

***JUDGMENT SHEET***  
**THE HIGH COURT OF SINDH, CIRCUIT COURT**  
**HYDERABAD**

**R.A No.38 of 2020**

Mr. Hakim Ali Siddiqui, advocate for applicant  
Mr. Muhammad Younus Shaikh, Advocate for respondents No.1 and 2  
Mr. Muhammad Ismail Bhutto, Additional A.G

Date of hearing                      21.04.2022

Date of judgment                      19.05.2022

**JUDGMENT**

***SALAHUDDIN PANHWAR, J.-*** By way of captioned revision application, applicant Liaquat Ali has called in question the judgment and decree dated 07.01.2020, whereby the learned Additional District Judge, Tando Adam dismissed the Civil Appeal No.29 of 2019 against the order of rejection of plaint dated 27.02.2019, handed down by the learned Senior Civil Judge, Tando Adam in F.C Suit No.113 of 2018 (Re: Liaquat Ali v. Muhammad Usman & others).

2. The applicant was plaintiff and the respondents were defendants in the suit.

3. Concisely, the facts of the case are that applicant filed Suit No.113 of 2018 for Declaration, Cancellation, Mandatory and Permanent Injunction on 24.05.2018 pleading therein that he owns agricultural land measuring 39-20 acres in Deh 54Jamrao, Tapo Dalore, Taluka Jam Nawaz Ali, District Sanghar and said land was mutated in his name on the basis of Registered Sale Deed alongwith possession. The applicant has pleaded to be an illiterate person, who cannot read or write but can sign in Urdu. The applicant and respondent No.1 were very good friends and applicant had great trust and confidence upon him. The applicant executed a Registered General Power of Attorney in favour of the respondent No.1 authorizing him to appear in Court and lookafter the pending litigation between applicant and his brother

namely Shoukat Ali. However, respondent No.1 taking undue advantage and without consent of the applicant got inserted Para 11, 12, 13 in the Registered General Power of Attorney and the contents whereof were neither read over nor explained in Urdu to the applicant at the time of execution of registration of the Registered Power of Attorney No.400 dated 25.05.2012. The brother of applicant had filed F.C Suit No.14 of 2013 in the Court of Senior Civil Judge, Sanghar for Specific Performance of the Contract etc. The respondent No.1 got the suit compromised on behalf of applicant. When applicant came to know about the said un-authorized act, he got readout of and explained in Urdu the contents of the Registered General Power of Attorney and also came to know about un-authorized and illegal insertion of Para No.11, 12 and 13 in the Registered General Power of Attorney, therefore, applicant orally revoked the said Power of Attorney, whereupon the respondent No.1 became annoyed and he committed other illegal acts of civil wrongdoing as well criminal liability.

4. Thereafter, applicant filed F.C Suit No.112 of 2014 for Cancellation of Registered Power of Attorney No.400 dated 25.05.2012, wherein respondent No.1 filed written statement annexing a copy of Agreement of Sale dated 08.03.2012 allegedly executed by the applicant in respect of the suit land in favour of the respondent No.1, which according to applicant was never executed by him. Thereafter, respondent No.1 filed an application under Order VII Rule 11 CPC for rejection of plaint, to which applicant filed objection/counter affidavit. After hearing the counsel for the parties, learned Senior Civil Judge rejected the said application vide order dated 07.10.2015.

5. Accordingly, respondent No.1 filed Civil Appeal No.08 of 2015 in the Court of District Judge, Sanghar, which was then made over to Additional District Judge, Tando Adam for disposal according to law, who, after hearing the counsel for the parties, vide judgment and decree dated 18.04.2016 allowed the same and consequently the plaint was rejected under Order 7 Rule 11 CPC, which was challenged by the applicant/plaintiff by preferring C.P.No.D-2154 of 2016 before this

Court, which was dismissed vide order dated 24.03.2018. It would be advantageous to reproduce paragraph No.4, which reads:-

*“4. Having heard the learned counsels and gone through the record. It is apparent that it appears from the impugned order that the same provides an opportunity to the petitioner being the principal to approach the proceeding where the said Power of Attorney was alleged to have been fraudulently exercised and seek proper order. It is also observed that for cancellation of Registered Power of Attorney a document of cancellation is required to be registered with the same Registrar where the Power of Attorney was got executed and registered. The order of withdrawal of suit as is contended to have been obtained seems to have never been contested on part of the petitioner. In the circumstances this petition being found not maintainable is dismissed with normal cost.”*

