

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
**IInd Appeal No. 32 of 2023**

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**Dated:** Order with signature of Judge(s)

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1. For orders on CMA No.2976/2023.
2. For orders on CMA No.624/2023.
3. For orders on CMA No.2977/2023.
4. For hearing of Main Case.

Date of hearing : 27 April, 2023.

Appellant : Syed Muhammad Faraz through  
Mr. Rana Muhammad Ahmed Khan,  
Advocate.

Respondents : Salmat M. Khokhar & Others.

**J U D G E M E N T**

**Mohammad Abdur Rahman, J.** This Second Appeal has been preferred under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree each dated 28 October 2022 passed by the learned VIIth Additional District Judge Karachi (East) in Civil Appeal No.129 of 2019 upholding a Judgment and Decree dated 1 April 2017 passed by the IXth Senior civil Judge Karachi dismissing Suit No. 526 of 2007 that was filed by the Appellant.

**I. THE FACTUAL BACKGROUND TO THE SECOND APPEAL**

2. The facts leading up to this second appeal are protracted:
  - (i) The dispute relates to Flat No.H-7, 3<sup>rd</sup> Floor Baradari Project, FL-2, Block 13-D, Gulshan-e-Iqbal, Karachi (the "Said Property").
  - (ii) By an Indenture of Lease dated 4 June 1978 the Karachi Development Authority leased the Said Property to Mr. Khursheed

Alam Qureshi for a term commencing from 1 June 1978 until 31 May 2077.

- (iii) Mr. Khursheed Alam Qureshi on 31 May 1979 purportedly executed an **unregistered** Power of Attorney (hereinafter referred to as the "POA 1979") **in favour of a limited company i.e. Eastern Star Corporation Limited**. That as is regular when a company is appointed an individual named Salim Shah Taimuri was nominated by Eastern Star Corporation Limited to act as a representative of Eastern Star Corporation Limited and who had been "duly authorized" by Eastern Star Corporation Limited to be the attorney of Mr. Khursheed Alam Qureshi
- (iv) From the record it is apparent that Mr. Khursheed Alam Qureshi had financed the purchase of the Said Property by obtaining a loan from House Building Finance Corporation Limited.
- (v) From pleadings, it would seem that Eastern Star Corporation Limited was issued the POA 1979 by Mr. Khursheed Alam Qureshi so and to represent him in settling the loan that he had obtained from House Building Finance Corporation Limited. This is apparent from the following powers that are indicated in the POA 1979:

- “
2. To take loan from the House Building Finance Corporation for the construction of flat on the Plot of land bearing No.FL-2 / H-7 measuring 100.00 Sq. Yrd. in Block No.13-D, Scheme No.24, Federal 'B' Area, Karachi which I am seized, possessed of and well entitled to and for that purpose to comply with all the requirements of the House Building Finance Corporation on my behalf as I have applied to the Corporation for a loan to enable me to defray the expenses of construction of the flat on the said plot.
  3. To execute and register the Lease of the Said Plot Before the Registrar or Sub-Registrar Karachi and admit execution.

5. To sign and execute all documents that may be required by the House Building Finance Corporation to be signed and executed and get the same registered which include any transfer or movable and immovable property and to admit the execution and signature before the Registrar.
7. To receive the Loan from the House Building Finance Corporation by means of crossed cheques in my name and sign and deliver property receipt for the same.
8. To invest the said loan for constructing the flat on the said Plot according to the plans and specifications submitted to the House Building Finance Corporation and the terms and condition that may be stipulated by the Corporation.
15. To make transfer and conveyance of my property in favour of House Building Finance Corporation in case it is required for reasons decided by the Corporation to do so and to sign and execute the proper deed of conveyance.
16. This Power of Attorney is irrevocable and shall be binding on me until it is revoked by joint written consent of the House Building Finance Corporation and myself, in case the Attorney himself desires to cease to continue as such Attorney, he shall not be allowed to do so without the previous consent of the House Building Finance Corporation and his liability and responsibility will be deemed to continue till such consent is procured in writing."

