

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
IInd Appeal No.36 of 2021

Mst. Fakhra Ahmed.....Appellant  
Vs.  
Sajid Abbasi & others .....Respondents

1. For hearing of CMA No.968/2021
2. For hearing of main case

**26.09.2024**

Syed Fazal-ur-Rehman, Advocate for the appellant.  
Mr. Jamshed Ahmed Abbasi, advocate for the Respondents No.4 & 5.

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

**Muhammad Iqbal Kalhoro, J:-** Appellant entered into a sale agreement dated 10-06-2013 with respondent No.1 Sajid Abbasi to sell House No. C-182, Block-J, measuring 860.80 Sq.Yards situated in KDA Scheme No.2, North Nazimabad, Karachi. At the time of sale agreement Rs.1,000,000/- were paid to appellant as a token money/advance /earnest money. It was stipulated in Clause-1 that the remaining sale consideration amounting to Rs.1,25,00,000/- would be paid to the appellant by respondent No.1 within 30 days. Clause-4 of the agreement lays down that if the vendee/second party did not complete the payment of balance consideration within stipulated time, general power of attorney and sale agreement shall stand cancelled. Clause-5 of the sale agreement reads that the sale agreement as well as general power of attorney will be considered as part and parcel of each other.

2. After three days of the sale agreement, a general power of attorney was executed on 13.06.2013 by appellant in favour of respondent No.1. The record reflects that when vendee Sajid Abbasi did not fulfill his commitment in terms of sale agreement, the appellant issued him a legal notice dated 23.07.2013 stating that since he had failed to pay the balance sale consideration, he should hand over the documents of the property besides original sale agreement and general power of attorney. Further reminding him that because of his default in making good of payment of the sale consideration the sale agreement as well as general power of attorney stood cancelled. Irrespective of above legal notice, respondent No.1, by exercising the general power of attorney executed in his favour by appellant, entered

into a sale agreement with respondents No.4 and 5 on 24.12.2013 in respect of the same property and on the same day he executed a sale deed in their favour, which has been duly registered.

3. The appellant, however, on 15.09.2014 filed a suit for cancellation of general power of attorney, declaration and perpetual injunction against respondent No.1 and others. After admission of the suit, notices were issued to respondent No.1 but he failed to appear, hence his side was closed and the matter was fixed for further proceedings. Respondents No.4 and 5, however, somehow came to know of pendency of the said suit, hence they filed an application under order 1 Rule 10 CPC impleading to be made a party in the suit. Their application was allowed and they were impleaded as defendants No.4 and 5. The appellant was allowed to file the amended plaint. She filed the amended plaint seeking this time the relief(s) of cancellation of general power of attorney, sale deed, sale agreement, declaration and perpetual injunction with following prayers:-

- a) To declare that the general power of attorney bearing Registration No. 685, Book No. IV, dated 24.10.2013 M.F. Roll No. 74685/8887 dated 18.09.2013 Photo Registrar Karachi in respect of immovable property viz. plot of land constructed thereon bearing No. C-182, Block-J, measuring 860 Sq. yds., situated at KDA Scheme No. 2, North Nazimabad, Karachi is null, void ab-initio.
- b) To Cancel the sale deed which was made by the Defendant No.1 with the Defendants No.4 & 5 bearing Registration No, 5498, Book No.1 Dated 26-12-2013
- c) To cancel/revoke sale agreement & general power of Attorney bearing Registration No: 685, Book No. IV. Dated 18-09-2013 M.F. Roll No: 74685/8887, Dated 24-10-2013 Photo registrar Karachi in respect of immoveable property viz. Plot of land constructed thereon bearing No.C-182 Block J, measuring 860.80 sq yds. situated at KDA scheme No.2 North Nazimabad Karachi which has been revoked under the clause 4 of Sale Agreement dated:-10.6.2013.
- d) To grant the permanent injunction against the defendants No.1,4 and 5 thereby restraining the Defendant No. 1, 4 and 5 and his agents, nominees, assignees, worker or any other person, not to create the third party or not to disposes the plaintiff from the suit property viz. Plot of land constructed thereon bearing No.C-182 Block J, measuring 860.80 Sq yds. situated at KDA scheme No.2 North Nazimabad Karachi.
- e) Any other relief(s) which this Honourable Court may deems fit and proper accordingly.