6. However, during pendency of Constitution Petition as well having knowledge of fraudulent insertion of clauses No.11, 12 and 13, the respondent No.1 executed Registered Sale Deed in favour of his father namely Muhammad Ismail / respondent No.2 herein on the basis of disputed / cancelled General Power of Attorney. In such circumstances, applicant filed Suit No.113 of 2018 for Declaration, Cancellation, Mandatory and Permanent Injunction on the following grounds:-

- i) That the General Power of Attorney had been verbally revoked and the Donee was informed.
- ii) That the Suit No.112 of 2013 for Cancellation had been filed.
- iii) That the Registered Sale Deed in favour of the respondent No.2 the father of the respondent No.1 was executed during the pendency of the Suit No.112 of 2013 and C.P.No.D-2114 of 2015.
- iv) That no consent or authority was obtained from the applicant by the Donee / Attorney from the applicant / plaintiff the principal / donor of the General Power of Attorney for sale or execution of Registered Sale Deed in favour of the respondent No.2 who was father of the respondent No.1, hence, the execution and Registered of Sale deed was illegal and confer no right, interest or title.
- v) That no consideration was paid to the applicant / owner of the suit land.

- vi) That the sale deed was executed as mentioned in the Registered Sale Deed for highly in-adequate consideration of Rs.100,000 (One Lac) whereas the price of 1 acre of land in the said area is more than Rs.500,000/- (five lac) per acre.
- vii) That the respondent No.1 filed Application under Order 7 Rule 11 CPC in the above F.C. Suit No.113 of 2018 on 04.12.2018 and the plaint was rejected by the Trial Court on 27.02.2019 on the ground that the suit is barred by time and the suit is incompetent.

7. The plaint was rejected on the ground of estoppel in view of the written statement filed in Suit No.14 of 2013 by the plaintiff / applicant.

8. The applicant filed Civil Appeal No.29 of 2019 before learned District Judge, Sanghar, which was made over to the Additional District Judge, Tando Adam and the same was dismissed vide order dated 07.01.2020 on the ground that the applicant/plaintiff is estopped to file the suit under the principle of estoppel.

9. It is also matter of fact that applicant / plaintiff was sued by his brother Shoukat Ali and in that suit he filed written statement. The relevant excerpt of said written statement is reproduced as under:-

*“3.....It is further submitted that answering defendant entered into exchange agreement with one Muhammad Usman Mangrio, wherein the answering defendant has given the so-called suit land to said Muhammad Usman Mangrio, while the answering defendant in exchange has received another land from said Usman Mangrio, such agreement was also executed in written in between answering defendant and said Muhammad Usman Mangrio vide agreement dated 08.03.2012. It is further submitted due to pendency of the present suit the answering defendant has not executed the final Registered Sale Deed in favour of said Muhammad Usman Mangrio, while for the satisfaction of said Muhammad Usman Mangrio, the answering defendant has Executed Registered Power of Attorney in respect of suit land in favour of said Muhammad Usman Mangrio vide its No.595 dated 22.05.2012, so also acknowledged the possession of so-called suit land was hand over to said Muhammad Usman Mangrio and till today the said Muhammad Usman Mangrio is in possession of suit land, the assertions of the plaintiff are totally false fabricated and based on malafide, let the plaintiff to prove the same.*”

10. The learned counsel for the applicant has argued that the suit of the applicant was not time barred, the limitation is mixed question of facts / law and thus cannot be decided without recording evidence, the principle of estoppel is rule of evidence relating to production of evidence as provided U/A 114 of Qanoon-e-Shahadat Order, 1984 and the plaint cannot be rejected merely on the basis of estoppel without recording evidence. It is argued that impugned judgment and decree are not sustainable under the law hence are liable to be set-aside. He prayed to allow the instant revision application.

11. The learned counsel for the respondents No.1 & 2 has argued that the applicant has failed to point out any illegality, irregularity or jurisdictional error in the impugned judgment and decree, which are well reasoned and based on proper appraisal of the material available on record, hence need no interference of this Court. The revision application merits no consideration hence is liable to be dismissed.

12. The learned AAG has contended that the dispute is between two private parties and no public interest is involved, hence prayed that any appropriate order may be passed.