The POA 1979 also conferred on Eastern Star Corporation Limited the power to appoint a Sub-Attorney which is reproduced hereinunder:

- "
1. To appoint one or more attorneys for me for all or any act with similar or lesser powers for carrying out the purposes hereunder mentioned for such term or period, my said attorney deems fit."

Importantly, no ***general*** power existed in the POA 1979 to sell, transfer or convey the Said Property; such power in Clause 15 of the General Power of Attorney being limited to convey the Said Property ***only in favour of House Building Finance Corporation Limited.***

- (vi) It is alleged by Mr. Muhammad Iqbal Rahi (hereinafter referred to as the "Respondent No. 2") that on 15 September 1988 he entered into an Agreement of Sale (hereinafter referred to the "Iqbal Rahi

Agreement of Sale”) with Mr. Khursheed Alam Qureshi through his purported attorney Mr. Salim Shah Taimuri for the purchase of the Said Property against a consideration of Rs.65,000/-. It was further contended by the Respondent No. 2 that at the time of the execution of the Iqbal Rahi Agreement of Sale he paid the entire consideration to Mr. Salim Shah Taimuri on behalf of Mr. Khursheed Alam Qureshi; receipt of which was confirmed by the execution of the Iqbal Rahi Agreement of Sale. As per the terms of the Iqbal Rahi Agreement of Sale, the loan that had been availed by Mr. Khursheed Alam Qureshi from House Building Finance Corporation Limited was to be settled by Mr. Muhammad Iqbal Rahi to his own account and after such loan was settled the Said Property would be conveyed by Mr. Khursheed Alam Qureshi to Muhammad Iqbal Rahi. It is also contended by Mr. Muhammad Iqbal Rahi that on 17 September 1990, Salim Shah Taimuri executed an **unregistered** General Sub-Power of Attorney in favour of Muhammad Iqbal Rahi (hereinafter referred to as the “Iqbal Rahi Sub-POA”) and which sub-power of attorney was purportedly executed by Salim Shah Taimuri on the basis of the 1979 POA that had been issued in favour of Eastern Star Corporation Limited.

- (vii) It was contended by Mr. Muhammad Iqbal Rahi that on the basis of these documents he was entitled to obtain Specific Performance on the Iqbal Rahi Agreement of Sale along with ancillary relief and in respect of which he had instituted Suit No.1248 of 2005 before the IXth Senior Civil Judge Karachi (East) purportedly through his duly constituted attorney Mr. Salamat Kokhar and who had been given a “General Power of Attorney dated 14 November 1993 by Mr. Muhammad Iqbal Rahi to act in respect of the Said Property on behalf of Muhammad Iqbal Rahi. To the contrary, Mr. Salim Shah

Taimuri **denies** the execution of the Iqbal Rahi Agreement of Sale but **admits** the execution of the Iqbal Rahi Sub-POA contending that it had been issued by him in favour of Mr. Muhammad Iqbal Rahi to manage and settle the loan that had been obtained by Khursheed Alam Qureshi from House Building Finance Corporation Limited.

- (viii) Conversely, the Appellants in their pleadings contended that they also acquired title to the Said Property on basis of a **registered** Conveyance Deed dated 3 June 2005 (hereinafter referred to as the “Conveyance Deed”) whereby the Said Property was conveyed in favour of the Appellant as against a sale consideration of Rs. 405,000/- by Khursheed Alam Qureshi through Mr. Muhammad Khalid (the Respondent No.7) who is admittedly the father of the appellant. The authority of Mr. Muhammad Khalid to act as an attorney of Mr. Khursheed Alam Qureshi is based on a **registered** General Sub-Power of Attorney dated 8 March 2005 (hereinafter referred to as the “Muhammad Khalid Sub-POA”), and that had admittedly been executed in his favour by Salim Shah Taimuri on the basis of the **unregistered** 1979 POA.

