

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI
JUSTICE SYED ARSHAD HUSSAIN SHAH

C.P.L.A.30-L/2025

*[against the judgment dated 11.12.2024 passed
by the Lahore High Court, Bahawalpur Bench,
Bahawalpur in W.P. No.9147/2017]*

*Mst. Bushra Bibi widow of Muhammad
Zubair and others*

...Petitioner(s)

Versus

*Additional District Judge, Bahawalnagar
and others*

...Respondent(s)

For the Petitioner(s) : Mr. Ahmed Mansoor Chishti, ASC

For Respondents No. 3-8 : Mr. Muhammad Tahir Ch., ASC

For Respondents No. 7-10 : Nemo.

Research Assistance By : Dr. Muhammad Mumtaz,
Research Officer

Date of Hearing : 09.07.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- Through this petition, the petitioners seek leave to appeal against the judgment dated 11.12.2024 rendered by the learned Single Judge of the Lahore High Court, whereby the writ petition filed by Mst. Kaneez Bibi and others was accepted.

2. According to the facts of the case, the petitioner assailed the compromise judgment and decree passed by the learned Trial Court by filing an application under Section 12(2) of the Code of Civil Procedure, 1908 ("CPC"), inter alia, on the ground that certain parties to the compromise were minors and that their interests had not been duly safeguarded by the Court in accordance with law. The said application was dismissed by the

learned Trial Court. However, the revision petition preferred by the petitioner was allowed by the learned Additional District and Sessions Judge vide a detailed order dated 02.10.2017, passed after due consideration of the law declared by the superior Courts in respect of compromises affecting the rights and interests of minors.

3. Aggrieved by the judgment of the Revisional Court whereby the application under Section 12(2), CPC was accepted, the compromise judgment and decree were set aside, and the original suit was remanded to the learned Trial Court for decision afresh on merits, the private respondents/decreed-holders invoked the constitutional jurisdiction of the Lahore High Court. The learned Single Judge, vide judgment dated 11.12.2024, allowed the writ petition, set aside the judgment of the Revisional Court, and restored the order of the learned Trial Court dismissing the petitioner's application under Section 12(2), CPC.

4. Arguments heard. Record perused.

5. The controversy involved in the present case is, in essence, uncomplicated. The compromise judgment and decree pertained to landed property in which certain defendants, admittedly minors, had an interest. Once the learned Trial Court proceeded to record the compromise without first ensuring that the interests of the minors were duly protected in the manner prescribed by law, the compromise proceedings stood vitiated. In these circumstances, the Revisional Court rightly exercised its jurisdiction by allowing the revision petition, setting aside the compromise judgment and decree, and remanding the suit to the learned Trial Court for decision afresh on merits. The said order was fully consistent with the settled principles governing the protection of minors' rights and, therefore, did not warrant interference in the exercise of the High Court's constitutional jurisdiction.

6. It is a well-settled principle of law that a Court acts as *parens patriae* in relation to minors and is under a solemn and

mandatory obligation to jealously safeguard their rights and interests at every stage of the proceedings. Compliance with the procedural safeguards prescribed by law is, therefore, not a matter of form but one of substance. The record reveals that although the plaint specifically disclosed that some of the defendants, including the present petitioners (except defendant No.1), were minors, there is nothing to indicate that any application under Order XXXII Rule 3, CPC, was ever filed seeking the appointment of a guardian *ad litem* to represent and defend their interests. The appointment of a guardian for a minor defendant is a mandatory statutory requirement, and non-compliance therewith strikes at the very validity of the proceedings insofar as the rights of the minors are concerned.

7. The controversy is governed by the provisions of Order XXXII of CPC, which regulate the institution and conduct of suits by or against minors. The relevant provisions are reproduced hereunder:

Order XXXII, Rule 2, CPC

2. Where suit is instituted without next friend, plaint to be taken off the file.—

(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections, if any, may pass such order as it deems fit.

Order XXXII, Rule 3, CPC

3. Guardian for the suit to be appointed by Court for minor defendant.—

(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit.

(2) Such appointment may be made upon an application by the plaintiff or on behalf of the minor.