4. Respondents No.4 and 5 filed their written statement denying the claim of plaintiff. They have further stated that they had purchased the property in the sum of Rs.1,80,00,000/- (One Crore and Eighty lac) from the appellant through her attorney, respondent No.1. They paid he entire amount but possession was not handed over to them on the pretext that

appellant needed some time to arrange residence for her family. On the basis of pleading of the parties, following issues were framed by the trial Court.

1. Whether the suit of the plaintiff in present shape is maintainable?
2. Whether the plaintiff has any cause of action against Defendants No. 4 and 5?
4. Whether Defendants No. 4 & 5 are bonafide purchaser of the suit property bearing No. C-182, Block-J, measuring 863 Sq. yards situated at KDA Scheme No. 2, North Nazimabad, Karachi?
5. Whether the plaintiff has executed registered general power of attorney bearing Registration No. 985, Book No. IV, dated 18.09.2013, M.F. roll No. U-74685 dated 24.10.2013 in favour of Defendant No.1 ?
6. Whether the Defendant No. 1 general power of attorney is liable to be cancelled?
7. Whether Defendants No. 4 & 5 have created third party interest despite interim injunction in favour of plaintiff ?
8. Whether Defendant No.1 was authorized to sell the suit property by the plaintiff by virtue of the registered sale deed dated 24.12.2013 bearing Registration No. 5498 Book No.1 dated 26.12.2013. M.F. Roll No. U-6252/9091 dated 31.01.2014 in favour of Defendants No. 4 & 5 ?
9. Whether the sale deed of Defendants No. 4 & 5 is liable to be cancelled ?
10. Whether the unregistered sale agreement dated 10.06.2013 executed between the plaintiff and defendant No. 1 has any legal value?
11. What should the judgment be?

5. In the trial, appellant examined herself through her son/attorney who produced all relevant documents. Besides her son, she also examined witnesses namely Syed Muhammad Zaman and Farhan Shamim. On the other hand defendant No.4, acting as attorney of defendant No.5, examined himself and produced affidavit-in-evidence, special power of attorney, agreement of sale, payment receipts of Rs.6,500,000/-, publication and other necessary documents. Respondents also produced witnesses namely Tanveer Hussain.

6. After a full-dressed trial and appreciating evidence of the parties and pleadings filed by them respectively, the trial Court dismissed the suit vide judgment and decree dated 27.11.2019. This judgment and decree were challenged by the appellant in Civil Appeal No.183 of 2019. This appeal has been dismissed by the impugned judgment, hence this second appeal.

7. I have heard the parties and perused the material available on the record. Appellant's counsel has argued that the sale agreement itself shows that vendee/respondent No.1 was required to pay the remaining sale

consideration within a period of one month (30 days) and in case of his failure the penal consequences i.e. cancelling the agreement were to follow. There is nothing on record from the side of respondents to show that as per agreement, respondent No.1 had made remaining payment in stipulated time. On the contrary, it is clear that when respondent No.1 failed to make good of the payment of remaining sale consideration, he was served with a notice by the appellant cancelling the sale agreement and power of attorney. At the time when respondent No.1 entered into sale agreement in respect of the same property with respondents No.4 and 5 and executed the sale deed, he had no such power or authority to exercise in favour of the respondents. Further, as per the sale deed possession of the property was handed over to the respondents but infact it is not disputed that appellant is still in possession thereof. The impression which emerges from subsequent sale agreement and sale deed appears to be as if respondents were in league with each other and by executing the said documents on 24.12.2013, they have attempted to deprive a widow/ the appellant of her property. He has relied upon the case law reported as 2006 SCMR, 1144, 1999 SCMR 1245, PLD 2018 S.C.698, PLD 2021 SC 538, 2007 SCMR 85, 2005 SCMR 1315, 1999 SCJ 433, 1991 CLC 820, 2008 CLJ 405, 2002 SCMR 1821, 2021 SCMR 19, 2019 SCMR 1726 and 2012 YLR 218.

8. On the other hand, learned counsel for the respondent has rebutted his arguments and supported the impugned judgments and submits that there is no record to show that the legal notice was issued or served upon respondent No.1.

