

PLJ 2016 Lahore 118
[Bahawalpur Bench Bahawalpur]

Present: AMIN-UD-DIN KHAN, J.

GHULAM BARI--Petitioner

versus

HAJI BASHER AHMAD through L.Rs. & others--Respondents

C.R. Nos. 619 & 618 of 2011, heard on 30.3.2012.

Agreement to sell--

----Power of attorney--Principle--Beneficiary of documents--Proof of--Given power of attorney only with regard to administration of suit land--Power of--Power of attorney was deemed to have not been proved in accordance with law--Validity--Agreement to sell is registered one, which is based upon a power of attorney by principal in favour of agent--If such power of attorney is taken as registered document, then powers to sell property or to mortgage property--There are no powers to enter into an agreement to sell with regard to suit property. [P. 122] A & B

Power of Attorney--

----Agreement to sell--Powers to entering into agreement to sell--Not given alleged power of attorney--Validity--Agent cannot enter into an agreement to sell with regard to property, as in an agreement there are conditions imposed upon both parties--In case of default by party there is ever a penalty clause in agreement to sell--When a person has given powers to sell his property, that does not automatically give powers to agent to enter into an agreement to sell property of Principal--In power of attorney when powers are not given to an Agent to enter into an agreement to sell, then he cannot do so--Thus, has not proved validity of agreement to sell by principal and he was not entitled to decree for specific performance--When clog of agreement to sell on property of plaintiff is vanished, then there is no other defence with defendants to defend suit filed by plaintiff for possession of suit property. [P. 123] C & D

Court Fee--

----Order of trial Court with regard to payment of Court fee was challenged--Court fee was not paid--Ready to pay Court Fee on plaint--Validity--Petitioner-plaintiff is ready to pay Court fee in accordance with price of land determined by trial Court--Though it is not in accordance with law but to resolve controversy and to shorten litigation and when petitioner has himself offered for payment of more Court fee, petitioner is ready to pay Court fee on plaint, appeal and on that civil revision--Petitioner-plaintiff is directed to deposit Court fee in trial Court for plaint, Rs. 4950/- in first appellate Court for appeal and Rs. 4950/- in High Court for civil revision, within a period of two months and will also submit requisite stamp papers of Court before Courts. [P. 123] E & F

Mr. Muhammad Mehr Hussain Khan Dharija, Advocate for Petitioner.

Mr. Muhammad Farooq Warind, Advocate for Respondents.

Date of hearing: 30.3.2012.

JUDGMENT

Through this single judgment I intend to decide the above captioned civil revisions, as the same are directed against the impugned judgments and decrees passed by two Courts below.

2. The petitioner (Ghulam Bari) has impugned the judgment and decrees dated 25.07.2011 passed by the learned Addl: District Judge, Rahim Yar Khan, whereby the appeals filed by him were dismissed, and the judgment and decrees dated 29.07.1986 passed by the learned Senior Civil Judge, Rahim Yar Khan, whereby suit for possession filed by the petitioner was dismissed and suit for specific performance filed by Muhammad Younas was decreed.

3. Briefly, the fact are that on 14.12.1978 petitioner-plaintiff (Ghulam Bari) filed a suit for possession of suit land mentioned in the plaint. Muhammad Younas also filed a suit for specific performance of the same suit land on 08.03.1979 on the basis of an agreement to sell dated 20.01.1979 allegedly on behalf of Ghulam Bari by his Attorney Ahmad Din. Both the suits were consolidated and out of the divergent pleadings of the parties consolidated issues were framed. In support of their versions both the parties adduced their oral as well as documentary evidence. After the close of trial, *vide* judgment and decree dated 29.07.1986, suit of petitioner-plaintiff (Ghulam Bari) was dismissed, whereas suit filed by Muhammad Younas for specific, performance was decreed. The petitioner-plaintiff filed two appeals before the first appellate Court.

