

O. S 196 of 2016 (Boalkhali)

Bangladesh Form No. 3701

**HIGH COURT FORM NO.J (2)
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE
DISTRICT- CHATTOGRAM**

IN THE BOALKHALI ASSISTANT JUDGE COURT,
PATIYA, CHATTOGRAM

Present : Mr. Md. Hasan Zaman,
Senior Assistant Judge, Patiya, Chattogram.

Date of Delivery of Judgment : 17th day of November, 2024

Other Suit No. 196 of 2016

Md. Abul BasharPlaintiffs

-Versus-

Rokeya Akter and OthersDefendants

This case came up for final hearing on 11.01.2023, 07.11.2023, 04.03.2024,
23.06.2024, 08.07.2024; 29.08.2024;

In presence of :

Mr Dipak Kumar ShilAdvocate for Plaintiff.

Mr. A.K.M Shajahan Uddin Advocate for Defendants.

And having stood for consideration to this day, the court delivered the
following judgment:-

This is a suit for declaration.

1. Plaintiff's case in brief is that the plaintiff claims ownership and possession of the suit land, as reflected in his purchased deed and B.S. Mutation Khatian No. 1238. The plaintiff's wife, Defendant No. 1, is the mother of his son and daughter. On June 19, 2013, the plaintiff, to maintain and manage the suit land during his stay abroad, decided to execute a general power of attorney in favor of Defendant No. 1 at the Boalkhali Sub-Registrar's Office.

2. It is further case of the plaintiff that he intended to authorize Defendant No. 1 solely for the management and preservation of the land, without any authority to sell, mortgage, or transfer it. However, while executing the document, Defendants No. 2-4,

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along with Defendant No. 1, hurriedly assured him that the power of attorney had been prepared as per his instructions. The plaintiff was not allowed to read or verify the document before signing it. After signing, the plaintiff returned home and later went abroad.

3. Upon returning to Bangladesh on June 17, 2016, he attempted to bring Defendant No. 1 and their children back to his home but was met with verbal abuse and refusal by Defendant No. 1 and her family. Suspecting foul play, the plaintiff obtained a certified copy of the power of attorney on July 26, 2016, and discovered that Defendants No. 1–4 had fraudulently inserted unauthorized terms, including clauses allowing the sale, mortgage, and transfer of the suit land. The plaintiff asserts that he was unaware of these fraudulent clauses until July 26, 2016. Despite sending a legal notice and making verbal requests, Defendant No. 1 refused to cancel the fraudulent power of attorney. Consequently, the plaintiff has been compelled to file this suit to cancel the document and seek justice.

4. **The defendants No. 1 contested the suit by filing written Statement contending, *inter alia*, on 19/06/2013, the plaintiff, as the owner of the disputed property, executed and registered a Power of Attorney (POA) at the Boalkhali Sub-Registry Office, bearing No. 2185, in favor of Defendant No. 1. This GPA empowered Defendant No. 1 to manage, preserve, sell, or transfer the disputed property on behalf of the plaintiff as deemed necessary. Acting under the authority of the said POA, Defendant No. 1 maintained possession of the disputed property on behalf of the plaintiff. Later, at the plaintiff's explicit instruction Defendant No. 1 executed and registered a sale deed (Kabala) on 19/10/2016 at the Boalkhali Sub-Registry Office, bearing No. 2730, transferring the disputed property to Defendants No. 5 and 6. The entire sale consideration was received directly by the plaintiff from Defendants No. 5 and 6, indicating her acknowledgment and approval of the transaction.**

5. Recently, a conflict arose between the plaintiff and Defendant No. 1, leading to a deterioration in their relationship. This dispute appears to have prompted the plaintiff to file the current suit against Defendant No. 1, alleging impropriety in the sale of the disputed property. The plaintiff now claims ignorance of the sale transaction despite having actively participated in the process and receiving the sale consideration. The Defendants No. 5 and 6 are in **peaceful possession** of the disputed property by virtue of the sale deed. The suit lacks any legal basis since the plaintiff willingly executed the POA and facilitated the subsequent sale. The suit is frivolous and filed with malafide intentions to cause undue hardship to Defendant No. 1. For this the suit is liable to be dismissed.