- (ix) On the strength of the Conveyance Deed dated 3 June 2005, the Appellant *inter alia* instituted Suit No. 526 of 2007 before the VIIth Senior Civil Judge Karachi (East) as against Muhammad Iqbal Rahi, his purported attorney Salamat Mr. Khokhar, Salim Shah Taimuri and Khursheed Alam Qureshi seeking a declaration as to his title to the Said Property and for ancillary relief as against Muhammad Iqbal Rahi and Salmat M. Khokhar who were in possession of the Said Property.

**II. THE DECISION OF SUIT NO.1248 OF 2006 AND SUIT NO.526 OF 2007.**

3. As the two suits were based on common facts and related to the same immovable property, Suit No.1248 of 2005 and Suit No. 526 of 2007 were consolidated by the IXth Senior Civil Judge Karachi (East), who framed the following consolidated Issues for decision:

- “
1. Whether the plaintiff and defendant No.1 general power of attorney Saleem Shah Taimuri executed sale agreement on 15.09.1988 in respect of Flat No.H-7, 3<sup>rd</sup> Floor, Baradari, Plot No.F-L-2, 13-D, Gulshan-e-Iqbal, Scheme No.24, Karachi and handed over original documents and vacant possession after receiving full and final consideration from the plaintiff?
  2. Whether the plaintiff of Civil Suit No.1248/2005 paid loan in account No.02-37095-6 of flat in question to HBFC in capacity of owner?
  3. Whether defendant No.1 through the attorney Saleem Shah Taimuri executed Sub-General Power of Attorney in favour of defendant No.2 in collusion of defendant No.4?
  4. Whether General Power of Attorney executed by defendant No.1 through his attorney Saleem Shah Taimuri in favor of plaintiff was revoked on 08.03.2005?
  5. Whether defendant No.2 on the basis of forged Sub-Power of Attorney collected original documents of the flat in question from HBFC?
  6. Whether defendant No.2 on the basis of forged power of attorney executed sale deed of flat in question in the name of defendant No.3 on 07.06.2005?
  7. Whether on 20.06.1988, plaintiff paid Rs.5,500/- to the office bearer of Baradari Apartment Welfare Association after purchase of flat in question from the attorney of defendant No.1 and also installed KESC meter?
  8. Whether the defendant No.3 is entitled for possession of flat in question as claimed by him in Civil Suit No.526/2007?
  9. Whether the plaintiffs of both the suits are entitled for the relief claimed by them?
  10. What should the decree be?”

4. By a common judgment dated 1 April 2017 the IXth Senior Civil Judge Karachi (East) dismissed both Suit No.1248 of 2005 and Suit No.526 of 2007 applying the following rationale:

(a) **Suit No. 1248 of 2005**

- (i) It was held that as per the terms of the Iqbal Rahi Agreement of Sale, the Conveyance Deed in favour of Muhammad Iqbal Rahi was to be executed after the loan that had been availed by Khursheed Alam Qureshi from House Building Finance Corporation Limited was settled and which had admittedly occurred on 20 May 2002. Suit No.1248 of 2005 being presented on 27 October 2005 was instituted after the period of limitation prescribed in Article 113 of the First Schedule of the Limitation Act, 1908 i.e. within three years from the date of performance i.e. 20 May 2002 and was barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908;
- (ii) It was also held that as the execution of the Iqbal Rahi Agreement of Sale had been denied it was incumbent on Muhammad Iqbal Rahi, in accordance with Article 79 of the Qanoon-e-Shahadat Order, 1984, to produce and depose the two witnesses who attested to the execution of the Agreement of Sale dated 15 September, 1988. As Muhammad Iqbal Rahi had failed to call these two witnesses to adduce evidence as such the Iqbal Rahi Agreement of Sale remained unproved;
- (iii) It was also held that through his evidence, Muhammad Iqbal Rahi had failed to show that he had in fact paid the entire consideration of Rs.65,000 for the purchase of the Said Property as only a sum of Rs.35,000 had been shown through receipts and which having been denied were required to be proved through attesting witnesses who had not been called to adduce evidence; as such the payment of the sale consideration for the purchase of the Said Property remained unproved;