There is checkered history of appeals, revisions and remand orders. The appeals of petitioner-plaintiff were dismissed by the learned Addl; District Judge, Rahim Yar Khan on 16.03.1987, which were challenged before this Court through C.R. No. 249-D-1987 and were accepted on 29.08.2002 by this Court. In Paragraph No. 3 of this judgment, this Court issued some directions to the learned first appellate Court to decide the appeals afresh taking into consideration the directions of this Court. *Vide* judgment and decrees dated 22.11.2003, learned Addl; District Judge, Rahim Yar Khan, remanded the cases to the trial Court for decision afresh. These remand orders were challenged by Muhammad Younas before this Court through C.R. No. 71-2004 and C.R. No. 80-2004. *Vide* judgment dated 23.06.2008 passed by this Court, remand orders dated 22.11.2003 passed by the learned A.D.J, remanding the cases to the trial Court, were set aside and the learned A.D.J was directed to decide the appeals himself in the light of directions issued in C.R. No. 249-D-1987.

It is on the record that another learned Addl; District Judge, Rahim Yar Khan, *vide* remand order dated 7.4.2010 ignoring the directions of this Court, once again remanded the cases to the trial Court. Against this order, C.R. No. 450-2010 was filed before this Court, which was accepted *vide* order dated 24.03.2011, whereby learned A.D.J was directed to decide the appeals in the light of directions issued by this Court in C.R. No. 249-D-1987 and RSA No. 88-1987 on 29.08.2012. Thereafter learned Addl.; District Judge, Rahim Yar Khan, *vide* judgment and decrees dated 25.07.2011 has decided the appeals and dismissed the same, which are under challenge before this Court.

4. Learned counsel for the petitioner-plaintiff (Ghulam Bari) states that admittedly petitioner purchased the suit and jointly with Defendants No. 1 to 4, who were admittedly partners of the Firm; that when they were in possession of the suit property, petitioner filed a suit for possession on 14.12.1978 and Ahmad Din who was not having any valid registered power of attorney by the plaintiff, dishonestly with the connivance of Muhammad Din (partner of his Firm) has shown an agreement to sell dated 20.01.1979 in favour of Muhammad Younas s/o Muhammad Din, whereas the suit for possession was filed on 14.12.1978, therefore, the *malafide* of defendants and Muhammad Younas is visible from the circumstances of this case. Further states that Muhammad Younas filed a suit for specific performance on 08.03.1979 on the basis of said agreement to sell and in the remand order it was directed to the learned first appellate Court to consider the statement of D.W.4 (Nazir Ahmad).

5. On the other hand, learned counsel for the respondents stated that there are concurrent findings of facts in the matter recorded by the Courts below, therefore, these civil revisions are liable to be dismissed.

6. I have heard the learned counsel for the parties at full length and also gone through the record minutely with their able assistance.

7. I have gone through the statement of Nazir Ahmad, which is the most important piece of evidence to decide the lis in hand coupled with the circumstances noted above. He has clearly stated that he never identified the plaintiff (Ghulam Bari) before the Sub Registrar, rather it was the signature of Ahmad Din upon the alleged power of attorney and on the asking of one Arshad, who was known to him, he identified the person to be Ghulam Bari appeared before the Sub Registrar. D.W.5 (Sub Registrar) stated that he has attested this document upon the identification of Nazir Ahmad, as he was Bank Official and he was known to him. D.W.6 (Petition Writer) says that his Register has been lost. Admittedly, the petitioner-plaintiff is owner of the suit property. He has filed the suit for possession against Bashir Ahmad, Muhammad Din, Nazir Ahmad and Ahmad Din and after that Muhammad Younas also. Admittedly, this property was purchased jointly by the plaintiff with Defendants No. 1 to 4 and when he was ousted, therefore, he filed the suit for possession on 14.12.1978.

8. On the other hand there is an agreement to sell dated 20.01.1979 on the basis of which Muhammad Younas filed suit for specific performance on 08.03.1979. The agreement is allegedly by the Attorney of plaintiff (Ghulam Bari), namely, Ahmad Din. Muhammad Younas was bound under the law to prove this valid agreement to sell in his favour and when the alleged agreement is by the Attorney of original owner, he was bound under the law to prove the valid execution of attorney in favour of person who entered into an agreement to sell with Muhammad Younas. The admitted position is that Muhammad Younas is son of Muhammad Din, who is a partner of Ahmad Din. First of all, the genuineness and proof of correct power of attorney is required, and further, when the Attorney is transferring the property of Principal in favour of a person of his close relation, then he is bound under the law to seek special permission from the Principal for selling the property of Principal.

