

*Judgment Sheet*

**PESHAWAR HIGH COURT, PESHAWAR**  
(Judicial Department)

***Civil Revision No. 552/2011.***

**JUDGMENT**

Date of hearing. 24.3.2014

Petitioner (s) (Haji Nek Amal) By Mian Muhibullah Kakakhel, Advocate.

Respondent (s) (Dr. Suhail Baluch etc) by Mr. Fazal Karim Khan, Advocate.

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**QAISER RASHID KHAN, J.** Through this revision

petition, the petitioner has called in question the validity of the judgment and decree of the learned ADJ-XI, Peshawar dated 02.03.2011, whereby the appeal of respondent No.1 was accepted, the judgment and decree of the learned Civil Judge-XI, Peshawar dated 18.5.2010 dismissing the suit was set aside and the suit of the respondent No.1 was decreed with costs..

2. As it transpires from the record, initially the respondent No.1/ plaintiff filed a declaratory suit on 12.2.2004 alongwith a prayer for permanent mandatory injunction and possession of suit property, fully described in the heading of the plaint against Syed Mazhar Ali Shah and others wherein the defendants were proceeded against ex-parte on different occasions and even his ex-parte evidence was recorded. However, on 6.4.2007 respondent No.6 Syed Mazhar Ali Shah joined the trial and he filed his written statement on 23.4.2007. On 28.5.2008, the

petitioner filed an application for his impleadment as a necessary party to the suit, on the ground that he had purchased the suit property from one Muhammad Nawaz Khan through registered deed No. 8319 dated 3.12.2007 on payment of sale consideration of Rs.50,00000/- (rupees fifty lac). The application was accepted by the learned trial court and accordingly amended plaint was filed by respondent No.1/ plaintiff on 21.7.2008 wherein the respondents No.2 to 6 and Haji Nek Amal (present petitioner) were impleaded as necessary parties. In the amended plaint, the respondent No.1/ plaintiff sought declaration etc, challenging the validity of special power of attorney No. 5811 dated 12.2.2007, sale mutation No. 6663 dated 2.11.1998, sale deed No. 1799 dated 7.4.2007 and mutations No. 8318 and 8509 dated 28.5.2007 and 31.3.2008 respectively. Notices were accordingly issued for service of the defendants. The suit was only contested by the petitioner/ defendant by filing his written statement on 24.1.2009 while the other defendants were placed ex-parte. From the divergent pleadings of the parties, the following issues were framed:

- (i) Whether the plaintiff has got a cause of action?
- (ii) Whether the suit is bad in its present form?
- (iii) Whether the plaintiff is stopped to sue by his own conduct?
- (iv) Whether the defendant No.1 collusively transferred the suit property on the basis of

mutation No. 663 attested on 2.11.1998, defendant No.3 transferred the same in favour of defendant No.4 on the basis of deed No. 1799 attested on 7.4.2009 and defendant No.4 transferred the same on the basis of deed No. 8319 attested on 3.1.2007 without any lawful authority, if so, its effect?

- (v) Whether defendant No.1 being the general power of attorney for the plaintiff sold out the suit house on the basis of mutation No. 6653 attested on 2.11.1999 and defendant No.3 sold the same in favour of defendant No.4 on the basis of deed dated 7.4.2007 and how sold out the same on the basis of deed No. 8319 attested on 3.12.2007, if so, its effect?
- (vi) Whether the plaintiff is entitled to the decree as prayed for?
- (vii) Relief.

5. The parties hotly contested the suit and produced evidence in support of their respective claims. On conclusion of evidence and hearing arguments of the learned counsel for the parties, the learned trial court dismissed the suit vide judgment and decree dated 18.5.2010. Feeling aggrieved, the respondent No.1 preferred an appeal which was accepted, the judgment and decree

of the learned trial court was set aside and the suit was decreed vide judgment and decree dated 2.3.2011. Hence this petition.