(3) The application shall be supported by an affidavit affirming that the proposed guardian has no interest adverse to that of the minor and is a fit person to be appointed.

(4) No order appointing a guardian shall be made except after notice to the minor and to the guardian or natural guardian specified therein and after considering any objection raised.

(5) A guardian so appointed shall continue to represent the minor throughout all proceedings arising out of the suit, including appellate, revisional and execution proceedings.

A plain reading of Rule 3 leaves no room for doubt that, once the Court is satisfied that a defendant is a minor, the appointment of a guardian *ad litem* is not discretionary but mandatory. Equally mandatory are the requirements that such appointment be preceded by an appropriate application supported by an affidavit and that notice be issued to the persons specified in sub-rule (4) before any order is passed. These safeguards are intended to ensure that the interests of a minor are effectively represented and are not prejudiced by any act or omission of the parties. Any compromise, concession or decree affecting the proprietary rights of a minor, recorded in disregard of these mandatory requirements, cannot be sustained in law.

8. The scheme of Order XXXII, Rule 3, CPC casts a mandatory duty upon the Court to appoint a guardian *ad litem* for a minor defendant immediately upon being satisfied of the fact of his or her minority. Correspondingly, it is incumbent upon the plaintiff to move an appropriate application seeking such appointment in the manner prescribed by law. Until a guardian *ad litem* is duly appointed, a minor defendant cannot be regarded as being effectively represented before the Court, and no proceedings affecting his or her rights can lawfully be undertaken. In other words, a minor defendant does not become a party to the suit in the eyes of law unless represented through a duly appointed guardian *ad litem*. Consequently, any decree passed against a minor without compliance with the mandatory requirements of Order XXXII, Rule 3, CPC is liable to be declared void and of no legal effect, where such non-compliance has occasioned prejudice to the minor.

9. In the present case, the record is conspicuously silent as to whether any application under Order XXXII, Rule 3, CPC was ever filed or whether the learned Trial Court appointed a guardian *ad litem* for the minor defendants before recording the compromise as per procedure ordained in CPC and passing the impugned judgment and decree. Such omission goes to the root of the proceedings, for the statutory safeguards embodied in Order XXXII are intended to ensure that the rights and interests of minors are not compromised without adequate and independent representation. The legal position is no longer *res integra*. In *Tanveer Mahboob and another v. Haroon and others*¹ the Supreme Court held that although the omission to appoint a guardian *ad litem* may, in certain circumstances, be treated as a procedural irregularity, where such omission has prejudicially affected the rights or interests of a minor, the Court is under a paramount obligation to protect the minor and cannot permit the decree to stand merely on technical considerations. The jurisdiction exercised by the Court in such matters is founded upon its role as *parens patriae*, requiring it to zealously safeguard the interests of those who are under a legal disability. The relevant portion of the above judgment is reproduced as under:-

"The non-fulfilment of formal requirement of appointment of a minor defendant under Order XXXII, Rule 3, C.P.C. would not affect the proceedings in the suit and the decree if ultimately passed, unless it is shown that due to omission of appointment of guardian *ad-litem* of a minor, who was being represented by his natural guardian, the minor was caused prejudice and the objection would be only of technical importance."

10. It is equally well settled that judicial proceedings affecting the rights of a minor must be conducted strictly in accordance with the procedure prescribed by law. Since a minor lacks legal capacity to prosecute or defend proceedings independently, he or she cannot effectively safeguard his or her own rights before a Court of law. Consequently, where a minor is impleaded as a defendant, the Court cannot proceed against such minor unless he or she is duly represented through a guardian *ad litem* appointed in accordance

¹ (2003 SCMR 480)

with Order XXXII, Rule 3, CPC. Any proceedings conducted, or decree passed, in disregard of this mandatory requirement are liable to be declared without lawful effect to the extent that they prejudice the rights and interests of the minor.

11. It is pertinent to observe that the learned Trial Court failed, at the very threshold, to comply with the mandatory requirements of Order XXXII, CPC by not appointing a guardian *ad litem* as per procedure, for the minor defendants before proceeding further with the suit. This omission constituted a failure to discharge a statutory obligation expressly cast upon the Court. Being the Court of first instance, the learned Trial Court was duty-bound to take cognizance of the minority of the defendants and to ensure strict compliance with the safeguards prescribed under Order XXXII, CPC before taking any substantive step in the proceedings. Its failure to do so vitiated the subsequent proceedings insofar as they affected the rights and interests of the minors.

