as provided under order V, C.P.C including publication in daily "Express", Karachi dated 08.06.2017, which shows that the respondents No.1&2/defendants No.1&2, knowingly and deliberately avoided to contest the Court proceedings owing to the reasons best known to them. However, the official respondents No.3&4/defendants No.3&4 have been represented by the learned

Assistant/Additional Advocate General, Sindh for respondent No.3/defendant No.3 and Mr. Mohammad Aqil Zaidi, Advocate for K.D.A (respondent No.4), but they did not advance their arguments.

8. Submissions put forward by the learned counsel for the appellants/plaintiffs Mr. Fazal-ur-Rehman, Advocate have been considered, the judgments passed by the learned Courts below have been examined in perspective of the law laid down by the superior Courts including the case laws referred by the learned counsel for the appellants/plaintiffs.

9. The perusal of the judgment passed by the learned trial Court on 04.05.2011 adequately reveals that the learned trial Court has decided the matter in a cursory and running manner. The reasons of such observation of this Court is that in-spite of availability of the documents of both claimants of the suit property on record neither these documents were examined and discussed by the learned trial Court, nor the learned trial Court compared the signatures, writing or seal of the documents of both the side in order to ascertain and decide the genuineness of the documents of either side as provided under Article 84 of the Qanoon-e-Shahadat Ord, 1984. The relevant Article 84 is hereby being reproduced for ready reference:-

**“Comparison of signature, writing or seal with others admitted or proved:** (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.”

10. The learned counsel for the appellants/plaintiffs while leading this IInd Appeal has pointed out several discrepancies of the judgments impugned in this appeal, which have been passed without discussing merits of the suit even no issue had been framed by the learned trial Court regarding genuineness of the documents in-spite of availability of the documents of the parties. It is very unfortunate that both the Courts below



did not bother to decide the suit of the appellants/plaintiffs on merits. The learned trial Court although recorded the examination-in-chief of the representative of official respondent No.4, who was summoned on request of the appellants/plaintiff and produced original documents of the suit property but no opportunity was provided by the learned trial Court to the appellant's/plaintiff's counsel to cross-examine him nor any question was put by the learned trial Court itself from the witness in regard of genuineness of the documents. The learned counsel for the appellants/plaintiffs has relied on the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of **Abdul Majeed, reported in 1999 SCMR 1245**, wherein the Hon'ble Supreme Court has held as under:-

**“everything which finds mention in the registered deed or Revenue Record must invariably be accepted without proof of their execution, genuineness and authenticity. It is axiomatic principle of law that a registered deed by itself, without proof of the execution and the genuineness of the transaction covered by it, would not confer any right. Similarly, a mutation although acted upon in Revenue Record, would not by its own force be sufficient to prove the genuineness of the transaction to which it purports unless the genuineness of the transaction is proved. There is no cavil with the proposition that these documents being part of public record are admissible in evidence but they by their own force would not prove the genuineness and execution of that to which they relate unless the transaction covered by them is substantiated from independent and reliable source. Admissibility is to be distinguished from proof required by law for determining the execution and genuineness of document.”**

11. Tested on the touchstone of the principles of laws elucidated by the apex Court, it will be seen that the judgments passed by both the learned Courts below are perfunctory and perverse and are unwarranted in the circumstances of the case. Since the relevant documents of both the claimants of the property in question were available on record, which were sufficient for the learned trial Court to pronounce the judgment on merits, in-

spite of that the suit of the appellants/plaintiffs was dismissed presuming that the alleged execution of Power of Attorney by the father of appellants/plaintiffs in favour of the respondent No.1/defendant No.1 was in their knowledge since the day of its execution, without considering the fact that appellants/plaintiffs were denying the execution of these alleged documents by their father and claiming it as fake, forged and fabricated documents. The learned trial Court has also not ponder it over with due care that if the respondents No.1&2 are the genuine owners of the property in question since 1992, as per documents produced by the representative of defendant No.4/K.D.A, then why they did not get the suit property in their own possession even they did not contest the Court proceedings of the suit wherein, the appellants/plaintiffs are claiming themselves as owners of the property in question, if they have any interest and lien over the suit property they should have contested the suit of the appellants/plaintiffs. However, without touching the merits of the case, the matter is being remanded back to the learned trial Court for denovo consideration strictly on merits within three months' time of receiving this judgment under report to this Court through the learned M.I.T- II.

12. These are the reasons of my short order dated 15.03.2021.

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