(v) The Power of Attorney executed by Mr. Muhammad Iqbal Rahi in favour of Mr. Salamat M. Kokhar has been issued illegally as the power conferred to Mr. Muhammad Iqbal Rahi in the Iqbal Rahi Sub-POA did not have the power to sub-delegate the authority purportedly vested therein in him and as such Suit No. 1248 of 2005 had been instituted by a person not properly authorised to institute such proceedings; Suit 1248 of 2005 and neither had the evidence in Suit No. 1248 of 2005 been adduced by a person who was properly authorised to adduce such evidence;

(vi) The execution of the Iqbal Rahi Sub-POA while having been admitted, was limited to the purpose of managing the loan to the House Building Finance Corporation Limited and could not have been used for any other purpose; and

(iv) That the Iqbal Rahi Sub-POA had been validly revoked by Salim Shah Taimuri in accordance with Section 202 of the Contract Act, 1872 by a Registered Revocation Deed dated 8 March 2005.

**(b) Suit No. 526 of 2007**

(i) As the POA 1979 authorised Mr. Salim Shah Taimuri to execute and register a lease and by contrast the rights which he purported to sub-delegate was a right to register a Sale Deed, the Conveyance Deed that had been executed in



favour of Syed Muhammad Faraz on basis of the Muhammad Khalid Sub-POA was illegal.

5. The Judgement and Decree dated 1 April 2017 passed by the IXth Senior Civil Judge Karachi (East) dismissing both Suit No.1248 of 2005 and Suit No.526 of 2007 was assailed by the Appellant in Civil Appeal No. 129 of 2017 and by Muhammad Iqbal Rahi through his Attorney Salamat M. Kokhar in Civil Appeal No. 136 of 2017 both of which were heard by VIIth Additional District Judge, Karachi (East) and each of which were dismissed by a consolidated judgement and decree dated 28 October 2022 applying the following rationale:

(a) **Civil Appeal No. 129 of 2017**

- (i) the Conveyance Deed executed by Muhammad Khalid on the basis of the Muhammad Khalid Sub-POA was illegal as an attorney is under Section 215 of the Contract Act, 1872 prohibited to transfer the Said Property to his son without first obtaining the permission of the principal;
- (ii) the 1979 POA was not a registered power of attorney and as such could not form the basis of a series of documents on the basis of which a Conveyance Deed could be registered rendering the Conveyance Deed invalid.

(b) **Civil Appeal No. 136 of 2017**

- (i) that as an agreement of sale did not create any right title or interest in an immoveable property, as such the Iqbal Rahi Agreement of Sale could not be the basis of any title that he claims to the Said Property;

- (ii) That no witnesses were deposed by Muhammad Iqbal Rahi to prove that he had paid a sum of Rs. 65,000 representing the consideration for the purchase of the Said Property;
- (iii) That no witnesses were deposed by Muhammad Iqbal Rahi to prove the execution of the Iqbal Rahi Agreement of Sale;
- (iv) That no witnesses were deposed by Muhammad Iqbal Rahi to prove a Sub-Power of Attorney dated 14 November 1993 that had purportedly been issued by Muhammad Iqbal Rahi on the basis of the Iqbal Rahi Sub-POA in favour of Salamat M. Khokhar;
- (v) The Iqbal Rahi Sub-POA which was being used to transfer a right, title or interest in an immoveable property had not been registered as mandatorily required under Section 17 of the Registration Act, 1908;
- (vi) That Muhammad Iqbal Rahi being the beneficiary of the Iqbal Rahim Agreement of Sale and who had purportedly issued the Sub-Power of Attorney in favour of Salamat M. Khokhar had not been deposed to prove the Iqbal Rahi Agreement of Sale, the Iqbal Rahi Sub-POA, or the Sub-Power of Attorney dated 14 November 1993; and
- (vii) Suit No.1248 of 2005 was barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act.