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6. **The defendants No. 6-7 contested the suit by filing written Statement contending, *inter alia*, that** on 19/06/2013, the plaintiff, as the owner of 33.68 decimals of land, executed and registered Power of Attorney No. 2185 at the Boalkhali Sub-Registry Office, granting his spouse, Defendant No. 1, authority to manage, protect, and, if necessary, sell or transfer the disputed property. At that time, the plaintiff was residing in Saudi Arabia and authorized Defendant No. 1 to act on his behalf. This delegation of authority was acknowledged by the plaintiff in an application to the local Union Parishad (UP) Office, submitted during a proceeding related to his divorce, wherein he explicitly stated that the Power of Attorney was intended to ensure the proper management and protection of his property during his absence.

7. Pursuant to the Power of Attorney, Defendant No.1 transferred the suit property vide Sale Deed No. 2730 dated 19.10.2016 in favor of Defendants No. 5 and No. 6. The full consideration amount for the sale was paid directly by Defendants No. 5 and No. 6 to the plaintiff, signifying his consent and benefit from the transaction. Since then they are in lawful possession of the suit property. Defendants No. 5 and No. 6, having acted in good faith and acquired valid title and possession, are bona fide purchasers. The plaintiff's attempt to challenge the transaction is baseless and unjustified. Given the lack of current ownership or possession by the plaintiff, the suit appears meritless and should be dismissed to avoid unwarranted harassment and prejudice to the defendants.

8. **Issues:**

From the rival pleadings of both the parties and considering the submissions of learned advocate of both the parties at the time of arguments, the following issues has been framed for proper adjudication of the case :

- 1) Whether the suit is maintainable in it's present form and prayer?
- 2) Whether the plaintiffs have any cause of action for filing the suit ?
- 3) Whether the suit is barred by limitation?
- 4) Whether the impugned Power of Attorney deed No. 2185 dated 19.06.2023 is forged, fabricated and not binding upon the plaintiff ?
- 5) Whether the plaintiff may get the relief as prayed for?

Discussions of Evidence :

11) To prove the plaint case, the plaintiff examined 02 witnesses namely **Md Abul Bashar as P.W.1 and Md. Sekantor as P.W.2 and during examination of P.W.1** the documents produced and proved were marked as Exhibits: No.1-3. On the other hand, the defendants examined **02** witnesses namely **Md. Selim Uddin as D.W.1 and Rokeya**

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Akter as D.W.2 before the court. During examination of **D.W.1** the documents have been marked as exhibits:- **Ka, Kha and Ga.**

Md Abul Bashar as P.W.1 and Md Selim Uddin as D.W.1 deposed in support of the facts stated in plaint and Written statement respectively.

12) During cross examination P.W.1 denied the suggestion that he executed a purported power of attorney ("Am-Mokhtar") in favor of Defendant No. 1 while abroad. He acknowledged, however, that blank papers with his signature were taken from him, and subsequently, he was taken to the sub-registrar's office. **P.W.1** asserted that he refused to sign any document without reading it first, but the defendants hurriedly obtained his signature. He further stated that he was unable to review the document properly before leaving for abroad. In 2016, Defendant No. 1 divorced him. Later, when visiting the local union council, he purportedly admitted to having executed the power of attorney.

13) P.W.1 denied the suggestion that he was in the country when Defendants Nos. 6 and 7 purchased the disputed property. He further denied that he filed the instant suit seeking cancellation of the power of attorney due to the breakdown of his marital relationship with Defendant No. 1. The plaintiff also rejected the suggestion that Defendants Nos. 5 and 6 are currently in possession of the disputed property and that he himself has no possession over it.

14) Md. Sekantor (P.W.2) in his deposition stated that the plaintiff is in possession of the disputed land. During cross-examination, he admitted that the plaintiff was indeed living abroad and had executed a general power of attorney for the sale and purchase of the disputed property.

