

**2016 S C M R 1781**

**[Supreme Court of Pakistan]**

**Present: Sh. Azmat Saeed, Dost Muhammad Khan and Maqbool Baqar, JJ**

**Mst. NAILA KAUSAR and another---Appellants**

**Versus**

**Sardar MUHAMMAD BAKHSH and others---Respondents**

Civil Appeal No.1213 of 2013, decided on 4th May, 2016.

(On appeal from the judgment dated 9-9-2013 of the Peshawar High Court, Abbottabad Bench passed in Civil Revision No.364-A of 2009)

**(a) Power of attorney---**

---Attorney, powers of---Scope---Attorney cannot utilize the powers conferred upon him to transfer the property to himself or to his kith and kin without special and specific consent and permission of the principal.

**(b) Power of attorney---**

---Attorney, powers of---Scope---Gift made by attorney---Power of attorney cannot be utilized for effecting a gift by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record.

Muhammad Munir Paracha, Advocate Supreme Court and Mehmood A. Sheikh,  
Advocate-on-Record for Appellants.

Khalid Rehman Khan Qureshi, Advocate Supreme Court and Ch. Akhtar Ali,  
Advocate-on-Record for Respondents Nos.1 and 2.

Ex parte for Respondents Nos. 3 and 4.

Date of hearing: 4th May, 2016.

**JUDGMENT**

**SH. AZMAT SAEED, J.---**This Civil Appeal under Article 185(2)(d) of the Constitution of the Islamic Republic of Pakistan, 1973 is directed against the Judgment dated 09.9.2013 of the learned Peshawar High Court, Abbottabad Bench, whereby Civil Revision No.364-A of 2009 filed by Respondents Nos.1 and 2 against the Judgment and

Decree dated 08.6.2009 of the learned Additional District Judge, Haripur has been allowed.

2. The brief facts necessary for adjudication of the lis at hand are that the property in dispute admittedly was owned by one Mst. Fatima Jan, who apparently executed a power of attorney in favour of Appellant No.2 Sardar Muhammad Aslam Khan, since deceased (now represented through his LRs). The said power of attorney was dated 11.10.1973. On the basis of said power of attorney, on 27.4.1998 a gift mutation was entered in favour of Appellant No.1, the daughter of the attorney. After the death of Mst. Fatima Jan, Respondents Nos.1 and 2, the admitted legal heirs, filed a suit for declaration and possession etc. to call into question the said gift. Respondents Nos.3 and 4 were impleaded as subsequent purchasers from the Appellant No.2. The suit was resisted, issues were framed and evidence was led. Whereafter, the learned Trial Court seized of the matter, vide Judgment and Decree dated 17.10.2008, decreed the suit. The present Appellants challenged the said Judgment and Decree of the learned Trial Court through an appeal, which was allowed by the learned first Appellate Court vide its Judgment and Decree dated 08.6.2009. Whereafter, Respondents Nos.1 and 2 invoked the Revisional Jurisdiction of the learned High Court through Civil Revision No.364-A of 2009, which has been allowed vide impugned Judgment dated 09.9.2013, whereby the Judgment and Decree of the learned first Appellate Court was set aside and the Judgment and Decree of the learned Trial Court was restored, decreeing the suit.

3. According to the office report, Respondents Nos.3 and 4 have deliberately, refused to accept the service, hence, they are proceeded ex parte.

4. It is contended by the learned counsel for the Appellants that the gift in question had been effected with the consent of Mst. Fatima Jan, the owner of the property by her attorney, as is evident from the evidence on record including the statement of Appellant No.2 as well as other witnesses produced by the Defendants, who had indicated her presence at the time of the attestation of the mutation. It is added that the findings returned by the learned first Appellate Court are based on the evidence and there was no occasion for setting aside the said findings by the learned High Court in its limited Revisional Jurisdiction.

5. The learned counsel for the contesting Respondents has controverted the contentions raised on behalf of the Appellants.

6. Heard and the available record perused.

7. It is an admitted fact that Mst. Fatima Jan was the original owner of the property, who was an aged woman. It appears from the record that she executed a power of attorney in favour of Appellant No.2 Sardar Muhammad Aslam, who was an official in the Revenue Department and not related to Mst. Fatima Jan. It is settled law that an attorney cannot utilize the powers conferred upon him to transfer the property to himself or to his kith and kin without special and specific consent and permission of the principal. It is an equally settled law that the power of attorney cannot be utilized for effecting a gift

by the attorney without intentions and directions of the principal to gift the property, which intentions and directions must be proved on record.

8. In the instant case, the power of attorney does not disclose any intention or direction of Mst. Fatima Jan, the principal to the attorney to gift the property to Appellant No.1. Furthermore, in absence of any relationship or other reasons, there was no occasion for Mst. Fatima Jan to gift her property to a stranger i.e. Appellant No.1. There is also no specific written permission by Mst. Fatima Jan to Appellant No.2, Sardar Muhammad Aslam to gift the property to Appellant No.1 his daughter. Some evidence was brought on record in an attempt to establish consent by Mst. Fatima Jan to Sardar Muhammad Aslam to gift the property to his own daughter. The bald and oral assertions of DWs are contradictory and against the documentary evidence, as has been correctly held by way of the impugned Judgment through a detailed analysis thereof. No doubt, in his cross-examination, Respondent No.2 did make a confused reference to the consent of Mst. Fatima Jan but such aspect was clarified in a subsequent statement by the same witness in post remand proceedings. In the facts and circumstances of the case, rather heavy onus upon the plaintiffs to prove the direction and/or permission of Mst. Fatima Jan to gift the property has not been discharged as has been correctly held both by the learned Trial Court and the learned Revisional Court. The learned counsel for the Appellants has not persuaded us to disagree with the findings returned by the learned High Court by way of the impugned Judgment, which not only appeared to be based on correct application of law but also a fair and judicious appreciation of the evidence on record. In this view of the matter, no ground exists for interference in the impugned Judgment.

9. Consequently, this Civil Appeal being without merit is dismissed with no order as to costs.

MWA/N-11/SC

Appeal dismissed.