6. The counsel for the Appellant has challenged the judgment and decree dated 28 October 2022 passed in Civil appeal No. 129 of 2017 by the VII Additional District Judge Karachi (East) emanating from the

judgment and decree dated 1 April 2017 passed in Suit No. 526 of 2017 by the IX Senior civil Judge Karachi (East) and contended that the judgment and decree was not sustainable as both the Courts had not properly appreciated the facts and evidence or record. He further contended that the 1979 POA in Clause 3 conferred the follower power on Saleem Shah Taimuri:

“3. To execute and register the lease of the Said Plot before the Registrar a Sub-Registrar Karachi and admit execution.”

and argued the expression “Lease” in this Power should be interpreted in its widest sense. He contended that while a lease would generally be interpreted to have the meaning given to that expression under Section 105 of the Transfer of Property Act, 1882, however as a lease executed by a government authority is considered to be a title document, the expression “Lease” as used in the power should be interpreted to mean “title” and as such the 1979 POA conferring the power on Salim Shah Taimuri to register a “lease” should be interpreted to give Mr. Salim Shah Taimuri the right to register a title document in favour of a third party. He did not cite any case law in support of his contention.

7. I have heard the learned counsel for the Appellant and have perused the record. The points for determination that arise out of this Second Appeal are:

**A.** Whether the POA 1979 could be used by Salim Shah Taimuri to present a document for registration of the transfer of any right, title or interest in the Said Property?

- B.** Whether the Muhammad Khalid Sub-POA Conveyance Deed executed by Salim Shah Taimuri on the basis of 1979 POA has been validly registered?
- C.** Whether the Conveyance Deed executed in favour of the Appellant on the basis of the Muhammad Khalid Sub-POA Conveyance has been validly registered?
- D.** Whether the Appellant is entitled to the possession of the Said Property?
- A.** **Whether the POA 1979 could be used Salim Shah Taimuri to present a document for registration of the transfer any right, title or interest in the Said Property?**

8. It is admitted that a **registered** Indenture of Lease was executed by the Karachi Development Authority on 1 June 1978 in favour of Mr. Khursheed Alam Qureshi. It would seem that Mr. Khursheed Alam Qureshi had on 31 May 1979 had executed the POA 1979 which was and remains an **unregistered** Power of Attorney.

9. Clause (b) of Sub-Section (1) of Section 17 of the Registration Act, 1908 states that:

“ ... The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which. Act No. XVI of 1864, or the Registration Act, 1886, or the Registration Act, 1871 or the Registration Act, 1877, or this Act came or comes into force, namely ...

- (b) other non-testamentary instruments which purport or operate to create declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one

hundred rupees and upwards, to or in immovable property.”

In **Siraj Din vs. Ghulam Nabi**<sup>1</sup> an immovable property was owned by a lady who had executed an unregistered, but notarized, Power of Attorney in favour of her attorney which *inter alia* allowed the attorney to transact on an immovable property. The attorney on the basis of the Power of Attorney sold the immovable property to his son and another person who further sold the immovable property to a second purchaser. On an action as brought by the lady’s successors in interest as against the second purchaser the question arose as to whether the unregistered power of attorney could have been used by the attorney to sell the immovable property. The Supreme Court of Pakistan while considering the application of Clause (b) of Sub-Section (1) of Section 17 of the Registration Act, 1908 held that:<sup>2</sup>

“ ... 8. The entire case hinges upon the authenticity of an alleged general power of attorney said to have been executed by Mst. Sardaran Bibi in favour of Allah Ditta. The record shows that no such general power of attorney was produced in the evidence before the trial court as such its being in nonexistence, the question of its validity does not arise at all. Under Section 17 (b) of the Registration Act, any document that purports to create right, title or interest in immovable property requires compulsory registration. *In case if it was in existence, the same should have been compulsory registered as per law and its mere attestation by the Notary Public was not sufficient to meet the requirement of the law.*