15) Md. Selim Uddin (D.W.1) in his examination in chief stated the same facts as in W/S. In order to avoid repetition I inclined not to discuss the same here. In cross-examination, DW-1 deposed that the plaintiff's first wife is the defendant No.1 in the suit. When the land was purchased, Abul Bashar was living with his wife, the (defendant No.1) **D.W.1** denied the suggestion that Abul Bashar, before leaving for abroad, signed several blank non-judicial stamps before the sub-registrar. He also denied the suggestion that, instead of executing a special power of attorney, a general power of attorney for sale was fraudulently prepared.

16) D.W.1 further stated during his cross-examination that he was unaware of the ongoing litigation at the time of his purchase of the land. He purchased the land while the suit was pending. He asserted that the plaintiff filed the case and subsequently left for

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abroad. The witness denied the suggestion that the plaintiff did not receive any money from him. He further deposed that the plaintiff and his wife (1st defendant) were living together at the relevant time. He claimed that the payment for the land was received by the plaintiff's wife. However, the witness denied the suggestion that the plaintiff was abroad and not present at the time of the payment.

17) Rokeya Akter (D.W.2) is the former wife of plaintiff. She deposed that the plaintiff was indeed living abroad and had granted her a power of attorney ("Am-Mokhtar") for managing and selling the disputed property. During cross-examination, DW-1 denied the suggestion that the plaintiff had never executed such a power of attorney. She asserted that the plaintiff was her first husband, and during the time of the sale, they had an existing marital relationship. D.W.2 claimed that the plaintiff authorized her to sell the disputed land, which was subsequently sold to Defendants Nos. 5 and 6 for a sum of 19.5 lacs. DW-1 maintained that the plaintiff had received the entire sale proceeds. However, after the sale, disputes arose between her and the plaintiff, leading to their divorce. She stated that Defendants Nos. 5 and 6 have been in possession of the disputed property since the sale. DW-1 denied the suggestion that the power of attorney was granted merely for the management of the property rather than its sale. She further stated that the plaintiff was in the country during the sale transaction, despite his subsequent claim to the contrary.

Reasoning and Decisions

18) Issue no. 1, 2 and 3

All these issues are taken up together for the sake of brevity and convenience.

Perusing the plaint, written statement and the evidences appearing in the record, it appears that the suit is purely civil in nature and there is no bar to try this suit by this Court. Therefore, the suit is well maintainable in its present form.

19) The plaint reveals sufficient cause of action for the plaintiffs for bringing the instant suit. It appears from the plaint that the plaintiff is the owners and possession holders of the disputed property. On June 19, 2013, the plaintiff, to maintain and manage the suit land during his stay abroad executed a general power of attorney in favor of Defendant No. 1. Later on he left the country for abroad. Upon returning to Bangladesh on June 17, 2016, he came to know that Defendants No. 1-4 had fraudulently inserted

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unauthorized terms, including clauses allowing the sale, mortgage, and transfer of the suit land. This act of defendants clouded the right, title, interest and possession of the plaintiffs over the schedule property mentioned in the plaint. The cause of action of the instant suit arose on and from 17.06.2016 and the suit was filed on 08.09.2016 which is within the statutory period of limitation. Thus, the suit is well maintainable and has sufficient cause of action and is not barred by limitation. Accordingly, all these issues are decided in favour of the plaintiff.

20) ISSUES NO.4 and 5 :

These two issues are taken together for convenience of discussions. It is admitted by both party that plaintiff and the defendant No.1 were husband and wife and in their wedlock two child was born who are now adult. It is also admitted that plaintiff stayed abroad for job purpose and he was the original owner of the suit land. In view of **[Exhibit No.1]** it appears that the plaintiff has executed a Power of Attorney (POA) in favor of his wife defendant No.1 on 19.06.2013 which is the impugned deed of the present suit. It is claimed by the plaintiff that he executed the GPA solely for the purpose of management and preservation of the suit property, with no intention to authorize its sale or transfer. The defendants fraudulently incorporated unauthorized clauses in the GPA, empowering Defendant No. 1 to sell or transfer the property. This claim of plaintiff has been fully denied by the defendants.