13. The revisional jurisdiction of this Court is very limited to interfere in the concurrent findings of the courts below. While exercising jurisdiction under Section 115, C.P.C., concurrent findings of fact cannot be disturbed in revisional jurisdiction unless courts below while recording findings of fact had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error. The Honourable Supreme Court in case reported as **Noor Muhammad and others v. Mst. Azmat Bibi (2012 SCMR 1373)** has held as under:

*"6. There is no cavil to the proposition that the jurisdiction of High Court under section 115, C.P.C. is narrower and that the concurrent findings of fact cannot be disturbed in revisional jurisdiction unless courts below while recording findings of fact had either misread the evidence or have ignored any material piece of evidence or those are perverse and reflect some jurisdictional error....."*

In the case of “Muhammad Idrees V. Muhammad Parvez (2010 SCMR 5) it is held that:-

*“It is settled principle of law that this Court seldom interferes in the concurrent conclusions arrived at by the Courts below while exercising power under Article 185(3) of the constitution unless and until the finding is on the face of it against the evidence or so patently improbable or perverse that to accept it could amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of a principle relating to appreciation of evidence, or, finally, if the finding could be demonstrated to be physically impossible. This being the practice and the rule of this Court in civil petitions, the burden lies rather heavily on the petitioner to show that the concurrent findings recorded by the High Court are not sustainable on the record and should be interfered with by us.”*

14. From the above pleadings, it is apparent of the record that there were different litigations between the parties. The first litigation between the applicant and his brother Shoukat Ali was F.C. Suit No.14/2012 (14/2013) filed by Shoukat Ali against the applicant for Specific Performance of contract and permanent injunction. Said suit was contested by the applicant himself by filing written statement. The relevant para of the written statement of the applicant has already been quoted (supra) wherein the applicant has mentioned that he entered into exchange agreement dated 08-03-2012 with Muhammad Usman Mangrio/respondent No.1 and in exchange the applicant has received some other land and due to pendency of suit he (the applicant) could not execute the registered sale deed, while for satisfaction of Muhammad Usman Mangrio, the applicant executed Registered General Power of Attorney and the possession of the suit land was handed over to respondent No.1. The second round of litigation was F.C. Suit No.112/2014, which was filed by the applicant for Cancellation of Documents, Mandatory and Permanent Injunction, the plaint of which was rejected in Civil Appeal No.08/2015. The order for rejection of plaint was impugned by the applicant in C.P. No.D-2114 which was

also dismissed and thereafter the applicant started third round of litigation by filing of F.C. Suit No.113/2018, the plaint of which was rejected by the trial Court vide order dated 27-02-2019. The applicant impugned the order of rejection of plaint in Civil Appeal No.29/2019. The appeal was dismissed vide judgment dated 07-01-2020, which has been impugned through the instant revision application.

15. From the material available on record, it is apparent that since very beginning the controversy is revolving on the General Power of Attorney. The first round of litigation was F.C. Suit No.14/2013 filed by the brother of the applicant namely Shoukat Ali which was ended by way of compromise, on the basis of General Power of Attorney. According to applicant the Para 11, 12 & 13 were inserted in the General Power of Attorney without his consent and knowledge and he had authorized the respondent No.1 only to look after the pending litigation and on the basis of General Power of Attorney said suit was compromised by the respondent No.1. It is the contention of the applicant that when he came to know about the fraud he orally revoked the power of attorney. It was the moment when the applicant had to approach the trial Court for challenging the compromise order and decree by filing an application u/s 12 (2) CPC because according to applicant the respondent No.1 in collusion with his brother Shoukat Ali played fraud and obtained compromise decree clandestinely, but the applicant failed to pursue his remedy. Needless to mention here that law favours diligent not negligent. Even the Applicant had not availed the remedy to challenge the compromise decree/ order provided under Order XLIII Rule 1(m), of the Code of Civil Procedure, 1908.No specific time has been mentioned that when the applicant learnt about the alleged fraud allegedly played by the respondent No.1, which leads to the presumption that the applicant lost his time for filing application u/s 12 (2) CPC and then he started second round of litigation by filing F.C. Suit No.112/2014, the plaint of which was rejected in the revision application and the order of rejection of plaint and allowing the revision application was impugned in CP No.D-2114/2016, the operative para of the order of this Court has already been quoted (*supra*) in which

same finding was given that the impugned order provides an opportunity to the petitioner (applicant) being the principal to approach the proceedings where the said Power of Attorney was alleged to have been fraudulently exercised and seek proper order.

16. After ending second round of litigation, the applicant started third round of litigation by filing suit with the prayers of declaration that RSD No.993 dated 25-07-2017 is illegal, unlawful, null and void and not binding upon the plaintiff, cancellation of registered sale deed No.993 dated 25-07-2017 in respect of suit land and direction to the defendant No.4 to cancel the Khata in favour of the defendant No.2 and for permanent injunction. The applicant sought declaration to the effect that the registered sale deed as illegal and its cancellation which is based on the General Power of Attorney through which the applicant authorized to respondent No.1 to do all acts mentioned in the Power of Attorney including sell, mortgage, register sale deeds, receive money and deliver possession of the land for which the contention of the applicant is that these were inserted without his consent and knowledge.