12. There is yet another aspect of the matter which cannot be overlooked. The compromise in question involved the immovable property of the minor defendants. Even assuming that their mother was representing them, she could not, in law, enter into any compromise or otherwise deal with the property rights of the minors without first obtaining the permission of the competent Guardian Court. Such permission is not an empty formality but a substantive safeguard enacted to ensure that the property of a minor is not alienated or otherwise dealt with to his or her detriment. It is well settled that a natural guardian, including the mother, does not possess an unfettered authority to transfer, relinquish, compromise or otherwise dispose of the immovable property of a minor. Any such transaction is subject to the supervisory jurisdiction of the Guardian Court, which is required to satisfy itself that the proposed transaction is demonstrably for the welfare and benefit of the minor. Even where permission is granted, the guardian remains accountable to the Court for the consideration received and its utilization for the benefit of the minor. These statutory safeguards reflect the cardinal principle

that the property of a minor is under the special protection of the Court. In this regard, Section 29 of the Guardians and Wards Act, 1890, is apposite and reads as under:

“Section 29. Limitation of powers of guardian of property appointed or declared by the Court.— Where a person, other than a Collector or a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court—

(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the ward; or

(b) lease any part of such property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward ceases to be a minor.”

13. The rationale underlying the aforesaid provision applies with equal force to a compromise whereby valuable proprietary rights of minors are surrendered or adversely affected. The appointment of a guardian of the person or property of a minor is governed by the provisions of the Guardians and Wards Act, 1890. The Act comprehensively regulates the powers and limitations of a guardian appointed or declared by the Guardian Court. In particular, Section 29 imposes a statutory embargo upon such guardian from mortgaging, charging, selling, gifting, exchanging, or otherwise transferring or dealing with the immovable property of a minor without the prior permission of the competent Court. The object of this provision is to ensure that the proprietary rights of minors are not prejudiced by any unilateral act of the guardian and that every transaction affecting such rights is subjected to judicial scrutiny to ascertain whether it is for the welfare and benefit of the minor.

14. Applying the aforesaid principle to the facts of the present case, it is evident that the compromise, which materially affected the proprietary rights of the minor defendants, was entered into without obtaining the prior permission of the competent Guardian Court. The record is devoid of any material suggesting that such permission was either sought or granted. The petitioners have,

therefore, successfully established that the alleged compromise was effected in contravention of the mandatory requirements of law. Consequently, the compromise, to the extent that it purported to affect the rights and interests of the minors, is devoid of legal sanctity and cannot be accorded judicial recognition.

15. In matters involving the rights and interests of minors, the Court cannot remain a passive spectator. Rather, it is under a positive and continuing obligation to ensure that the interests of minors are adequately protected and, where necessary, to exercise its inherent jurisdiction to prevent any prejudice to those interests. This obligation flows not merely from the procedural provisions of CPC, but also from the well-established doctrine of *parens patriae*, under which the Court assumes the role of the ultimate protector of persons under legal disability.

16. The doctrine was succinctly explained by Henry Brand, J. in *Amar Chand case*² wherein it was observed that the Court possesses an inherent jurisdiction, derived from the Crown as *parens patriae*, to safeguard the interests of minors. The same principle is firmly embedded in our constitutional jurisprudence. The State of the Islamic Republic of Pakistan, acting through its Courts, is the constitutional guardian (*parens patriae*) of minors and other vulnerable segments of society. This constitutional obligation finds expression in the Preamble, which embodies the ideals of social justice, equality and protection of the legitimate interests of the weaker sections of society, as well as in Article 25(3) of the Constitution, which authorizes the State to make special provisions for the protection of women and children, and Article 35, which enjoins the State to protect the child and the family. Viewed in this constitutional backdrop, the provisions of Order XXXII, CPC are not merely procedural in character; they constitute substantive safeguards designed to secure the effective protection of minors involved in judicial proceedings. These provisions must, therefore, receive a purposive and progressive interpretation consistent with the constitutional mandate of

² (Amar Chand v. Nem Chand (AIR 1942 All. 150)

protecting children and advancing their welfare. A minor litigant is deemed to be under the special protection of the Court, which bears the primary responsibility of ensuring that the minor is effectively represented and that no order, decree or compromise prejudicial to his or her interests is permitted to be made in disregard of the statutory safeguards.

