

**Judgment Sheet****IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR JUDICIAL DEPARTMENT**

Civil Revision No. 232-P/2019.

Hussain Zada

..VS..

Fazal Maula etc.

**JUDGMENT**

Date of hearing.....01.8.2024.....

Petitioner(s) by:- Mr. Shahid Qayyum Khattak,  
Advocate.Respondent (s) by: M/s Ihsan Ullah, Muhammad Tariq  
and Atta Ullah Khan, Advocates.

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**WIOAR AHMAD, J:-** Instant civil revision is directed against judgment and decree dated 26.01.2019 passed by learned District Judge, Peshawar whereby appeal filed by petitioner against judgment and decree dated 15.5.2012 of learned Civil Judge, Peshawar was dismissed.

2. Brief facts of the case, as per averments of the plaint are, that petitioner filed a suit for declaration, perpetual mandatory injunction and possession against the respondents and averred therein that, petitioner had been living in Birmingham, United Kingdom for the last thirty years in connection of his business. Lastly, petitioner had come to Pakistan on 16.12.2004 and left

Pakistan on 23.2.2005. He had purchased a land measuring 06 marlas situated at Chughulpura Peshawar, fully detailed in head note of the plaint, through mutation No. 2088 attested on 15.10.1989 and thereafter built a two story house thereon. He had been giving said house to different tenants on rent from time to time and used to receive the rent through respondent No.1 being his close relative, as sister in law of petitioner was married to him. Lastly respondent No.3 was living in the house in dispute as tenant on month rent of Rs. 4000/- per month. It was asserted that, respondent No.1 had prepared a fake power of attorney on behalf of petitioner on 20.12.2004 and on the basis of said power of attorney, sold the house in dispute to respondent No.2, on 21.12.2004 through a registered deed No. 4888 in lieu of sale consideration of Rs. 400,000/-. He further stated in the plaint that neither he had given any power of attorney to respondent No.1 nor he had signed any document related to alleged power of attorney or appeared before any officer in this respect; that the power of attorney, so prepared and attested by respondent No.1 was forged, fake and fraudulent. He had further asserted that if he wanted to sell the house, he could have done it himself, because at the time of alleged sale he was present in his native village and there was no need to give power of attorney to anyone. He has prayed

that the alleged power of attorney, registered sale deed should be declared fake, bogus and ineffective upon rights of petitioner and same were liable to be cancelled. In alternate he had prayed for recovery of Rs. 25,00,000/- as price of the house in dispute. He had also prayed for recovery of monthly rent at the rate of Rs. 4000/- per month from respondent No.3, because lastly he was residing as tenant therein.

3. Arguments heard and record perused.

4. Perusal of record reveals that petitioner had brought a suit thereby challenging transfer of his house through registered deed No. 4888 attested on 31.12.2004 on the basis of registration of power of attorney as deed No. 5309 Volume No. 486 Bahi No. 4 on 20.12.2004 in the office of Sub Registrar, Peshawar as illegal, fraudulent and ineffective upon his rights. Declaration has been sought in respect of registration of power of attorney as well as sale deed and execution of both the documents had been denied. The power of attorney was claimed by defendants/ respondents to have been executed by petitioner in favour of Haji Aman Ullah while the petitioner namely, Hussain Zada had been living at U.K and said power of attorney had also been endorsed before Notary public as well as officer of the

Conciliate General of Pakistan at Birmingham. Copy of said power of attorney is Ex.PW-3/2. Both the courts below concluded that this power of attorney had been admitted by petitioner in his cross-examination and same had therefore, been requiring no further evidence. To said extent findings of both the courts below had been based on proper consideration of the admission of the petitioner so far as execution of power attorney was concerned. It is however very conspicuous to be noted that on face of record that said power of attorney executed on 12.5.1992 had been presented before the sub registrar Peshawar for registration on 20.12.2004 and said request of registration had strangely been allowed by Registrar without any inquiry or its further and subsequent re-authentication. The registered power of attorney was brought in evidence as Ex.DW-1/1. A registered conveyance deed was also executed by the attorney in favour of Khaista Gul (respondent No.12). It was the case of respondent No.1 & 2 that the attorney namely, Haji Aman Ullah had sold the house on the instructions of the petitioner which the later had given to him at a time when he had also been staying in Pakistan and was available for execution of the deed but he had been avoiding attending of offices in Pakistan therefore, he had instructed the attorney to execute the deed instead of executing it himself and that

the payment of sale consideration of Rs. 400,000/- had also been paid to the petitioner after the sale of the house. This story of respondents have been believed by both the courts below to be gospel truth despite lack of affirmative evidence in this respect. While doing so, both the courts had also ignored section 23 as well as section 26 of the Registration Act, 1908. The belated presentation of the document for registration was also ignored and both the courts below concurrently dismissed the suit.

