

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 24 of 2024

Mst. Khawar Kifayat alias Khawar Saeed
v. Chaudhary Muhammad Faisal Latif & others

Date of hearing : 17.02.2025

Date of announcement : 28.02.2025

M/s Abdul Qadus Rawal and Mian Abdul Salam, Advocates for applicant.
Mr. Ali Ahmed Soomro, Advocate for respondent No.1.
Mr. Rashid Ali Sindhu, Advocate for respondents No.2 to 6.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – The applicant (plaintiff) has filed this Civil Revision to challenge the judgment and decree dated 13.12.2023, passed by the learned Additional District Judge, Ubauro, in Civil Appeal No.18 of 2023. The appeal filed by respondents (defendants) No.2 and 3 was allowed, thereby setting aside the judgment and decree dated 06.12.2022, passed by the learned Senior Civil Judge, Ubauro, in F.C. Suit No.292 of 2016, wherein the applicant's suit was partly decreed.

2. The applicant claims ownership of the land with a share of 0-12½ paisa in Survey Nos.792 (2-18 acres), 532 (3-31 acres), 533 (2-01 acres), 582 (4-34 acres), 791 (2-38 acres) and 822 (2-07 acres), and 0-01¼ ghunta in Survey No.637 (2-18 acres), situated at Deh Sonan, Taluka Ubauro, District Ghotki. Respondent No.1 is her son from her first husband, while respondent No.3 is her brother, respondents No.2, 4 and 5 are her nephews, and respondent No.6 is her niece. After her second marriage, the applicant relocated to Lahore, where her second husband resides, and entrusted respondent No.1 with a general power-of-attorney dated 19.05.2014 (Page-151) to manage her land. Acting on this power-of-attorney, respondent No.1 executed a sale deed on 08.03.2016 (Page-119), selling part of the applicant's land (0-10 ghuntas) from Survey Nos.532, 533 and 791. In the same sale deed, respondent No.4 (Waleed

Farooq) also sold his share (0-11 ghuntas) in the same survey numbers. The purchasers of these properties were respondent No.2 (Umar Farooq), who purchased 0-09 ghuntas, and respondent No.3 (Saifullah), who purchased 0-12 ghuntas. Additionally, on the same date viz. 08.03.2016, respondent No.1 and respondent No.4 jointly purchased another land portion with a share of 0-10 and 0-11 ghuntas, respectively, in Survey No.792 through another sale deed (Page-173) from respondents No.2, 3, 5 and 6. Each transaction was carried out against a sale consideration of Rs.40,000/-. The applicant alleges that the amount received from the sale of her land was used by respondent No.1 to purchase the other property in his own name, without her knowledge or consent. She claims that these transactions are dubious, particularly because respondent No.1, acting as her attorney, not only sold her property but also used the proceeds to purchase other property for himself. Consequently, she sought the following reliefs:

- a) To cancel Sale Deeds bearing No.150, Book No.1, SRO Ubauro dated 8-3-2016, MF Roll No.650/7545 dated 8-4-2016 and Sale Deed No.158 Book No.1, SRO Ubauro Dated 8-3-2016, MF Roll No.650.7553 dated 8-4-2016 along with other relevant documents and mutation entries made on the basis of fake and bogus sale deeds are liable to be cancelled, delivered and marked cancelled in the relevant records maintained by the defendant No.7 to 10.
- b) To declare that the act of the private defendants particularly the defendant No.1 transferring the suit property firstly in name of other defendants then in his own name by way of a drama of alienating Suit Land is against law, equity and justice and plaintiff is owner of the suit property.
- c) To grant permanent injunction in favour of the plaintiff against the defendants, restraining them from selling, mortgaging alienating, transferring making additions alterations, raising any kind of construction on the Suit Land or handing over possession to any other persons except the plaintiff or creating any third party interest in the suit property.
- d) To award the cost of the suit to the plaintiff.
- e) To grant any other relief suitable to the plaintiff under the circumstances of the case.

3. Learned Counsel for the applicant argued that the power-of-attorney granted to respondent No.1 was misused by him. The attorney should not have executed these sale transactions without consulting the applicant. Learned Counsel stressed that while power-of-attorney does grant the authority to sell property on behalf of the principal, the principal should be informed about the transactions and permission should be sought, especially when the attorney purchases another property in his own name from the same funds obtained through the sale of the principal's property. Reference was made to Sections 211, 213, 214 and 215 of the Contract Act, 1872, which the learned Counsel argued, protect the principal and require the attorney to act in good faith and with full disclosure. He has relied upon the cases reported as **PLD 1985 Supreme Court 341**, **1994 SCMR 818**, **2007 CLC 500**, **PLJ 2008 Supreme Court 368**, **2008 SCMR 805**, **2016 SCMR 1781**, **PLJ 2009 Supreme Court 118**, **2023 CLC 1761**, **2024 SCMR 978**, **2023 CLC 782**, **2005 SCMR 135**, **2024 SCMR 1984** and **2007 SCMR 85**.

