Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Regular First Appeal No. 613 of 2022

Rahila Shahid

Versus

Shahid Perwaiz and others.

Appellant by:	Mr. Hasnat Ahmed, Advocate.
Respondent No. 1 by:	Mr. Arshad Bashir, Advocate.
Respondent No. 2 by:	Mr. Sammar Anwar Dar, Advocate.
Respondents No. 2A to 2C by:	M/s. Barrister Zopash Khan, Hasan Rashid Qamar and Haider Zaman, Advocates.
Respondents No. 2D to 2G by:	Mr. Rahim Nawaz Khan Abbasi, Advocate.
Assisted by:	Ms. Amber Qayyum, Law Clerk.
Date of Hearing:	10.03.2025.

TARIQ MEHMOOD JAHANGIRI, J: Through this Regular First Appeal, the appellant has assailed judgment and decree dated 27.09.2022, passed by learned Civil Judge 1st Class, West-Islamabad, whereby suit filed by the appellant for declaration, permanent and mandatory injunction, was dismissed.

02. Brief facts of the case are that earlier, the appellant filed suit for declaration, permanent and mandatory injunction before the Court of learned Senior Civil Judge, West-Islamabad, with the contention that respondent No. 1/husband

of appellant/plaintiff validly and lawfully had gifted House No. 620, Main Road, Sector G-9/1, Islamabad **("Suit Property")** in favour of appellant/plaintiff and she had accepted the same vide gift dated 15.04.1992. The appellant/plaintiff submitted said gift deed in CDA but was not accepted due to pendency of suit titled as "Tasnim Akhtar etc. Vs. Shahid Perwaiz etc". Respondent/defendant No. 1 executed the said gift in terms of General Power of Attorney dated 17.09.1990, duly registered with Sub-Registrar, Islamabad, which was executed by original owner of suit property namely Muhammad Rafiq s/o Pannu Khan and the said powers were exercised by executing gift deed dated 13.04.1992, by respondent No. 1 during lifetime of said Muhammad Rafiq who died on 03.04.2000, and appellant is in possession of suit property since execution of gift deed dated 13.04.1992. The appellant applied for transfer of ownership in her name and submitted applications along with other related documents to the respondent No. 2, which had been responded vide letter dated 10.11.2006, followed by letter dated 06.12.2012, intimating about pendency of cases in Civil Courts, Islamabad, while the appellant/plaintiff's application dated 09.12.2012, has not been responded by respondent No. 2, which constraint her filing of civil suit, which was transferred to High Court and she had no knowledge about its fixation or dismissal by the defunct High Court,

Islamabad vide order dated 14.07.2009, rather this fact came into her knowledge in April, 2013. The plaintiff/appellant also filed application U/O 1 rule 10, CPC for becoming party in the suit titled "Tasnim Akhtar etc. Vs. Shahid Perwaiz etc.", which was dismissed by Civil Court and she filed revision petition, which was also dismissed and due to which the lawful rights of plaintiff/appellant over the suit property became at stake. Thereafter, the suit *ibid* filed by the appellant/plaintiff was dismissed vide judgment & decree dated 27.09.2022, passed by learned Civil Judge 1st Class, West-Islamabad, hence the instant appeal.

03. Out of divergent pleadings of the parties, following issues were framed on 19.05.2022:

1. Whether the plaintiff is entitled for a decree of declaration, permanent and mandatory injunction as prayed for? OPP

2. Whether plaintiff has no cause of action or locus standi to file instant suit, hence liable to be dismissed? OPD

3. Whether plaintiff has not come the court with clean hands, hence suit is liable to be dismissed? OPD

4. Whether suit of plaintiff is false, frivolous and vexatious, hence liable to be dismissed with special costs U/S 35-A CPC? OPD

5. Relief.

04. In evidence of the appellant/plaintiff, Mr. Salman Shahid / special attorney of appellant/plaintiff appeared in the witness box as PW-1, wherein he stood behind the contents of

the plaint. He produced special power of attorney as Ex.P1 and his affidavit in evidence as Ex.P2. Mr. Muhammad Afzal appeared as PW-2 and produced his affidavit in evidence as Ex.P9, wherein he fully supported the version of appellant/plaintiff. In documentary evidence, learned counsel for the plaintiff/appellant has produced following documents:

1. *Copy of general power of attorney as Ex.P3.*
2. *Copy of gift deed as Ex.P4*
3. *General power of attorney as Ex.P5.*
4. *Original letter dated 10.11.2006 issued by Estate Management Officer-II, CDA regarding application of transfer of house as Ex.P5/1.*
5. *Original letter dated 06.12.2006 regarding transfer of house issued by Estate Management Officer-II CDA as Ex.P6.*
6. *Copy of letter dated 04.04.1974 issued by CDA as Ex.P7.*
7. *Attested copy of case file of suit titled as "Mst. Tasneem Akhtar etc. Vs. Shahid Pervez etc" as Ex.P8.*