9. I have considered submissions of the parties, the material available on record and sought guidance from the case law relied by the parties at bar. The entire case revolves around the sale agreement dated 10.6.2013, this document shows that at the time of its execution Rs.1,000,000/- were advanced to the appellant as earnest money. The total sale consideration was Rs.1,35,00,000/- (Rupees One Crore, Thirty Five Lacs) and the remaining sale consideration, as per Clause-1 of the agreement, was to be paid by the vendee/respondent No.1 to the appellant within 30 days. Clause-4 of the agreement is penal in nature, which stipulates that if the second party/ vendee does not complete/pay the remaining sale consideration, the sale agreement and general power of attorney, which was executed after three

days of the sale agreement on 13.06.2013 would stand cancelled/revoked. In the trial, respondent No.1 who is the middle man between appellant and the respondents No.4 & 5 with whom the appellant had entered into sale transaction of her property chose to remain absent despite service. He did not come forward to show that he had fulfilled his part of agreement by depositing/paying the remaining sale consideration to the appellant within due time.

10. On the contrary, the legal notice dated 23.07.2013, immediately after one month of the sale agreement and power of attorney executed by appellant in favour of respondent No.1 bears testimony to the failure of respondent No.1 to perform his part of agreement and give remaining sale consideration to the appellant. The sale agreement and sale deed executed by respondent No.1 in favour of respondents No.4 and 5 have genesis in the sale agreement and general power of attorney dated 10.6.2013 and 13.06.2013 respectively. When the sale stipulated in these two documents did not materialize and title of the subject property was not transferred to respondent No.1, he had no authority to further transmit it to any other third party in absence of any evidence showing payment of remaining sale consideration at least by respondent No.1 to appellant and execution of sale deed in his favour. The sale agreement dated 13.06.2013 in the light of penal Clause-4 would be deemed to have been cancelled/revoked due to non-compliance of clause No.1 of the agreement by respondent No.1.

11. Although in the trial respondents No.4 and 5 examined themselves and other witnesses and produced the sale agreement and registered sale deed dated 24.12.2013 executed in their favour by respondent No.1, but they did not produce in their support respondent No.1 to indicate that he had a complete and unquestioned title over the property to further transfer it in favour of them. Respondent No.1 was deriving his authority from the appellant through sale agreement executed by former in his favour but that very said agreement stipulated payment of remaining sale consideration by him within a month to the appellant, and on failure, cancellation/revocation of the same and power of attorney without further notice. Respondents although have produced all the documents but failed to produce any receipt of remaining sale consideration paid by respondent No.1 or by them of the amount of Rs.1,80,00,000/- to the appellant. The sale of the subject property

stayed incomplete due to failure of respondent No.1 to pay remaining sale consideration to appellant, and he had no authority to enter into sale purchase transaction thereof with third party.

12. All these lacunas show that the suit of the plaintiff was maintainable and the evidence produced by her was solid enough to decree the suit. Both the Courts below have been swayed away by the fact that in favour of respondents No.4 and 5 a registered document in the shape of sale deed stood available. However, both the Courts ignored the fact that this very document had roots in earlier two documents viz. sale agreement and power of attorney which stood cancelled on failure of respondent No.1 to perform his part of agreement. It goes without saying that his authority was qualified by his coming forward to pay the remaining sale consideration to the appellant, the burden of which was upon respondents to prove but the record shows they did not. During the course of entire case, the respondents not only failed to furnish any evidence in this regard but also did not bring respondent No.1 in the witness box to support their case. When the very authority of respondent No.1 was qualified and got doubtful and questionable due to his failure to pay the remaining sale consideration, his transmission of the property in favour of respondent No.4 and 5 by the sale deed would be equally doubtful and cannot be sanctioned and given currency. In such circumstances, the fact that the sale deed in favour of the respondents No.4 & 5 is registered document would lose importance and currency in the law.

13. I am therefore of the view that both the Courts below have erred in dismissing the suit of the appellant and have not appreciated the evidence in the proper context. The concurrent findings of the Courts below have never been considered sacrosanct; and if it is justified and the evidence points out to a situation otherwise, they can be reversed and set aside. In view of above discussion, I am of the view that appellant was able to make out a case on the basis of evidence and the documents relied upon by her. Hence the suit filed by the appellant is hereby decreed as prayed and both the impugned judgments are set aside.

The appeal is accordingly disposed of alongwith pending application.

JUDGE

Imran