10. The 1979 POA being an instrument which, as held by the Supreme Court of Pakistan, was required to be registered under the provisions of Clause (b) of Sub-Section (1) of Section 17 of the Registration Act, 1908 and which was admittedly not registered, as per Sub-Section (a) of Section 49 of the Registration Act, 1908 such a Power of Attorney could not:

“ ... operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property”

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<sup>1</sup> PLD 2003 SC 159

<sup>2</sup> *Ibid* at pg. 163

This proposition has been reiterated by the Supreme Court and is well settled.<sup>3</sup> Clearly in the presence of the **registered** Indenture of Lease issued by the Karachi Development Authority to Mr. Khursheed Alam Qureshi, the 1979 POA being an **unregistered** document could not be used by Mr. Salim Shah Taimuri to create any right title or interest in the Said Property in favour of the Appellant i.e. he could not have used the 1979 POA to register the Muhammad Khalid POA. The Muhammad Khalid POA was therefore illegally registered and which could not have been used by Muhammad Khalid to execute the Muhammad Khalid Conveyance Deed.

11. While this finding would be enough to dismiss the appeal, **even if I was to consider that the 1979 POA was registered in accordance with Clause (b) of Sub-Section (1) of Section 17 of the Registration Act, 1908**, the only interpretation that could have been cast on the powers contained in the 1979 POA would have been to authorise Mr. Salim Shah Taimuri to convey the said property to the House Building Finance Corporation Limited and no one else. The argument of the counsel for the Appellant that the power to register a lease of the said property as contained in clause 3 of 1979 POA should be read to confer the power to transfer title of the Said Property is therefore misplaced. It has been settled by the Supreme Court of Pakistan in **Moiz Abbas vs. Mrs. Latifa**<sup>4</sup> that:<sup>5</sup>

“ ... It is settled law that the language of a power of attorney must be strictly construed. We are in no manner of doubt that there was no stipulation in the Power of Attorney that could be construed by any stretch of the language to confer a right of sale. In this regard it has been held by this Court in various pronouncements that even when a general POA has been executed “it is wrong to assume that ever “general” POA on account of the said description means and include the power to alienate/dispose of property of

<sup>3</sup> See **Muhammad Ishaque (Represented by his Legal Heirs) vs. Messrs Eroze Theater Arts** PLD 1977 SC 109 at pg. 123-124; **Habibur Rehman vs. Wahdania** PLD 1984 SC 424 at pg. 427; **Nawab Din vs. Ghulam Haider** 1988 SCMR 1623 at pg. 1628; **Farida Malik vs. Khalida Malik** 1998 SCMR 816 at pg. 820; **Ali Rehman vs. Fazal Mehmud** 2003 SCMR 327 at pg. 328;

<sup>4</sup> 2019 SCMR 74

<sup>5</sup> *Ibid* at pg 77

the principal. In order to achieve that object it must contain a clear separate clause devoted to the said subject." It has been further held by this Court that the rule of strict construction applies to such an instrument and if a power to sell a property has been given even then the same needs to be exercised strictly in the manner specified in the POA. Reliance is placed on *Imam Din vs. Bashri Ahmed* (PLD 2005 SC 418).

12. In light of the findings of the Supreme Court of Pakistan two clauses of the 1979 POA need to be examined in terms of the powers that were conferred to Mr Salim Shah Taimuri. The first is clause 3 of the 1979 POA which reads as under:

" ... 3. To execute and register the Lease of the Said Plot Before the Registrar or Sub-Registrar Karachi and admit execution."

It is to be remembered that the lease of the Said Plot had on 1 June 1978 been executed and registered in favour of Mr. Khursheed Alam Qureshi. As the lease of the Said Plot had already been executed and registered in favour of Mr. Khursheed Alam Qureshi, no question arose for Mr. Salim Shah Taimuri to exercise any power under this clause. The argument raised by the Appellant that this power should be treated as a power to register a conveyance also fails as has been held by the Supreme Court of Pakistan the 1979 POA has to be strictly construed and as such the wide beneficial interpretation that has been cast on the 1979 POA cannot be given.