21) The defendants claimed that that the POA was executed with full authority to sell or transfer the property, as explicitly acknowledged by the plaintiff in various documents. As per Clause 7 and 8 of the impugned POA deed **[Exhibit-1]** this facts appears to me as true. The defendants claimed that Defendant No. 1, under the POA's authority and with the plaintiff's knowledge, sold the property to Defendants No. 5 and 6 via **Sale Deed No. 2730**. The plaintiff received the sale proceeds and participated in the transaction process. The plaintiff has no right title and interest in the suit land and defendant no.5 and 6 are now in possession of the land.

22) Considering the above positions, it appears the plaintiff admits to executing **POA No. 2185** at the Boalkhali Sub-Registry Office on **19/06/2013**. The POA, being a registered document, enjoys a presumption of validity under the Evidence Act, 1872. The burden lies on the plaintiff to prove allegations of fraud. The plaintiff alleges fraud in the inclusion of certain clauses in the POA but has failed to provide any credible evidence

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supporting this claim. The plaintiff himself admitted to signing the document without reading it. Negligence on the plaintiff's part cannot constitute fraud on the defendants' part, as per the principle laid down in *Md. Afzal Hossain vs. Md. Manik Mia* (47 DLR 563).

23) The defendants claim that at the time Defendant No. 1 sold the disputed property to Defendants No. 5 and 6, the plaintiff was physically present and personally witnessed the transaction, including the exchange of money. However, the plaintiff denies this assertion and claims that he was abroad during the alleged transfer. To support his claim, the plaintiff failed to produce any documentary evidence, such as his passport, that could corroborate his absence from the country at the relevant time.

24) The Court, during the evidence stage, specifically orally directed the plaintiff to submit his passport to substantiate his claim of being abroad. Despite this directive, the plaintiff did not provide his passport, raising doubts about the veracity of his assertion. The failure to produce such crucial evidence leads to a reasonable presumption that the plaintiff was indeed present in the country during the disputed transaction. The plaintiff's conduct demonstrates acquiescence to the sale. His claim of fraud emerged only after disputes arose with Defendant No. 1. The Apex Court in *Most. Rehana Sultana vs. Abu Bakar Siddique* (68 DLR 424) held that a party who knowingly benefits from a transaction cannot subsequently claim it to be void based on technicalities or unsubstantiated allegations.

25) Furthermore, it is pertinent to note that it is natural and customary for a wife to manage her husband's property in his absence. In this case, the execution of a power of attorney (POA) by the plaintiff in favor of Defendant No. 1 could be reasonably interpreted as a formal arrangement to manage the property, including its sale, as needed. This lends credibility to the defendants' claim that the plaintiff executed the POA with the intention to facilitate the sale of the disputed property.

26) Another significant aspect is the timing of the challenge to the POA. The POA was executed in 2013, yet the plaintiff only contested its validity in 2016, after a prolonged period. Such a delay in disputing the POA further undermines the plaintiff's allegations of fraud and irregularity, as it suggests acquiescence on his part to the terms of the document. Based on these considerations, the Court finds it reasonable to conclude that the plaintiff executed the POA with full knowledge of its implications, including the

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authority it granted Defendant No. 1 to sell the property, and that the challenge to its validity is baseless.

27) Defendants No. 5 and 6 have established their status as bona fide purchasers for value without notice of any alleged fraud. The Supreme Court in *Md. Mofizul Haque vs. Abdul Haque and Others (39 DLR 57)* emphasized the protection of bona fide purchasers who act in good faith and rely on registered documents.

28) Considering the above discussions, it appears that the plaintiff has failed to discharge his initial burden to prove his claims of fraud or lack of authority in the execution of the POA or the sale of the property. Thus these issues are decided as against the plaintiff. Keeping in consideration of the plaint, written statement and other materials on record of this case and hearing of the Ld. Advocates for both the parties to the suit, I have no hesitation to hold that the suit is liable to be dismissed without any order as to cost.

In result the case fails.

Court fee paid is correct

Hence,

It is Ordered

that the suit be dismissed on contest against the defendant no.1/6/7 and ex-parte against the rest without any order as to cost.

The case is thus disposed of.

Typed & Corrected by me

Md. Hasan Zaman
Senior Assistant Judge,
Boalkhali Assistant Judge Court,
Patiya , Chattogram.

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