17. It is for this reason that, even after the appointment of a guardian *ad litem*, no agreement or compromise affecting the rights or property of a minor can be entered into without the express leave of the Court. The appointment of a guardian does not absolve the Court of its continuing responsibility. Rather, the Court must vigilantly supervise the conduct of the guardian *ad litem* and satisfy itself that every act undertaken on behalf of the minor is genuinely for the minor's welfare and benefit. As the ultimate custodian of the rights and interests of minors, the Court is under a continuing duty to ensure that the statutory safeguards are faithfully observed and that the rights of minors are not sacrificed through omission, inadvertence or compromise.

18. There is yet another legal infirmity which goes to the root of the matter. The mandatory requirements of Order XXXII, Rule 7 of the CPC, were also not complied with. The said provision reads as follows:

Rule 7. Agreement or compromise by next friend or guardian for the suit.—

(1) No next friend or guardian for the suit shall, without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

19. A plain reading of the above provision leaves no room for ambiguity. It unequivocally prohibits a next friend or guardian *ad litem* from entering into any agreement or compromise on behalf of a minor unless the leave of the Court has first been obtained and such leave is expressly recorded in the proceedings. The requirement is couched in mandatory terms and is intended to ensure that the Court independently examines whether the proposed compromise serves the welfare and best interests of the

minor before according its approval. In the present case, the record does not disclose that any application seeking leave of the Court under Order XXXII, Rule 7, CPC was ever moved, nor does it reveal that the learned Trial Court granted or expressly recorded such leave before accepting the compromise and passing the impugned judgment and decree. The omission is not a mere procedural irregularity; rather, it constitutes a violation of a mandatory statutory safeguard enacted for the protection of minors. The Court itself bears an independent and non-delegable obligation to ensure strict compliance with the requirements of Rule 7 and cannot validate or overlook a compromise entered into in derogation thereof.

20. It is equally well settled that, while considering whether to grant leave under Rule 7, the Court must satisfy itself, on the basis of cogent material, that the proposed compromise is demonstrably beneficial to the minor and does not prejudice his or her proprietary or other legal rights, particularly where the interests of the minor and those of the adult parties are divergent or potentially conflicting. Judicial approval cannot be accorded mechanically or as a matter of course; it must follow a conscious judicial determination that the compromise promotes the welfare of the minor. The principle is trite that where the law prescribes that a particular act is to be performed in a particular manner, it must be performed in that manner alone or not at all. The mandatory procedure prescribed by Order XXXII, Rule 7, CPC having been wholly disregarded, the compromise and the decree founded thereon stood vitiated. The learned Revisional Court, therefore, committed no legal error in setting aside the compromise judgment and decree and restoring the suit for adjudication on merits. The interference made by the High Court in the exercise of its constitutional jurisdiction was, thus, wholly unwarranted.

21. There is yet another aspect of the matter which merits consideration. The petitioner specifically pleaded that she is an illiterate *parda nasheen* lady and that the alleged compromise was procured without her being properly apprised of its nature, legal

implications, and consequences. Such a plea could not have been brushed aside without a meaningful judicial inquiry. Once the validity of a compromise is challenged on the ground that the consent of a *parda nasheen* and illiterate woman was obtained through fraud, misrepresentation, or without informed understanding, the Court is under a legal obligation to examine the matter with utmost care before according sanctity to the transaction. The learned Trial Court, however, failed to discharge this obligation.