05. Whereas, Muhammad Adil Hussain/representative on behalf of Estate Management CDA/defendant No. 2 appeared as DW-1 and recorded his statement and produced copy of allotment letter dated 04.04.1974, as Ex.D1/1. Mr. Shahid Perwaiz/defendant No. 1 appeared as DW-2. He got recorded his conceding statement in favour of appellant/plaintiff. Mr. Kamran Zafar appeared as DW-3. He also got recorded his statement and produced copy of general power of attorney as Ex.P5.

06. Learned counsel for the appellant, *inter-alia,* contends that the impugned judgment and decree dated 27.09.2022, passed by learned Court below is against the law and facts of the case; the impugned judgment and decree is passed in a hasty and slip shod manner without perusing the evidence and record in its true perspective; the impugned judgment and decree has been passed on the basis of misreading and non-reading of the evidence/record; learned trial Court has failed to exercise the jurisdiction vested to it in proper manner; the impugned judgment and decree is erroneous, not tenable under the law, hence the same is liable to be set-aside.

07. Conversely, learned counsel for respondents No. 2A to 2G has controverted the argument advanced by learned counsel for the appellant and has stated that respondent No. 1 placed general power of attorney bearing No. 5663 dated 17.09.1990, registered with the office of Sub-Registrar, Islamabad allegedly executed by Muhammad Rafiq s/o Punnu Khan in favour of respondent No. 1, who on the basis of said GPA gifted the suit property in favour of his wife/appellant, however, during the course of evidence, respondent No. 1 did not produce the said GPA for the reason that it too is a forged document and bears the NIC No. of Muhammad Rafiq s/o Punnu Khan as 276-29-003174, the alleged gift deed executed

by respondent No. 1 in favour of his wife on account of said attorney is also doubtful and has no legal value. He further stated that Muhammad Rafique Solehria s/o Feroz Din and Muhammad Rafique s/o Punnu Khan are the same persons, while Punnu Khan was their real grandfather, whereas Feroz Din was the friend of their real grandfather. Feroz Din adopted their father for a while since he did not have a child, however, Feroz Din died before partition and after his death, Muhammad Rafique returned to his native village, and due to love and affection kept the name of Feroz Din as his father in one of his ID cards; the appellant was placed certified copy of inheritance mutation of Muhammad Rafique s/o Punnu Khan in respect of his property situated in Village Lakhanwal, Tehsil & District Gujrat, which shows that the respondents are the legal heirs of Muhammad Rafique s/o Punnu Khan, and the same was also not challenged by respondent No. 1 before any forum; the documentary evidence i.e. Death Certificate, Inheritance Mutation of Mouza Lakhanwal Gujrat, record of documents from CDA which contain the name of the father of respondent No. 1 and other respondents as "Muhammad Rafiq Solehria" as well as "Muhammad Rafiq" proves that they are one and the same person and suit property must devolve upon them; respondent No. 1 abused the process of law and has consistently taken a false plea in respect of the identity of his

father in order to grab the suit property and defrauded his brothers and sisters and deprived them from their shares in the suit property; the suit property be partitioned and shares be divided amongst the respondents accordingly; respondent No. 1 be directed to return/share the rent of the suit property enjoyed by him since 2006 amongst all the legal heirs and has prayed to dismiss the instant regular first appeal.

08. Arguments advanced by learned counsel for the parties have been heard and record has been perused with their able assistance.

09. The suit was filed on 19.02.2014, by Rahila Shahid/appellant for declaration, permanent and mandatory injunction against her husband namely Shahid Perwaiz s/o Muhammad Rafiq Sulehria and Capital Development Authority (CDA) for declaring that on the basis of gift deed dated 15.04.1992, she be declared as owner in possession of the suit house which was executed in her favour by her husband/defendant No. 1 being attorney of Muhammad Rafiq s/o Punnu Khan.

10. It is pertinent to mention here that legal heirs of the deceased namely Muhammad Rafiq Sulehria were not impleaded as party, subsequently on 19.12.2016, legal heirs of

the deceased were impleaded as respondent(s) by filing memorandum of parties.