5. True that while hearing a revision petition in a case where courts below concurrently resolve a factual controversy, the scope of interference of this court is much reduced but it is a case where findings of two courts below were found to be result of mis reading of evidence. Hon'ble Supreme Court of Pakistan while giving its judgment in case of **Samar Gul .vs. Mohabat Khan (2000 SCMR 974)** has held that where concurrent findings are findings perverse, arbitrary or fanciful, there is glaring illegality, non-reading or misreading of evidence, same cannot be termed as sacrosanct and High Court can interfere in concurrent findings of the Courts. Besides, relevant law i.e. sections 23 and 26 of the Registration Act, 1908 have not been

properly applied to the fact of the case in hand, therefore, this court would not like to become contributory to same mistake of law and facts. It was due to this reason that the evidence is being reappraised.

“Hussain Zada petitioner recorded his statement as PW-1 and reiterated his stance as taken in the plaint which was reproduced in para-1 of the judgment. It was added that electricity meter installed in the house in dispute was in his name, and that the sui gas meter had also been installed in his name. He further stated that he had been paying the property tax of the house in question. He stated that he had never given any power to respondent No.1 through the alleged power of attorney for sale of the house in question. In his cross examination he admitted factum of the power of attorney executed by him in England on 12.5.1992. Except this fact nothing vitiating could be extracted from his mouth during the course of his cross examination. PW-2 Ghafoor Khan Patwari Halqa recorded his statement as PW-2, wherein he produced revenue record pertaining to the house in dispute, i.e. Mutation No. 2083 dated 15.10.1989 as Ex.PW-2/1, Aks Shajara as Ex.PW-2 and Jamabandi for year 1984 to 85 to 2002-2003 as Ex.PW-2/3. Shah Faisal, Assistant Housing Section, PDA recorded his

statement as PW-3, wherein he had produced allotment letter of the plot measuring 10 marlas situated at Phase-6 Hayat Abad Peshawar in the name of petitioner as Ex.PW-3/1, application for possession dated 11.12.1996, Ex.PW-3/2, copy of letter Ex.PW-3/3 whereby possession was handed over to petitioner as well as copy of possession certificate as Exc.PW-3/4. Shah Wali, recorded his statement as PW-4, and stated that petitioner had been residing in UK for the last 30 years had been visiting Pakistan. He had purchased two plots one situated at Phase-6 Hayat abad and another in Gulshan Abad, Chughulpura Peshawar in 1989 and 1991 respectively. On the plot situated at Gulshan Abad, he had constructed a house, which he had been renting out from time to time; that he had not given any power of attorney to anyone for sale of his plots, and that if he wanted to dispose of his plot he could have done it himself because at the time of allege sale of house in dispute he was present in Pakistan. Khitab Gul, attorney of petitioner, recorded his statement as PW-6 and stated that petitioner had purchased a plot No. 154 situated in Sector-5 Phase-6 Hayatabad Peshawar and in the year 1991 the PDA had allotted it to petitioner. Similarly the petitioner had purchased a plot measuring 06 plot situated at Chughulpura Peshawar in 1989, whereupon he had constructed a house

and rent it out to tenant. When he came to Pakistan, he came to know that respondent No.1 had sold the house in question through a forged and bogus power of attorney as well as bogus registered deed. The cross examination did not produce any substantial benefit to the defendants.

Respondents produced Shah Faisal, Assistant Housing Section PDA Peshawar as DW-1, who produced the relevant record pertaining to plot No. 154 situated at Phase-6 Hayatabad Peshawar, i.e. general power of attorney dated 16.4.1997 Ex.DW-1/1 consisting of three pages, copy of letter No. 154/F-5/10-M/4 dated 8.2.2005 issued by housing officer to the office of Sub Registrar, Peshawar for verification, Ex.DW-2/1, reply to the said letter by Sub Registrar Peshawar dated 09.02.2005 was exhibited as Ex.DW-1/3 as well as transfer letter No. 21375 dated 16.4.1997 Ex.DW-1/4. Khaista Gul, recorded statement as DW-2, and stated that he knew both the parties; that the wives of petitioner and respondent No.1 are sisters in law interse. Since petitioner was residing in UK, therefore, he had appointed respondent No.1 as his attorney to deal all his affairs and lookafter his properties in Pakistan and for this purpose had sent power attorney from UK, which was registered in the office of Sub-Registrar Peshawar, already placed on file as



