JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R No.46 of 2019

Muhammad Shamraiz

Versus

Zahid Mehmood and others

Petitioner by:	Raja Gul Nawaz, Advocate.
Respondents No.1 to 3:	Ex-parte.
Respondents No.4 & 5 by:	Mr. Asif Javed and Mr. Yasir Mehmood, State Counsels.
Date of Hearing:	**09.09.2025.**

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INAAM AMEEN MINHAS, J:- Through the instant civil revision, the petitioner has assailed the ex-parte judgment and decree dated 28.05.2018 **("Impugned Judgment-I")**, passed by the learned Civil Judge 1st Class, Islamabad-East **("Trial Court")** and ex-parte judgment dated 23.11.2018 **("Impugned Judgment-II")**, passed by the learned Additional District Judge-East, Islamabad **("Appellate Court")**, whereby suit for declaration, cancellation, permanent and mandatory injunction filed by the petitioner was dismissed concurrently.

2. Brief facts are that the petitioner filed a suit for declaration, cancellation, permanent and mandatory injunction against respondents No.1 to 5 with the averment that he is owner in possession of the property mentioned in the plaint and appointed respondent No.1 as General Attorney, where-after an agreement was executed between the petitioner and him regarding the suit property on 19.11.2014, under which he paid Rs.900,000/- to the petitioner, whereas Rs.720,000/- was

paid through a cheque No.2251331025 drawn on Allied Bank G-11/2, Markaz, Islamabad Branch, which was dishonoured due to insufficient funds. Respondent No.1 fraudulently sold out the suit land in parts to respondents No.2 & 3 through registered sale deeds by misusing the power of attorney.

3. Respondents No.1 to 5 did not appear before the learned Trial Court, therefore, they were proceeded against ex-parte. The learned Trial Court after recording ex-parte evidence, hearing the arguments, dismissed the suit of the petitioner through the Impugned Judgment-I. Feeling aggrieved the petitioner filed an appeal before the learned Appellate Court, which met the same fate through the Impugned Judgment-II, hence, this civil revision.

4. None appeared on behalf of respondents No.1 & 2 despite publication in the newspaper, therefore, they were proceeded against ex-parte vide order dated 22.04.2025. Respondent No.3 appeared in person on 22.04.2025, however, he absented himself, therefore, he was also proceeded against ex-parte on 26.05.2025.

5. The learned counsel for the petitioner contended that the impugned judgments are contrary to law and facts of the case and that the Impugned Judgments are result of misreading and non-reading of evidence.

6. I have heard the learned counsel for the petitioner and perused the record.

7. The record reveals that the petitioner while appearing as P.W.1 admitted that the sale agreement Exh-PF, dated 19.11.2014 was executed with respondent No.1, wherein total sale price was fixed as Rs.16,20,000/-. The essential elements of offer and acceptance were never denied. The petitioner did not claim that the agreement lacked free consent, rather, his only grievance is that he did not receive the

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remaining/balance sale consideration of Rs.7,20,000/-, whereas he received Rs.9,00,000/- as part payment. Similarly, the execution of the General Power of Attorney (Mark-PA) on 19.11.2014 is also admitted. Using this authority, the attorney transferred the disputed land through registered sale deeds Exh-PJ (08.12.2014) and Exh-PK (23.12.2014) to respondents No.2 & 3 and the General Power of Attorney (Mark-PA) remained valid at that time. It was only later cancelled on 18.01.2016 through Exh-PI. The record does not show that respondent No.1 being attorney transferred the land to himself or to any close relative. On the contrary, the General Power of Attorney (Mark-PA) was not merely a simple authority but one "coupled with interest," which under settled law cannot be revoked, especially after it has already been acted upon. At the time of filing of the suit, the land had already been legally transferred, leaving the petitioner with no vested ownership right, which is a necessary condition for seeking a declaration. Since the sale deeds Exh-PJ and Exh-PK were executed under the authority of a valid General Power of Attorney (Mark-PA), they cannot be treated as void or voidable, which are basic requirements. As mandatory and permanent injunctions are dependent on the success of declaration and cancellation, these reliefs also cannot be granted. Ultimately, the petitioner's actual grievance is only about non-payment of the balance sale consideration and under settled law, when the petitioner categorically admitted that the execution of sale agreement Exh-PF and General Power of Attorney (Mark-PA) in lieu of consideration amount then only the remedy available to the petitioner is to recover the outstanding amount from respondent No.1. The suit of the petitioner for declaration, cancellation, permanent and mandatory injunction was not maintainable.

8. In view of the above discussion, both the Courts below rightly appreciated the ex-parte evidence and passed the impugned judgments and decree in accordance with law. No illegality or jurisdictional defect

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has been found therein. Resultantly, the instant civil revision is **dismissed** being devoid of merits.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 26.09.2025

JUDGE

R.Anjam

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