11. Two sons and one daughter of deceased/Muhammad Rafique Sulehria filed suit for partition against their five siblings for partition of the suit house, all the seven legal heirs of deceased shown their willingness regarding the partition of the suit house, only husband of the appellant namely Shahid Perwaiz (son of deceased) contested the suit on the ground that Muhammad Rafique executed power of attorney in his favour and he gifted the suit house to his wife vide unregistered gift deed dated 15.04.1992, the suit for partition was dismissed vide judgment and decree dated 06.05.2021, passed by learned Civil Judge 1st Class, West-Islamabad. Being aggrieved, RFA bearing No. 277 of 2021 was filed which has been allowed by this Court vide judgment dated 18.03.2025.

12. Issues were framed, the appellant/plaintiff did not produce title documents of the suit property in her evidence. It is mentioned in the general power of attorney (Ex-P3) that executant, Muhammad Rafiq s/o Punnu Khan is the owner of the suit house but surprisingly no ownership document was produced.

13. Power of attorney was executed on 17.09.1990 (Ex-P3) in favour of Shahid Pervaiz, however, the registered power of attorney (Ex-P3) does not contain the thumb impression of the executant/Muhammad Rafiq s/o Punnu Khan.

14. As per averments of the plaint, Muhammad Rafiq s/o Punnu Khan died on 03.04.2000, and Shahid Perwaiz/respondent No. 1 gifted the property to the appellant/his wife vide unregistered gift deed dated 15.04.1992. After the death of Muhammad Rafiq s/o Punnu Khan in the year 2000, general power of attorney issued by him in 1990 seized to exist. As far as unregistered gift deed (Ex-P4) is concerned, same has got no legal value in accordance with law.

15. Under Section 17 of the Registration Act, 1908, a gift of immovable property must be registered to be valid. An unregistered gift deed does not transfer any right, title or interest in the property, as provided in Section 49 of the Registration Act, 1908, which are reproduced below for ready reference:

> ***17. Documents of which registration is compulsory.–*** *(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian Registration Act, 1877, or this Act came or comes into force namely:-*
>
> *(a) instruments of gift of immovable property;*

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

[(bb) an instrument which grants power to an attorney or which constitutes an agreement to create, declare, assign, limit or extinguish, by way of sale, any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property;]

(c) non-testamentary instruments [(other than the acknowledgement of a receipt or payment made in respect of any transaction to which an instrument registered under [clause (b)] relates)] which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; and

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

[49. Effect of non-Registration of documents required to be registered.– *No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall–*

(a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property, or

(b) confer any power to adopt,unless it has been registered.]

In this regard, reliance is placed on the following dictums laid down by the Hon'ble Supreme Court of Pakistan:-

i. Case titled as ***Muhammad Ejaz And 2 Others Versus Mst. Khalida Awan and another*** **(2010 SCMR 342)**, where it was held that:

> *"14. It may be noted that where a donee claims transfer of immovable property by way of gift through an instrument purporting to transfer rights in praesenti, the instrument is compulsorily registrable under section 17 of the Registration Act. Failing registration, the provisions of section 49 of the Registration Act come into play and, as a consequence, the document does not operate to create any right, title or interest, whether vested or contingent in the property."*

ii. Case titled as ***Allah Diwaya Versus Ghulam Fatima, Represented by Ahmad Sher and others*** **(PLD 2008 Supreme Court 73)**, where it was held that:

> *"There is, however, no cavil to the proposition that the gift deed was compulsorily registerable under section 17 of the Registration Act and without getting it registered the title of the property in question could not have been conferred upon."*

16. Shahid Perwaiz and other witnesses were not produced by the appellant/Rahila Shahid before the learned trial Court. Only Muhammad Afzal i.e. the marginal witness was produced. Learned trial Court has made comparison of the signatures of Muhammad Rafiq s/o Punnu Khan on the unregistered sale deed with his admitted signatures on the CNIC and gave findings that the same were not matched.

17. Learned counsel for the appellant is unable to explain that, as Muhammad Rafiq s/o Punnu Khan died on

03.04.2000, and the unregistered gift deed was executed on 15.04.1992, so why the property in question never got transferred on the name of appellant in the office of CDA by Muhammad Rafiq s/o Punnu Khan. The appellant's husband, who held a general power of attorney from the original owner, allegedly gifted the property to the appellant. However, a general power of attorney does not typically grant the attorney the authority to gift the principal's property to himself or his relatives without specific permission.