The only other power that is found in the 1979 POA is in clause 15 of the POA which reads as under:

" ... 15. To make transfer and conveyance of my property in favour of House Building Finance Corporation in case it is required for reasons decided by the Corporation to do so and to sign and execute the proper deed of conveyance."

A strict interpretation of this clause of the 1979 POA can only be construed to permit Mr. Salim Shah Taimuri to transfer or convey the property to House Building Finance Corporation Limited and to no other person. In addition such a person could also not have been acted upon by Mr. Salim Shah Taimuri as the 1979 POA was not a registered power of attorney and which under Section 49 of the Registration Act, 1908 could not have been made to even convey a transferable title before the House Building Finance Corporation Limited. I am therefore clear the finding of the IXth Senior Civil judge Karachi East in Suit No. 526 of 2007 that the POA 1979 only authorised Mr. Salim Shah Taimuri to execute and register a lease (which he could not do as the POA 1979 was not a registered document) and similarly the findings of the VIIth Additional District Judge Karachi in Civil Appeal No. 129 of 2017 that as the 1979 POA was not a registered power of attorney it could not form the basis of a series of documents on the basis of which a Conveyance Deed could have been registered are also correct.

13. I therefore hold that Mr. Salim Shah Taimuri did not have the requisite capacity under the 1979 POA to register **any** document which transferred any right, title or interest in the Said Property before the Registrar of Rights and Assurances as the 1979 POA was not registered as mandatorily required under clause (b) of Sub-Section 1 of Section 17 of the Registration Act, 1908 rendering it under Section 49 of the Registration Act, 1908 incapable of transferring any right, title or interest in an immovable property.

**B. Whether the Muhammad Khalid Sub-POA Conveyance Deed executed by Salim Shah Taimuri on the basis of 1979 POA has been validly registered?**

14. Mr. Salim Shah Taimuri had on the basis of the 1979 POA executed and caused to be registered the Muhammad Khalid Sub-POA before the Sub-Registrar T Division VIII A Karachi. As I have held that the 1979 POA



was not a registered document and that Mr. Salim Shah Taimuri on the basis of the 1979 POA did not have the capacity to register any document to transfer any right, title or interest in the Said Property; the execution and the registration of the Muhammad Khalid Sub-POA by Mr. Salim Shah Taimuri, purporting to create a “right” in favour of the Respondent No. 5 to authorise him to sell the Said Property, was illegally registered by the Sub-Registrar T Division VIII A Karachi rendering the Muhammad Khalid Sub-POA document, to the extent that it purports to transfer any right, title or interest in an immovable property, to be treated as a void document.

15. I therefore hold that the finding of the VIIth Additional District Judge Karachi in Civil Appeal No. 129 of 2017 that the Muhammad Khalid Sub-POA albeit a document having been registered by the Sub-Registrar T Division VIII A Karachi, having been executed and registered by Mr. Salim Shah Taimuri **who had no capacity to cause the document to be registered on the basis of the unregistered 1979 POA**, was registered illegally and as per Sub-Section (a) of Section 49 of the Registration Act, 1908 could not “ operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property” is also in conformity with law

**C. Whether the Conveyance Deed executed in favour of the Appellant has been validly registered?**

16. I have already held that the Muhammad Khalid Sub-POA ,that had been registered by Mr. Salim Shah Taimuri on the basis of his authority under the 1979 POA, was invalid as the 1979 POA had not been registered, it naturally follows that the Conveyance Deed that had been executed by Mr. Muhammad Khalid in favour of the Appellant on the basis of the Muhmmad Khalid Sub-POA, as has been held by the IX Additional District Judge Karachi in Civil Appeal no. 129 of 2017, could not form the basis of

a series of documents on the basis of which a Conveyance Deed could be registered rendering the Conveyance Deed invalid and to this extent I cannot fault the findings of the IX Additional District Judge Karachi which are also upheld.