4. In contrast, learned Counsel for respondents No.2 to 6 contended that the applicant was fully aware of the power-of-attorney and the subsequent sale transactions. He cited the evidence of Umar Farooq (Page-279), showing that the applicant was present at the house of respondent No.3 when the sale deeds were executed, and she had knowledge of the transactions. Learned Counsel argued that there was no fraud involved in these transactions since only a portion of the land (three survey numbers) was sold, and the entire land was not disposed of, which action one would expect if fraudulent intent was present. Learned Counsel further asserted that the power-of-attorney was general and legally valid, and the principal was not misled. Additionally, learned Counsel pointed out contradictions in the applicant's testimony and her version in the plaint. He further contended that though respondent No.1 purchased the land in Survey No.792, where the applicant is a shareholder, but her 0-12½ share in that survey number has not been disturbed. In support of his arguments, learned Counsel placed reliance upon the cases reported as **2022 SCMR 1454** and **2023 SCMR 815**.

5. Learned Counsel for respondent No.1 contended that the power-of-attorney issued by the applicant was valid, and he supported the stance taken by the Counsel for respondents No.2 to 6. He argued that the first sale transaction, through which he sold the applicant's property, was carried out in accordance with the authority granted by means of the power-of-attorney and that the applicant had no grounds to challenge the same now.

6. When the Court asked about the applicant's intention in granting power-of-attorney to respondent No.1, the applicant's Counsel explained that it was intended to manage the land in her absence. On being questioned whether the power-of-attorney explicitly allowed respondent No.1 to sell the property, learned Counsel admitted that it did, and argued that Sections 211, 213, 214 and 215 of the Contract Act, 1872 were not complied with in this case. When Section 223 of the Act was discussed by this Court, learned Counsel stressed that "good faith" is absent from the transaction. When asked whether any steps had been taken to penalize respondent No.1, learned Counsel responded that criminal proceedings could not be initiated during the pendency of the civil litigation, as police typically avoid registering cases during the ongoing suits.

7. Against the argument of learned Counsel for respondents No.2 to 6 that the property's value increased rapidly, leading the applicant to change her mind at the instigation of her second husband, the Court queried how this could be the case when the sale transaction and filing of the suit both occurred in 2016. Learned Counsel explained that the respondents had converted the agricultural land into residential plots, thereby increasing its value.

8. A review of the plaint reveals that the applicant describes herself as a household and parda-nasheen woman, residing in Lahore. She asserts that she appointed respondent No.1, Faisal Latif (her son), as her attorney to manage the suit land through the power-of-attorney dated 19.05.2014. However, during her examination-in-chief, the applicant contradicted this position, stating that respondent No.1, Faisal Latif, had asked her to

execute the power-of-attorney, and when she refused, respondent No.3, Saifullah (her brother), forcibly took her thumb impressions on the document and asked her to sign it without explaining its contents. This testimony is inconsistent with the applicant's plaint, which makes no mention of any coercion or force used in obtaining her signature.

9. It has been observed that while the applicant's Counsel claimed that the power-of-attorney had been revoked on 20.10.2016, the proper legal procedure was not followed in its cancellation. Notably, respondent No.1 was not informed of the revocation, which raises concerns about potential future misuse of the power-of-attorney and also casts doubt on the applicant's integrity.

10. After considering the arguments from both sides and reviewing the record, I concur with the learned appellate Court's reasoning. The contradictions in the applicant's statements about the execution of the general power-of-attorney are evident. Initially, the applicant claimed in the plaint that the power-of-attorney was executed solely for the purpose of managing the land, but later asserted in the evidence that it was signed under duress and that the contents were not read to her. These conflicting statements undermine her position, particularly since she raised no objection or complaint regarding the execution of the power-of-attorney, either immediately or within a reasonable time, though it was executed on 19.05.2014 and the sale transactions were carried out on 08.03.2016.

11. The general power-of-attorney executed on 19.05.2014 before the Sub-Registrar, Ubauro must be considered valid and executed voluntarily. The applicant did not raise any complaint about being forced to sign the document or about the contents being withheld from her. Furthermore, there is no indication that she was coerced or defrauded into traveling to Ubauro for the document's execution, especially as she had disclosed her residence in Lahore.

12. The power-of-attorney clearly gave respondent No.1 the authority to sell, mortgage, gift, or dispose of the suit land at his discretion, which he

exercised when he sold the land to the other respondents through the registered sale deed dated 08.03.2016. This transaction, carried out under the granted authority of the power-of-attorney, was legal and cannot be viewed as fraudulent. The fact that respondent No.1 also purchased another property on the same day does not indicate any fraudulent intent. The two transactions involved different properties, and the timing of the deals does not suggest any unlawful conduct.

13. When a principal grants a power-of-attorney, he/she is providing the attorney with the legal authority to act on his/her behalf, including in property transactions. The attorney's actions, provided the same fall within the scope of the power granted, are generally binding on the principal. If the principal later attempts to invalidate a sale under a power-of-attorney by claiming that Sections 211, 213, 214, or 215 of the Contract Act were not followed, he/she would need to provide strong evidence to support this assertion. To successfully claim that the sale is invalid, the principal would need to prove that the attorney exceeded his/her authority (which would be contrary to the power-of-attorney granted), acted in bad faith (such as misrepresenting facts or engaging in fraudulent conduct), and did not act within the terms and conditions outlined in the power-of-attorney. In absence of such evidence, the principal's claim would likely fail. The key point here is that the power-of-attorney itself serves as the foundation of the attorney's authority, and as long as the attorney acts within the limits of that authority, the transactions should generally be valid and enforceable. Thus, the claim that the sections of the Contract Act were violated is not valid if the power-of-attorney was properly granted and executed, and the attorney acted in accordance with that authority.

14. In light of the above, instant Civil Revision is **dismissed**, upholding the judgment and decree of the learned appellate Court.

J U D G E