6. Arguments heard and record perused.

7. Keeping in view the available record, it can be safely said that the case in hand has a long and chequered history spread over a decade with the respondent No.1 at the receiving hand. There is no denying the fact that the suit property situated near Nishtar Abad Peshawar City was initially owned by Dr. Suhail Baluch i.e. respondent No.1. It all started the day when Dr. Suhail Baluch/ respondent No.1 being a U.K based doctor executed a registered general power of attorney in favour of Imdad Hussain, respondent No.5 way back on 5.3.1997 for the management and look after of his property with the following recitals:

1. that I am serving in England and my address in England is 34-Audley Place, Sutton Surrey, SM2-6 RW, England UK, for the last so many years and do visit my home land regularly.
2. That I own immovable property in Islam Abad outside Lahori Gate, near Nishtar Abad, Peshawar City, consisting of 2 build houses with lawns and a vacant site, situated in Khasra No. 589/ 458, Peshawar City. The houses are occupied by my tenants, whereas the vacant site is lying vacant.
3. That in view of my absence from my home land, I am unable to look after and manage my above mentioned immovable property, therefore, I hereby appoint and constitute Mr. Imdad Hussain mentioned above as my General Power Attorney holder:-
  - i. to look after my above mentioned property, to manage rent being deposited in the bank by the tenants, file ejectment application, appeals, writ petitions etc. in respect of the said house and defend the

lis on my behalf, before any court of law in the country.

- ii. To file suits, appeals, revision petition, before the original courts, appellate courts hon'ble High Court, August Supreme Court of Pakistan and any other Authority, Tribunal etc. on my behalf and to defend the lis on my behalf. To appear and act on my behalf. To sign, verify pleadings etc., swear affidavits, compromise and receive money and execute receipts for the same.
- iii. To sell the above mentioned vacant site and execute sale deed and receive the sale consideration and appear before the Sub Registrar Peshawar, for the registration of the sale deed and any other authority in this respect. He may sell the said vacant site either through sale deed or mutation.
- iv. To file suit for pre-emption, appeals and revisions etc. upto Supreme Court of Pakistan. All the acts of the said attorney in respect of my above mentioned property will be as if I myself have done the same.

8. Two things are abundantly manifest from the said General Power of Attorney. Firstly, that no authorization has been conferred by Dr. Suhail Baluch (hereinafter referred to as “the principal”) upon Imdad Hussain (hereinafter referred to as “the agent”) to sub-delegate the said authority or to nominate or appoint anyone as a special attorney so as to do acts or perform functions as specified in the General Power of Attorney on behalf of the principal and secondly, out of the immovable property consisting *“of two build houses with lawns and a vacant site situated in Khasra No. 589/ 458, Peshawar City”* (para 2 of the

General Power of Attorney referred), the general attorney namely, Imdad Hussain, was only authorized **“to sell the above mentioned vacant site”**, execute sale deed and receive sale consideration for the same and appear before the Sub-Registrar Peshawar etc. (Para iii of the General Power of Attorney referred) However, misfortune befell the respondent No.1 when his general attorney Imdad Hussain went his way as he had something else in mind. Instead of living up to the trust and confidence reposed in him by the principal, the agent for whatever consideration but of course to the detriment of the interests of the principal executed a special power of attorney in favour of one Khushdil Khan s/o Khalid Khan vide deed No.5811 and registered in the office of Sub-Registrar Peshawar on 12.12.1997 with Muhammad Amin s/o Habib-ur-Rehman and Naseem Khan s/o Nawab as witnesses of the said power of attorney with the following recitals:

1. To appear before the Sub-Registrar Peshawar, or before any concerned office/ department in connection with the above mentioned plot.
  2. To receive sale amount or any other amount for the said house/ Plot, from any party he may deem fit and proper.
  3. To sell, mortgage, Hibba, Tamleek, etc the above mentioned plot.
  4. to look after the above mentioned plot, to give on rent and also to receive rent amount, to construct the above mentioned plot.
  5. To look after the said plot.
9. The said special power of attorney was executed by the agent namely, Imdad Hussain, in total departure from the explicit