22. It is by now a firmly settled principle of our jurisprudence that where a transaction is entered into by a *parda nasheen*³, illiterate, rustic or otherwise vulnerable woman, the burden rests heavily upon the beneficiary of such transaction to establish, by cogent, convincing and unimpeachable evidence, that it represented her free, conscious and informed act. The beneficiary must affirmatively prove that the executant fully understood the nature and contents of the document, appreciated its legal consequences, was aware of the rights sought to be relinquished, and executed the transaction voluntarily after receiving competent, independent and disinterested advice. This principle has repeatedly been affirmed by this Court, most recently in Ghulam Muhammad case⁴ and others, wherein the settled doctrine relating to *parda nasheen* women was reiterated and applied with considerable emphasis.

23. The rationale underlying this doctrine is rooted in the constitutional and legal obligation of the Courts to protect vulnerable persons from exploitation. In our social milieu, where women—and particularly illiterate, rural and *parda nasheen* women—are not infrequently deprived of their lawful property and inheritance rights through subtle coercion, undue influence, manipulation or fraudulent devices, the Courts are required to

³ (A *parda nasheen* woman is one who, because of seclusion, illiteracy or social vulnerability, is accorded special protection by law. Transactions affecting her rights are subject to strict judicial scrutiny, and the beneficiary must prove that they were entered into freely, knowingly and with independent advice. See **Phul Peer Shah v. Hafeez Fatima** (2016 SCMR 1225); **Ghulam Muhammad v. Zohran Bibi and others** (2021 SCMR 19)

⁴ (Ghulam Muhammad case (Ghulam Muhammad v. Zohran Bibi and others (2021 SCMR 19)

scrutinize such transactions with heightened vigilance. The doctrine protecting *parda nasheen* women is, therefore, not a mere rule of evidence but a substantive principle of law evolved to ensure that consent is real, informed and voluntary, and not the product of ignorance, dependence or exploitation. This position was reaffirmed by Supreme Court in Phul Peer Shah case.⁵

24. The duty of judicial scrutiny becomes even more onerous where the transaction simultaneously affects the rights of minor children. In such circumstances, the Court is required to satisfy itself not only that the *parda nasheen* woman acted with full knowledge and independent advice, but also that the compromise was demonstrably beneficial to the minors whose interests the law places under the special protection of the Court. The coexistence of these two legally protected classes—namely, an illiterate *parda nasheen* woman and minor children—casts an exceptionally heavy burden upon the beneficiary of the transaction to dispel every suspicious circumstance by evidence of the highest probative value. Unless that burden is satisfactorily discharged, the Court cannot accord legal recognition to the transaction or permit it to operate to the prejudice of their rights.

25. The constitutional scheme of the Islamic Republic of Pakistan manifests a clear and unequivocal commitment to the protection of proprietary rights, particularly those of women and minors, who constitute vulnerable segments of society. The Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”), being the supreme law of the land, provides a comprehensive normative framework requiring all Courts to zealously safeguard the property and inheritance rights of women and children and to ensure that such rights are not defeated through fraud, coercion, procedural irregularities or any device inconsistent with law. The relevant constitutional provisions, having a direct bearing on the controversy, are reproduced hereunder for ease of reference:

⁵ (Phul Peer Shah v. Hafeez Fatima (2016 SCMR 1225))

Article 4: Every individual shall be entitled to enjoy the protection of law and to be treated in accordance with law. In particular, no action detrimental to life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Article 9: No person shall be deprived of life or liberty save in accordance with law. This provision has been interpreted by the Supreme Court to include the right to livelihood and economic security — encompassing property rights.

Article 23: Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

Article 25: All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone. Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.⁶

26. The procedural safeguards incorporated in Order XXXII of the CPC and the protective provisions of the Guardians and Wards Act, 1890, are statutory manifestations of this constitutional mandate. Consequently, these provisions must receive a purposive and liberal interpretation so as to advance, rather than defeat, the constitutional objective of protecting women and minors from exploitation and unlawful deprivation of their proprietary and inheritance rights. Viewed against this constitutional backdrop, any compromise or decree affecting the property rights of an illiterate *parda nasheen* woman or minor children, without strict adherence to the mandatory safeguards prescribed by law, cannot receive judicial approval. The constitutional guarantees contained in Articles 4, 23 and 25 require the Courts to subject such transactions to the closest scrutiny so that the proprietary rights of vulnerable persons are not sacrificed through fraud, misrepresentation, undue influence or non-compliance with mandatory legal requirements.

