

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA No. 93 of 2019

Civil Misc. No. 51 of 2019

(Filed on 13.04.2019)

Tasleem Mehmood Khan S/o Raja Khalid Mehmood
Khan R/o Dheri Brootian Tehsil and District Mirpur.

.....PETITIONER

VERSUS

Muhammad Saleem & others.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated
21.02.2019 in revision petition No. 93 of 2018]

(Application for interim relief)

FOR THE PETITIONER: Mr. Taimoor Ali Khan,
Advocate.

FOR THE RESPONDENT: Nemo.

Date of hearing: 24.05.2019.

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.– The
captioned petition for leave to appeal has been filed
against the judgment of the High Court dated

21.02.2019, whereby, the revision petition filed by the petitioner, herein, has been dismissed.

2. The precise facts of the case are that the plaintiff-respondent, herein, filed a suit for declaration pertaining to land Khewat No. 17, Khata No 106, (old) survey No. 303/1, (new) survey No. 398 measuring 11 Kanal 05 Marlas Shamilat Deh situated in Mozia Dhairi Thothal Tehsil & District Mirpur, against the defendant-petitioner, herein, before the Additional District Judge, Mirpur. The case was at the stage of recoding evidence, when the learned counsel for the defendants raised objection that attorney was not rendered any power to record his statement on behalf of the plaintiff in the recital of power of attorney. The learned Court below after hearing the parties allowed the attorney for recording his statement vide order dated 18.04.2018. Against the said order, the petitioner, herein, filed a revision petition before the High Court. The learned High Court after necessary proceedings has dismissed the revision petition

through impugned judgment, hence, this petition for leave to appeal.

3. Mr. Taimoor Ali Khan, Advocate, the learned counsel for the petitioner after narration of necessary facts submitted that the sole point involved in this case is the interpretation of power of attorney. He referred the deed of power of attorney and submitted that as in this document, the principal has not specifically authorized the attorney to appear before the Court on his behalf and got his statement recorded. According to the statutory provisions of law as well as principle enunciated by the superior Courts, the special power of attorney has to be strictly construed and if the power is not expressly mentioned, the same cannot be exercised by the Agent/attorney. The Court below has not properly appreciated this proposition, therefore, it is an important proposition justifying grant of leave.

4. Despite service of ,notice, no one appeared on behalf of the respondents.

5. I have considered the arguments of the learned counsel for the petitioner and examined the record juxtaposed with the deed of power of attorney. The point agitated requires detail deliberation, therefore, for doing complete justice, leave is granted. The petitioner shall deposit security of Rs. 1000/- within two weeks' time, otherwise, the leave granting order shall automatically stand rescinded. The office shall proceed further according to rules.

CHIEF JUSTICE

Mirpur,
24.05.2019