

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.1860 of 2020

Date	Order with signature of Judge
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For hearing of CMAs No.

1. 21613 of 2021
2. 11647 of 2021
3. 171 of 2021
4. 172 of 2021
5. 13415 of 2020
6. 14999 of 2021
7. 15000 of 2021
8. 15819 of 2022

07.11.2022.

Syed Amir Ali Shah for the Plaintiff
Mr. Fazal ur Rehman for defendant No.1
Defendant No.4, Ms Hawwa Amir in person

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The statement alongwith Nikahnama filed by the plaintiff pursuant to order dated 31.10.2022 is taken on record.

1&5]. I have heard learned counsel for the parties and perused materials available on record.

The facts are very peculiar as far as surreptitious transactions are concerned while the plaintiff was in relation with defendant No.1 and consequently a property deal with defendants No.4&5 was materialized. The plaintiff No.1 solemnized marriage with defendant No.1 in July, 2019 and the plaintiff, who claimed to have been living abroad, executed a registered power of attorney on 15.7.2020 in her favour while he was in Pakistan. It is claimed that on the strength of said power a sale deed was executed in November, 2020 by defendant No.1 in favour of defendants No.4&5 while plaintiff and defendant were in relation, whereas soon after the plaintiff realized about aforesaid transaction he divorced her in the month of December, 2020. Plaintiff maintained that purpose of power of attorney was to collect rent however it was, for convenience, made a comprehensive one and got it registered. Defendant No.4&5 claimed interest in the property by virtue of a registered instrument claimed to have been executed by defendant No.1 on the strength of power of attorney.

It is surprising that within a short period of marriage, though a power of attorney was executed in favour of defendant No.1 being wife of the plaintiff, she disposed of the property in November, 2020. This power of attorney is not coupled with interest. In law, it only enabled the attorney to act upon including sale, mortgage, gift, charge etc etc which action was performed on behalf of the plaintiff by the attorney and the attorney is accountable for it.

The actions as undertaken by defendant No.1 were in fact surreptitious in nature as this deed was executed in favour of defendants No.4&5 without any public notice. Defendant No.1 has not been able to show any correspondence between herself and the plaintiff that any deal was finalized by her or that any public advertisement was made or that any estate agent was engaged to such transaction of sale. This power of attorney is not an ownership deed in the real sense as it is not coupled with interest and she has to account for it as far as alleged property's deal is concerned. It is to be seen whether subject deal is a collusive deal or genuine transaction and unless evidence is recorded it cannot be determined. In view of above, I deem it appropriate to allow the application bearing CMA No.13415 of 2020 to the extent that parties shall maintain status quo in respect of possession as well as title of the subject property.

Since defendants No.1,4 & 5 have filed their respective written statement, the matter be fixed for framing of issues.

J U D G E