Ex.PW-3/2. Respondent had purchased a property measuring 06 marlas situated at Chughulpura Peshawar, whereupon respondent had constructed a house. In the year 2004, petitioner had come to Pakistan and on his instruction, respondent No.1 sold the house to him, on the basis of power of attorney Ex.PW-3/2, against sale consideration of Rs. 400,000/- through registered sale deed Ex.PW-3/1. He stated that the entire sale amount had been paid to petitioner by respondent No.1 in his presence, however due to close relationship no written agreement was executed. Zain Ullah Khan (son of deceased Aman Ullah respondent No.1), recorded his statement as DW-3 and stated that petitioner was owner of two plots one situated at Hayatabad and one in Chugulpura Peshawar, for lookafter sale etc. of which, petitioner had sent special power of attorney in favour of respondent No.1, because petitioner had been residing in UK alongwith his family. Respondent No.1 used to collect rent of the house and sent same to petitioner. In 2004 when petitioner came to Pakistan, he sold the plot situated at Hayatabad whereas constructed a house over the property situated at Chughulpura Peshawar through respondent No.1; that on the basis of general power of attorney prepared and attested in favour of respondent No.1 in the year 1992, respondent No.1 sold the house in question

to respondent No.2 against a sale consideration of Rs. 400,000/- and the sale amount was paid to petitioner.”

6. As stated earlier the power of attorney had been executed at Birmingham on 12.5.1992 and sent to the respondent. It had also come in evidence rather admitted by DW-3 (son of the attorney holder) that earlier the property in dispute was comprising a vacant plot whereupon construction had been raised by his father, (attorney holder) with the money sent by petitioner from abroad. He has also stated that a plot owned by same petitioner had been disposed of by his father (which sale has also been separately challenged by petitioner and out of which connected CR No. 231-P/2019 has arisen) and said amount of Rs. 400,000/- had also been spent on the construction of the house situated at Chuighupura Peshawar i.e the house in dispute in the case in hand. He has also admitted that rent had also been received by his father and he used to send it to petitioner. Regarding the consideration received by his father(deceased) for sale of the house in question he had replied that his father had sold the house for a sum of Rs. 400,000/- and that same had been paid to the petitioner.

7. It was very strange that the power of attorney had earlier been sent at a time when it was a vacant plot. It

cannot be perceived that petitioner had instructed the attorney to sell the house at the time of execution of the power of attorney in 1992 and that he had never changed his mind for selling the house and that such instructions had stood valid till the year 2004. It was also not the case of defendants. They stated in the written statement that when the petitioner had come to Pakistan in 2004 he had made up a mind of selling the house but instead of signing the conveyance himself he had instructed the attorney holder to complete the process of transaction and that also on the basis of power of attorney earlier sent by him in the year 1992. In the meanwhile the house had also been constructed on the money sent by the petitioner. On record a purchase deed of the house in name of the petitioner is also available which show that the petitioner had purchased a vacant plot for sale consideration of Rs. 108,000/- on 15.10.1989 through Mutation No. 2088. That two storey house had been contrasted with the money sent by him from abroad as well as the money which according to respondent had been obtained from sale of plot situated at Hayatabad i.e. Rs. 400,000/- ( separately) despite incurring such expenditure on purchase of the plot, and construction of the house would he sell the house for a meager amount i.e Rs. 4,50,000/- in the year 2004? It is also common

knowledge that property prices in the city had increased manifold from late 80s till 2004. This is also one of the times where Pakistani currency had seen major devaluation due to atomic experimental explosions on 28<sup>th</sup> of May, 1998 and the ensuing sanctions. All these facts are judicially noticeable under Article 112 of Qanoon-e-Shahadat Order 1984 and need not be proved separately. Selling of the house for a meager sum of Rs. 4,50,000/- in the year 2004 does not show that the transaction had neither been conducted in the mode and manner as stated by defendants nor the sale consideration had been received and accepted by the petitioner. It is also not believable that a purchaser would not insist on transacting with the actual owner and would rather feel contended with an attorney holder who presents a power of attorney executed in 1992 for its presentation before the sub registrar in 2004. It was an admitted fact and also held by both courts below in its judgments that the petitioner had been staying in Pakistan in those days. His passport (Ex.PW-6/1) also bears testimony to this fact. If the petitioner was statedly avoiding appearance before sub registrar etc. then a simple agreement to sell could have separately been signed by him at the place of his residence or stay. A separate receipt of payment of consideration could have been obtained from him in

presence of witnesses but neither the purchaser nor the claimed attorney holder had taken any such precautions which are against the normal human conduct in this country where normally people remain extra vigilant at the time of purchase of immovable properties so as to avoid future complications. Judgments and decrees of two courts below in this respect where the result of misappreciation of evidence, on these material particulars of the case.