27. The same principle also finds recognition in international human rights instruments. Article 25(2) of the Universal

⁶ (Constitution of the Islamic Republic of Pakistan, 1973, Articles 4, 23 and 25)

Declaration of Human Rights, 1948 recognizes that motherhood and childhood are entitled to special care and assistance, while Article 17 guarantees to every person the right to own property and prohibits arbitrary deprivation thereof.⁷ Read conjointly, these provisions affirm the international legal norm that the property rights of children merit enhanced protection, precisely because children, by reason of their legal incapacity, are unable to effectively safeguard or assert such rights on their own.

28. The protection afforded to the property rights of minors is not only a constitutional and statutory obligation but also a fundamental command of Islamic jurisprudence. The Constitution itself mandates that all laws shall be brought in conformity with the Injunctions of Islam, and the Courts, while interpreting laws relating to the rights of minors, ought to remain mindful of these foundational principles. The Holy Qur'an repeatedly enjoins the faithful to protect the property of minors, particularly orphans, and sternly condemns every form of misappropriation, exploitation or unlawful deprivation thereof. In this regard, Allah Almighty commands in Surah Al-Nisā':

“Give orphans their wealth ‘when they reach maturity’, and do not exchange your worthless possessions for their valuables, nor cheat them by mixing their wealth with your own. For this would indeed be a great sin.”⁸

29. Likewise, verse 4:6 directs guardians to preserve the property of orphans until they attain maturity and demonstrate sound judgment (*rushd*), whereupon their property is to be restored to them in full. The verse further requires transparency and accountability by directing that witnesses be present at the time of handing over the property and admonishes guardians not to derive any unjust benefit from the estate under their control. The gravity of violating these obligations is emphatically expressed in verse 4:10:

⁷ (Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, G.A. Res. 217 A (III), U.N. Doc. A/RES/217(III), Articles 17 and 25(2).)

⁸ (Al-Qur'an, 4:2)

“Indeed, those who unjustly consume orphans’ wealth ‘in fact’ consume nothing but fire into their bellies. And they will be burned in a blazing Hell!”⁹

30. These Qur'anic injunctions reinforce the legal principle that a guardian is merely a trustee of the minor's property and that any transaction affecting such property must demonstrably advance the welfare of the minor and conform strictly to the requirements of law. Viewed in the light of these constitutional, statutory and Islamic principles, the Courts are under a solemn obligation to ensure that the property rights of minors are not compromised through fraud, undue influence, procedural impropriety or unauthorized compromises. Any judicial process that permits the relinquishment or alienation of a minor's proprietary rights without scrupulous compliance with the safeguards prescribed by law would not only offend the statutory scheme but would also run contrary to the constitutional ethos and the clear Injunctions of Islam. Customs and social practices which have the effect of defeating these rights find no sanction either in Islam or in any civilized system of jurisprudence and are merely vestiges of the age of ignorance which the message of Islam came to eradicate.

31. The next and more fundamental question requiring determination is whether the circumstances of the present case attract the mischief contemplated by Section 12(2) of CPC, namely, that the impugned judgment and decree were procured by fraud, misrepresentation or in the absence of lawful jurisdiction. In answering this question, it must be borne in mind that fraud, by its very nature, is rarely susceptible of direct proof. More often than not, it is established through surrounding circumstances, the conduct of the parties and the cumulative effect of proved facts which, when viewed holistically, lead to an irresistible inference that the judicial process has been abused to secure an unjust advantage. The controversy before us squarely falls within the ambit of Section 12(2), CPC. A compromise decree passed under Order XXIII, Rule 3, CPC¹⁰ does not derive its validity merely from

⁹ (Al-Qur'an, 4:10)

¹⁰ (Section 12(2) of the Code of Civil Procedure, 1908 (providing for setting aside a judgment, decree or order obtained through fraud, misrepresentation or want of

its embodiment in a judicial order; rather, its legal efficacy is founded upon the existence of a lawful, voluntary and enforceable compromise between the parties. The jurisdiction conferred upon the Court under Order XXIII, Rule 3, CPC is conditioned upon its satisfaction that the compromise is lawful and free from every vitiating factor recognized by law. The Court does not act as a mere recording agency; it exercises judicial power which must be invoked and exercised in accordance with the statutory requirements.