18. There is no denial of the facts that the learned counsel for the appellant has neither specifically pleaded in the written statement about the special/specific permission of the principal to his attorney to gift his property to his wife/appellant through gift deed dated 13.04.1992, or the original transaction of gift with time, date, day, month etc. nor three essential/basic/inseparable ingredients of valid gift i.e. offer, acceptance and delivery of possession. The learned counsel for the appellant has also not pleaded/exhibited any document(s) especially showing the written consent/permission of the principal to the attorney to further gift the suit property. On the basis of alleged general power of attorney No. 5663 dated 17.09.1990, the husband/ Respondent No. 1 further gifted the suit property to his wife/appellant through an unregistered oral gift deed dated

15.04.1992, during the lifetime of the principal. It is strange that the principal himself never exercised the right and power for the purpose of making a gift to alleged donee by taking a mentally conscious decision. Power of attorney is an instrument in writing, conferring authority or power by a principal to his attorney to do certain acts in a specific and limited manner and in the disputed general power of attorney No.5663 dated 17.09.1990, no specific powers were given by the principal to his attorney to gift his land to attorney's wife/appellant by clearly specifying the name of donee and the power of attorney is also not clearly indicating/conveying the principal's knowledge, intention and consent for making gift of his land to his attorney's wife/appellant. In this regard, reliance is placed on the following dictums laid down by the Hon'ble Supreme Court of Pakistan:-

i. Case titled as ***Allah Bakhsh deceased through L.Rs and others Versus Muhammad Riaz and others*** **(PLD 2025 Supreme Court 63)**, where it was observed by the Court that:

> *"8. It is established law that holder of a general power of attorney must obtain special permission from the principal when alienating the principal's property, either in their own favor or in the name of their relatives."*

ii. Case titled as ***Ijaz Bashir Qureshi Versus Shams-Un-Nisa Qureshi and others*** **(2021 SCMR 1298)**, where it was observed by the Supreme Court of Pakistan as follows:

> *"7. Now comes the question whether in a power of attorney if it is mentioned that the agent can transfer the property through gift, these powers are given to the agent to transfer the property himself or herself through gift, in our view the gift can be made by the owner/principal only. The agent cannot himself or herself transfer the immovable property of principal through gift on the basis of any power of attorney even if the power of attorney contains the powers to transfer the property through gift. These powers can only be used for completion of codal formalities of the gift which must be by the owner/principal himself/herself. The attorney cannot transfer the property of principal himself/ herself to anyone through gift and if that transfer is by the attorney himself/herself, that is invalid transfer."*

Additionally, in the case of ***Rab Nawaz (Deceased) through Legal heirs and others Versus Mst. Samra Andleeb*** (**2025 MLD 286**), it was observed by the Lahore High Court that:

> *"4. There is no cavil to the proposition that generally an attorney cannot utilize the powers conferred upon him to transfer the property to himself or his kith and kin, without special and specific consent/permission of the principal and in case of gift transaction, more strict conditions have been attached by the Superior Courts*

for proving the gift made by an attorney as a valid gift transaction because being voluntarily and gratuitous, gift reflects the personal sentiments of love, affection, kindness and compassion of donor for the donee or sometimes sentiments due to personal services rendered by the donee to the donor and personal sentiments of donor/principal cannot be expressed by an attorney on behalf of donor, therefore, the process of making valid gift must preferably be initiated and completed by the donor himself with the exception that the attorney may gift the property on the express permission and instructions of his principal. Reference is made to the cases reported as "Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others" (1994 SCMR 818), "Haji Faqir Muhammad and others v. Pir Muhammad and another" (1997 SCMR 1811),"Maqsood Ahmad and others v. Salman Ali" (PLD 2003 SC 31), "Jamil Akhtar and others v. Las Baba and others" (PLD 2003 SC 494), "Ijaz Bashir Qureshi v. Shams-un-Nisa Qureshi and others" (2021 SCMR 1298), "Syed AtifRaza Shah v. Syed FidaHussain Shah and others" (2022 SCMR 1262) and "Babar Anwar v. Muhammad Ashraf and another" (2024 SCMR 734).”

19. The registered general power of attorney was executed by M. Rafiq s/o Punnu Khan in favour of respondent No. 1/Shahid Perwaiz (husband of Rahila Shahid) on 17.09.1990, whereas the executant, M. Rafiq died on 03.04.2000. It is settled provision of law that on the death of the executant, the general power of attorney ceased to have effect. Reliance in this regard is placed on a case reported as

Muhammad Nawaz through L.Rs. and others Vs. Muhammad Khan and others **(2016 CLC Note 62)**.

20. Learned counsel for the appellants and respondent No. 1, have failed to explain that after the expiry of registered power of attorney, under which capacity they are enjoying the possession of the suit house.

21. For what has been discussed above, suit filed by the appellant was rightly dismissed by the Court of learned Civil Judge 1st Class, West-Islamabad vide impugned judgment and decree dated 27.09.2022, which needs no interference by this Court, hence the instant Regular First Appeal is without merits and is ***dismissed*** accordingly.

22. All pending C.Ms are disposed of accordingly.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on this 18th day of March, 2025.

JUDGE

*Bilal /**

APPROVED FOR REPORTING.