language of the general power of attorney in his favour wherein no authority was given to him by the principal for further delegation of the same in favour of any person. In this respect the age old Latin maxim goes that “a delegatee cannot delegate” **(Delegatus Non Potest Delegare)**. The same clearly signifies that a person to whom an authority has been delegated by someone cannot in turn further delegate or sub-delegate the same to another unless the original delegation has expressly and explicitly authorized it. In fact a power of attorney or letter of attorney is a written authorization to represent or act on behalf of the principal in respect of the subject matter as enjoined in the general power of attorney itself. Any departure from the explicit language shall be deemed to be against the will and wishes of the principal and would be void to that extent. It is by now a settled law that power of attorney shall be strictly construed and that nothing can be read in it unless the same is specifically provided therein and the attorney is to act within the scope of the authority as described in the instrument. In this respect, wisdom can advantageously be drawn from *“Khalil Ahmad and another v. Mst. Muhammad Jan and others”* (2004 SCMR 1034), *“Imam Din and 4 others vs. Bashir Ahmad and 10 others”* (PLD 2005 SC 418), *“Muhammad Yousuf Siddiqui v. Haji Sharif Khan (since deceased) through his legal heirs and others”* (NLR 2005 Civil (SC) 556) *“Jamal Din v. Syed Altaf Hussain Shah and others”* (2005 MLD 1351) and *“Babu Muhammad Aslam v.*

*Mst. Rehana Parveen” (PLD 1989 Peshawar 185).* As per the dicta laid down in all these judgments of the honourable superior courts, it is abundantly clear that:

- i) An attorney cannot delegate the same powers to another person as long as he is not specifically authorized by the principal to do so, and
- ii) Where General Power of Attorney does not contain any specific authority to delegate the power of the executant to another person, then in the event of any delegation of authority or attorney in favour of such person and also consequent sale by such person would be void.
- iii) That the attorney or agent has to act strictly within the mandate of the instrument itself and cannot give it any other meaning and if he does so, the same would be ineffective upon the rights of the principal.

10. Since the agent in this particular case was upto something, therefore, he not only nominated a special attorney namely, Khushdil Khan, but also played a trick. As against the General Power of Attorney in his favour by the respondent No.1 whereby he was only empowered and authorized to the extent of selling the “**vacant site**” as per para-iii of the said power of attorney, the agent Imdad Hussain not only in derogation of the explicit language of the general power of attorney appointed Khushdil

Khan as his special attorney but also authorized him in para-2 of the special power of attorney to receive the sale amount or any other amount for the said 'house/ plot'. The mentioning of the word "**house**" in the Special Power of Attorney was obviously meant to rob the respondent No.1 of his valuable property. Much was to follow when Khushdil Khan in turn sold the property in favour of Muhammad Amin s/o Habib-ur-Rehman (one of the witnesses of the special power of attorney). The same per se suggests that both the agent namely, Imdad Hussain, Khushdil Khan and Muhammad Amin were in league and on one page while committing one illegal act after another. Since it was a typical "*Two One Act Play*" with different characters assigned with different roles, therefore, it was now the turn of Muhammad Nawaz to take over the stage and that is how the suit property was transferred in his name by Muhammad Amin and to call the final shot, the petitioner took over claiming to have acquired the suit property through sale deed No.8319 registered on 3.12.2007 from Muhammad Nawaz Khan. This court cannot lose sight of the fact that the sales went on during the pendency of the suit (initially instituted on 12.2.2004) before the learned trial Judge with an ulterior motive with the beneficiaries little knowing that such clandestine transactions are squarely hit by the rule of **lis pendens**.

11. Another intriguing aspect of the matter is that ever since the institution of the amended suit before the learned trial court

till the instant revision petition before this court, only the petitioner was found to be flexing his muscles against the respondent No.1/ plaintiff in the case. None turned up before the learned trial court to throw some weight behind the staggering stance of the petitioner right from Imdad Hussain to Khushdil, to Muhammad Amin and to Muhammad Nawaz. None came over to the trial court in support of the Special Power of Attorney by Imdad Hussain in favour of Khushdil Khan as well as the follow up deeds favouring Muhammad Amin and Muhammad Nawaz. It prima facie suggests that all the others after playing their surreptitious role in the entire episode made good their escape from the scene and left the petitioner in the lurch to face the music as the collusion and connivance between them duly surfaced over the period whereby a vain attempt was made to defraud and rob the respondent No.1 of his property.

12. The learned Judge Appellate Court through a well reasoned judgment has rightly allowed the appeal of the respondent which is based on proper appreciation of evidence and does not suffer from any illegality, material irregularity, mis-reading or non-reading of evidence warranting interference by this court through the instant petition.

For the above mentioned reasons, this revision petition being meritless stands dismissed with costs.

Announced:  
24.3.2014.

***J U D G E***