17. The final finding of the IXth Additional District Judge in Civil Appeal No. 129 of 2017 that on account of the prescription of Section 215 of the Contract Act, 1872, the Respondent No.5 on the basis of the Muhammad Khalid Sub-POA could not execute a Conveyance Deed in favour of his son i.e. the Appellant without the consent of the ultimate principal i.e. Mr. Khursheed Alam Qureshi has a basis in law.<sup>6</sup> In **Muhammad Ashraf vs. Muhamamd Malik**<sup>7</sup> it was held that:<sup>8</sup>

“ ... Even if it be taken that power of attorney was validly executed, petitioner No.1 had no authority and he was not competent in law to gift or sell the suit land to his son-in-law namely, Muhammad Amin. There is no evidence on record to show that the attorney before making the gift in favour of his son-in-law ever obtained the consent and permission of the plaintiffs and sought any approval from the real owner of the property, who even according to the stance of the petitioners are his principals. It is a settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The consistent view of this Court is that if an attorney on the basis of power of attorney, even if "general" purchases the property for himself or for his own benefit, he should firstly obtain the consent and approval of principal after acquainting him with all the material circumstances. Here in the cases of Fida Muhammad v. Pir Muhammad Khan (deceased) through legal heirs and others PLD 1985 SC 341, Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others 1994 SCMR 818 and Nisar Ahmad and others v. Naveed-ud-Din and others 2004 SCMR 619, can be referred, which are fully applicable to the case in hand.. In view of the principle laid down in the aforesaid cases, the petitioners have no case and the learned High Court has rightly dismissed petitioners' revision petition.”

<sup>6</sup> See **Mst. Shumal Begum vs. Mst. Gulzar Begum** 1994 SCMR 818 at pg. 822; **Maqsood Ahmed vs. Salman Ali** PLD 2003 SC 31 at pg. 39; **Mst. Ghulam Fatima vs. Muhamamd Din** 2004 SCMR 618 at pg. 619; **Muhammad Ashraf vs. Muhamamd Malik** PLD 2008 SC 389 at pg. 391; **Syed Atif Raza Shah vs. Syed Fida Hussain Shah** 2022 SCMR 1262 at pg. 1265-1266; **Haq Nawaz vs. Banaras** 2022 SCMR 1068 at pg. 1071

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid* at pg 391

18. No evidence was adduced to show that the permission of Mr. Khursheed Alam Qureshi has ever been sought by either Mr. Salim Shah Taimuri or by Mr. Muhammad Khalid prior to the execution of the Conveyance Deed. The findings of the IXth Additional District Judge in Civil Appeal No. 129 of 2017 that on account of the prescription of Section 215 of the Contract Act, 1872 it was mandatory for Mr. Muhammad Khalid to secure the approval of Mr. Khursheed Alam Qureshi are also upheld to indicate the Conveyance Deed executed in favour of the Appellant has been registered illegally.

**D. Whether the Appellant is entitled to the possession of the Said Property?**

19. As the Conveyance Deed has been executed in favour of the Appellant has been held by me to have been illegally executed and registered as the authority purportedly exercised by Muhammad Khalid on behalf of Mr. Khursheed Alam Qureshi has been exercised on the basis of the illegally registered Muhammad Khalid Sub-POA, I am of the considered opinion that the Judgment and Decree each dated 28 October 2022 passed by the VIIth Additional District Judge Karachi (East) in Civil Appeal No.129 of 2019 and the Judgment and Decree dated 1 April 2017 passed by the IXth Senior Civil Judge Karachi (East) in Suit No. 526 of 2007 denying the Appellant the right to claim possession of the Said Property are in consonance with law and are upheld.

20. On account of the foregoing there being no illegality or infirmity in the Judgment and Decree each dated 28 October 2022 passed by the VIIth Additional District Judge Karachi (East) in Civil Appeal No.129 of 2019 upholding the Judgment and Decree dated 1 April 2017 passed by the IXth Senior civil Judge Karachi (East) dismissing Suit No. 526 of 2007 I had

dismissed this Second Appeal on 27 April 2023 and these are the foregoing reasons for that order.

Dated 27 June 2023.

JUDGE

Nasir PS.