9. First of all, I take the matter of agreement to sell. The agreement to sell is registered one, which is based upon a power of attorney by the Principal in favour of Agent. The beneficiary of this document i.e. Muhammad Younas is bound under the law to prove the valid execution of power of attorney by the Principal in favour of the Attorney. The simple execution of power of attorney has not been denied by the plaintiff (Ghulam Bari). He has stated that he was not willing to give the powers to transfer the suit property in favour of anyone, therefore, he refused to appear before the Sub Registrar for registration of the said

document. He has only given the power of attorney with regard to the administration of suit land and further to deal with the loan case etc. I have minutely scrutinized this document. When the alleged Identifier, before the Sub Registrar, of the Principal has denied the identification of Ghulam Bari and the Sub Registrar also states that he did not personally know. Ghulam Bari and he has attested this document on the identification of D.W.4, who has made statement before the Court that Ghulam Bari was not present at the time of attestation of this power of attorney, therefore, the power of attorney is deemed to have not been proved in accordance with law. If this power of attorney is taken as registered document, then I gives the powers to sell the property or to mortgage the property. There are no powers to enter into an agreement to sell with regard to the suit property. When the powers to entering into the agreement to sell of suit property and not given in this alleged power of attorney, therefore, I am clear in my mind that the Agent cannot enter into an agreement to sell with regard to the property, as in an agreement there are conditions imposed upon both the parties. In case of default by the party there is ever a penalty clause in the agreement to sell. When a person has given powers to sell his property, that does not automatically give the powers to the Agent to enter into an agreement to sell the property of Principal. As I have earlier observed that in an agreement to sell both the parties are bound to the conditions mentioned therein. In this view of the matter, I am of the considered view that in the power of attorney when the powers are not given to an Agent to enter into an agreement to sell, then he cannot do so. Thus, Muhammad Younas has not proved the validity of agreement to sell by the Principal and he was not entitled to the decree for specific performance. When the clog of agreement to sell on the property of plaintiff (Ghulam Bari) is vanished, then there is no other defence with the defendants to defend the suit filed by the plaintiff (Ghulam Bari) for possession of suit property. In these circumstances, while reversing the concurrent findings recorded by two Courts below, the impugned judgments and decrees dated 25.07.2011 and 29.07.1986 passed by the Courts below in favour of Muhammad Younas, are hereby set aside.

10. Learned counsel for the respondents has raised the objection that petitioner plaintiff has not paid the Court fee on Civil Revision No. 619 of 2011. Learned counsel for the petitioner-plaintiff states that he has challenged the order of trial Court with regard to payment of Court fee, as it was payable in accordance with the net profit and not on the alleged sale price of suit land. Besides, learned counsel for the petitioner-plaintiff is ready to pay the Court fee in accordance with the price of land i.e. Rs. 66,000/- determined by the trial Court. Though it is not in accordance with law but to resolve the controversy and to shorten the litigation and when petitioner has himself offered for payment of more Court fee, learned counsel states that petitioner is ready to pay the Court fee on plaint, appeal and on this civil revision.

In this view of the matter, the petitioner-plaintiff (Ghulam Bari) is directed to deposit Court fee of Rs. 4950/- in the trial Court for plaint, Rs. 4950/- in the first appellate Court for appeal and Rs. 4950/- in this Court for this civil revision, within a period of two Months from 01.04.2012 and will also submit the requisite stamp papers of Court before the Courts, respectively.

11. In the light of what has been discussed above, both the Civil Revisions are allowed. The result would be, the suit for possession filed by the petitioner-plaintiff (Ghulam Bari) shall stand

decreed, whereas the suit for specific performance filed by Muhammad Younas shall stand dismissed.

(R.A.) Revisions allowed