32. It necessarily follows that where the compromise itself is tainted by fraud, misrepresentation, undue influence, uncertainty or any other circumstance rendering it unlawful or unenforceable, the decree founded thereon cannot acquire a higher or independent legal sanctity merely because it has been incorporated into a judgment of the Court. A judicial decree cannot breathe legal life into an agreement which the law itself regards as vitiated. The source of the decree's validity is the lawfulness of the underlying compromise; once that foundation collapses, the superstructure erected upon it cannot survive.

33. A harmonious construction of Section 12(2) and Order XXIII, Rule 3, CPC unmistakably demonstrates that the Court's jurisdiction to pass a compromise decree is predicated upon the existence of a lawful, certain and voluntary agreement. Conversely, where the compromise is procured through fraud or misrepresentation, or is otherwise contrary to the mandatory requirements of law, the jurisdictional foundation for passing such decree is itself undermined. The resulting decree is, therefore, not merely erroneous but suffers from an inherent legal infirmity rendering it amenable to challenge under Section 12(2), CPC. In the present case, the cumulative circumstances—namely, the failure to appoint a guardian *ad litem* for the minor defendants as per proper procedure; the absence of prior leave of the Court under Order XXXII, Rule 7, CPC; the want of permission from the

jurisdiction), read with Order XXIII, Rule 3 thereof (governing lawful compromises and compromise decrees)

competent Guardian Court in respect of a compromise affecting the property rights of minors; and the plea of fraud raised by an illiterate *parda nasheen* woman—are not isolated procedural lapses. Considered collectively, they constitute compelling circumstances giving rise to a strong inference that the compromise decree was not the product of a lawful, informed and voluntary settlement. The Revisional Court, therefore, rightly exercised its jurisdiction under Section 12(2), CPC in setting aside the compromise decree, whereas the High Court fell into patent error in interfering with that well-reasoned exercise of jurisdiction.

34. When a matter is brought before the High Court in the exercise of its constitutional jurisdiction under Article 199 of the Constitution, the primary question is whether the subordinate forum has acted without lawful jurisdiction, has failed to exercise jurisdiction vested in it by law, or has acted illegally or with material procedural irregularity in the exercise of such jurisdiction. The constitutional jurisdiction is not intended to substitute the High Court's opinion for that of the subordinate forum merely because another view of the matter is possible. Unless the findings impugned before it suffers from a jurisdictional defect, patent illegality, perversity or material irregularity, interference in the exercise of constitutional jurisdiction is not warranted.

35. In the present case, the learned High Court, without first examining whether the Revisional Court had exceeded its jurisdiction or committed any jurisdictional error in allowing the application under Section 12(2) of CPC, proceeded to substitute its own assessment of the facts and law. Such an approach is inconsistent with the well-settled parameters governing the exercise of jurisdiction under Article 199 of the Constitution. The High Court appears to have proceeded on the premise that the compromise was an admitted fact and that, since the petitioner's mother had made a statement before the learned Trial Court in her capacity as guardian, the compromise was beyond reproach. Such an approach overlooks the core issue raised in the proceedings, namely, that the petitioner, an illiterate *parda nasheen* woman,

had specifically alleged that her consent had been procured through misrepresentation and without a proper understanding of the nature and legal consequences of the compromise. More importantly, the compromise directly affected the property rights of minor children, whose interests enjoy special protection under the Constitution as well as the statutory framework governing civil proceedings.