17. It is pertinent to mention that in the earlier litigation the applicant has failed to obtain decree for cancellation of General Power of Attorney. The applicant's case is that he orally revoked/cancelled the Power of Attorney, though no date is available on record regarding such oral revocation but he had given notice to Sub Registrar for its cancellation on 18-05-2018, however, the RSD was executed on 25-07-2017, hence the RSD No.993 dated 25-07-2017 cannot be declared to be illegal and void mere on the basis that the applicant had orally revoked the General Power of Attorney in as much as the applicant had neither revoked the registered general power of attorney through written notice to the attorney, nor published such revocation in daily newspaper having wide circulation before execution of the sale transaction to put the public-at-large in view of the dictum laid down by the Honourable Supreme Court of Pakistan in Case of ***Raza Munir and another v. Mst. Sardar Bibi and 3 others*** (2005 SCMR 1315). Here the written statement filed by the applicant is concerned, it



shows that he had entered into an exchange agreement with respondent No.1, he had given the land to him, in exchange received another land from respondent No.1, due to pendency of suit he was unable to execute the sale deed, for satisfaction of respondent No.1 he executed Registered General Power of Attorney and delivered possession of land to Muhammad Usman. On the basis of registered power of attorney the respondent No.1 executed the registered sale deed in favour of the respondent No.2 and delivered possession. Surprisingly, pleadings of the instant suit are silent in this regard.

18. The perusal of the General Power of Attorney reveals that it is irrevocable. The admission with regard to exchange of land, receiving of land in exchange, execution of agreement and delivery of possession of the land is evident from the written statement of the applicant. The attorney/respondent No.1 as an agent of the applicant-principle acquired interest in the disputed land forming part of agency within the meaning of section 202 of the Contract Act, 1871, which provides as under: -

*“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.”*

Provisions of Section 202 of the Contract Act, 1872 can be split up into two parts. First part contemplates that interest of agent himself should exist in property that forms subject matter of agency; second part is that when such interest is created, it cannot be terminated to the prejudice of agent, unless it is expressly provided in the contract. Reliance can be placed on **2009 YLR 334**. No condition with regard to second part is available in the Registered Power of Attorney, hence it was not revocable and the applicant was not competent to revoke the authority because the applicant himself entailed his legal disability by inserting

fact of irrevocability. Besides this the execution of Registered Power of Attorney is admitted by the applicant and it was against the consideration hence it cannot be revoked.

19. The main contention of the learned counsel for the applicant is that the plaint cannot be rejected on the basis of estoppel. The trial Court as well as the appellate Court have given much weight to the written statement of the applicant which he had filed in F.C. Suit No.14/2012 (14/2013), in which the applicant had admitted the sale of the suit land to the respondent No.1 as estoppel, the power of attorney is still in the field and the trial Court rejected the plaint. The appellate Court in the impugned judgment has strengthened the findings of the trial Court while relying the said written statement of the applicant in the earlier round of litigation, in which he has stated that due to pendency of the suit he could not execute the registered sale deed in favour of respondent No.1 therefore he had executed an irrevocable General Power of Attorney. The present litigation is in respect of same land against the respondent No.1 for cancellation of General Power of Attorney and cancellation of Registered Sale Deed. In the instant litigation the applicant is taking approbate and reprobate in the same breath, hence the doctrine of estoppel as provided U/A 114 of Qanoon-e-Shahadat Order, 1984 applies to the case of the applicant, which is reproduced as under: -

***“Article 114: [Estoppel.—When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing.”***

Estoppels are classified as (i) estoppel by matter of record, (ii) estoppel by deed, and (iii) equitable estoppel. Estoppel as a matter of record is something part of the records of a Court. In the instant matter, the

estoppel is based on matter of record of the Court in shape of written statement of the applicant. The applicant has taken an inconsistent position in the instant case and in earlier cases hence the principle of estoppel is applying to the present case.

20. For what has been discussed above, I am of the view that the impugned judgment and decree are well reasoned and based on proper appraisal of facts and law. I do not find any illegality, irregularity or jurisdictional error in the impugned judgment and decree which are upheld, consequently; the instant revision application is dismissed with no order as to the costs.

**JUDGE**

Shahid