8. Besides, in the process of registration of power of attorney executed in 1992 after lapse of almost 12 years, the provisions of law have also been violated and both the courts below could not take notice of this fact, rendering the decision unsustainable. In part-4 of Registration Act. 1908, Legislature had taken pains to provide timelines for presentation of a document for the purpose of registration. Section 23 of the Registration Act, was providing that subject to provisions of section 24 and 26 no document other-than a well would be accepted for registration unless presented for the purpose to the proper officer within 04 months from the date of its execution. Section 23-A was dealing with a case of re-registration which is not relevant here. Section 24 was providing that where there are several persons executing

a document at different times such document should be presented for re-registration within 04 months from the date of its execution. Section 25 was providing that if owing to urgent necessity or unavoidable circumstances any document executed, could not be presented for registration within the prescribed time then the Registrar might allow such registration on payment of fine provided the delay was not exceeding the maximum time available in the provisions. Section 26 is much relevant to our present discourse, which is also reproduced for ready reference as under:

**“ 26. Documents executed out of the Provinces, etc. \_\_\_when a document purporting to have been executed by all or any of the parties out of Pakistan is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied:-**

**(a) that the instrument was so executed, and**

**(b) that it has been presented for registration with four months after its arrival in Pakistan may on payment of the proper registration fee, accept such document for registration.”**

9. Section 26 had also been mainly providing a period of 04 months from the arrival of the document in Pakistan. The petitioner in case in hand while admitting the execution of the power of attorney had also stated that same had been sent to the attorney holder via post. The successor of attorney holder had never mentioned that any delay had been caused in sending the document or that he had received the document of 1992 in 2004. Such a delay is unimaginable. It was therefore, apparent that the document has wrongly been presented and wrongly allowed to be registered without any inquiry as to the authenticity of the document or reasons for delay. On said date of registration the petitioner was not staying abroad but was staying at Peshawar. Such a registration of power of attorney conducted in violation of the express provisions of the Registration Act, 1908, was sufficient to divest the document of its character as a registered instrument but both courts below could not attend to this aspect of the case. Ignoring the express provisions of law could easily be termed to be an illegality which was also discoverable in instrument of registration of the power of attorney. Both the courts below did not address this illegality. The other registered sale deed in favour of respondent No.2 was entirely deriving its validity and authority from the power of

attorney which itself was defective and therefore, the subsequent sale deed was also illegal and should have been declared ineffective upon rights of petitioner.

10. A related question would be whether the vendee/ respondent No.2 was entitled to the benefit of section 41 of the Transfer of Property Act as bonafide purchaser? It is not difficult to answer this question in light of the above made analysis of evidence where the power of attorney was not at all an authentic document as same had remained unregistered for almost twelve years. The person with whom they had been transacting was not ostensible owner of the property in dispute. The power of attorney was clearly mentioning the date of 12.5.1992 and when same was being registered on 20.12.2004 i.e. one days before the registration of the sale deed on 21.12.2004 and the vendee accepted such sale he has been really acting as extremely credulous person. He has not acted with due care and caution. In such circumstances, respondent could not be extended the benefit of section 41 of the Transfer of Property Act. Besides his bondafide in the peculiar circumstances of the case cannot be readily inferred.

11. In light of what has been discussed above, petitioner has been able to make out a case for



interference of this Court. Both the impugned judgments and decrees of the courts below were found unsustainable. Resultantly, instant civil revision is allowed. Impugned judgments and decrees of both the courts below are set aside and suit of the plaintiff shall stand decreed to the extent of relief as prayed for in prayer Alif, Bay, Jeem and Daal of the plaint with the modification that the amount mentioned in prayer Daal shall be recovered from inherited property of legal heirs of defendant No.1 in the suit. The relief prayer in the alternate i.e. Sale prices of the decreed house with interest have become redundant due to grant of actual reliefs prayed for in the rest of the prayers. Costs of the litigation shall also be borne by defendant No.1 and 2, throughout.

***Announced on;  
01<sup>st</sup> of August, 2024***

***\*Zarshad\****

**JUDGE**

Date of announcement of judgment..... 01.8.2024  
Date of preparation & signing of judgment..... 05.8.2024

(SB) Hon'ble Mr. Justice Wiqar Ahmad