36. In these circumstances, the petitioner's allegations were required to be subjected to careful judicial scrutiny instead of being rejected merely because a statement had been recorded before the Court. A statement recorded in judicial proceedings does not, by itself, foreclose an inquiry where fraud, misrepresentation or non-compliance with mandatory statutory safeguards is specifically pleaded and prima facie supported by the record. This is particularly so where the rights of minors are involved, for in such cases the Court acts as *parens patriae* and bears a continuing obligation to ensure that no compromise prejudicial to their interests is accepted except in strict conformity with law. The Courts must, therefore, exercise the utmost caution before accepting any compromise or relinquishment affecting the property rights of minors or vulnerable women. Expedition in disposal can never be achieved at the cost of sacrificing mandatory statutory safeguards or constitutional guarantees. The approach adopted by the learned High Court failed to appreciate the settled jurisprudential framework governing the protection of the inheritance and property rights of women and minors, which obliges the Courts to apply a heightened standard of judicial scrutiny whenever such rights are sought to be compromised or relinquished. Consequently, the interference made by the High Court with the well-reasoned judgment of the Revisional Court cannot be sustained.

37. For the foregoing reasons, leave is granted. Consequently, this petition is converted into an appeal and is allowed. The judgment dated 11.12.2024 passed by the learned Single Judge of the Lahore High Court is set aside, and the judgment of the

learned Revisional Court is restored. As a necessary consequence, the compromise judgment and decree passed by the learned Trial Court shall remain set aside, and the original suit shall stand restored to its file. The learned Trial Court shall proceed with the matter strictly in accordance with law and decide the suit afresh on its own merits after affording all concerned an adequate opportunity to adduce their respective evidence. While doing so, the learned Trial Court shall ensure scrupulous compliance with the mandatory provisions of Order XXXII of CPC, the Guardians and Wards Act, 1890, and the other applicable provisions of law governing the protection of the rights and interests of minors. Nothing observed in this judgment shall be construed as an expression on the merits of the rival claims of the parties, which shall be determined independently on the basis of the evidence produced before the learned Trial Court.

38. Before parting with this judgment, we consider it appropriate to lay down the following guidelines for observance by all Civil and Revenue Courts while dealing with proceedings affecting the person, property or inheritance rights of minors. These guidelines are intended to reinforce the statutory safeguards contained in the CPC, the Guardians and Wards Act, 1890, and the constitutional duty of the Courts, acting as *parens patriae*, to protect the rights and interests of minors:

- (i) The Court shall, at the earliest stage of the proceedings, ascertain whether any party is a minor and ensure strict compliance with the mandatory provisions of Order XXXII, CPC before taking any substantive step.
- (ii) A guardian *ad litem* shall be appointed strictly in accordance with Order XXXII, Rule 3, CPC, after satisfying the Court that the proposed guardian has no interest adverse to that of the minor.
- (iii) No compromise, admission, concession, relinquishment or consent affecting the rights or property of a minor shall be accepted unless the Court is satisfied, for reasons to be recorded, that it is lawful and demonstrably in the best interests of the minor, and the requirements of Order XXXII, Rule 7, CPC have been fully complied with.
- (iv) Where the compromise involves the transfer, relinquishment or alienation of a minor's property or inheritance rights, the Court shall also ensure compliance

with the Guardians and Wards Act, 1890, and obtain prior permission from the competent Guardian Court wherever required by law.

(v) Where a compromise is entered into by or on behalf of an illiterate, *parda nasheen* or otherwise vulnerable person representing a minor, the Court shall subject the transaction to heightened judicial scrutiny before according its approval.

(vi) The Court shall remain vigilant to ensure that no conflict of interest exists between the guardian and the minor and, if necessary, appoint another suitable guardian in accordance with law.

(vii) Proceedings affecting the proprietary or inheritance rights of minors shall not be disposed of in undue haste, and every order affecting such rights shall reflect the Court's independent application of mind to the welfare and best interests of the minor.

(viii) These safeguards are substantive in nature and shall be strictly observed, keeping in view the constitutional guarantees contained in Articles 4, 9, 23, 24, 25(3) and 35 of the Constitution, the doctrine of *parens patriae*, and the Injunctions of Islam relating to the protection of the property of minors and orphans.

These guidelines are intended to serve as guiding principles for all Civil and Revenue Courts while dealing with proceedings affecting the rights and property of minors. Their faithful observance would not only advance the constitutional mandate of protecting minors but would also strengthen public confidence in the administration of justice by ensuring that the rights of those under legal disability receive the highest degree of judicial protection.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad,
09.07.2026
APPROVED FOR REPORTING
RajaAhsan/-