

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

**Present:**

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE  
JUSTICE ALI BAQAR NAJAFI

**C.P.L.A.143-Q/2025**

*[against the judgment dated 25.06.2025  
passed by the High Court of Balochistan,  
Quetta in C.P. No.1263/2024]*

*Mst. Bibi Amina and others*

***...Petitioner(s)***

***Versus***

*Shamsullah and others*

***...Respondent(s)***

For the Petitioner(s) : Mr. Naimatullah, ASC

For Respondent Nos1-9 : Mr. Muhammad Jameel, ASC

For Respondent No.10 : Nemo.

Respondent No.11 : Proforma Respondent

Research Assistance by : Dr. Muhammad Mumtaz  
*Research Officer*

Date of Hearing : 04.06.2026

**JUDGMENT**

**AMIN-UD-DIN KHAN, CJ.-** The case in hand emanates from a petition originally instituted before the Supreme Court of Pakistan under Article 183 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”), prior to the advent of the Constitution (Twenty-seventh Amendment) Act, 2025 (“the 27<sup>th</sup> Amendment”), seeking leave to appeal against the judgment dated 25.06.2025 rendered by a learned Division Bench of the High Court of Balochistan, Quetta, in Constitutional Petition No.1263 of 2024. Through the impugned judgment, the learned High Court, while exercising its constitutional jurisdiction, accepted the constitutional petition preferred by the respondents and consequently annulled the concurrent determinations of the fora below, namely, the order passed by the learned Revisional Court dismissing the revision petition as well as the order of the learned Trial Court whereby an application instituted under Section 12(2) of the Code of Civil Procedure, 1908 (“CPC”), had been declined.

Subsequent to the constitutional reconfiguration brought about through the promulgation of the 27<sup>th</sup> Amendment, and in view of the transitional framework envisaged therein, the instant matter, notice whereof had already been issued to the contesting respondents by the Supreme Court, stood transmitted to this Court and now falls for consideration and adjudication in accordance with law.

2. The suit out of which the present proceedings arise was instituted by the petitioners, being the daughters and legal heirs of late Abdul Rehman and Mst. Bibi Sabza, against their brothers and/or the legal representatives of the deceased defendants, primarily seeking declaration and separate possession of their respective Shari shares in the estate left behind by their deceased parents. During the pendency of the suit, a written compromise was purportedly arrived at between the parties and, on the basis thereof, the learned Trial Court proceeded to pass a judgment and decree dated 15.06.2021 in terms of Order XXIII Rule 3, CPC. Subsequently, the petitioners, alleging that the said compromise had been procured by practicing fraud, misrepresentation and concealment of material facts, and that their consent thereto was neither free nor informed, besides asserting that the learned Trial Court lacked the jurisdiction to pass a decree founded upon an unlawful and uncertain compromise, invoked the curative jurisdiction vested under Section 12(2), CPC by filing an application on 12.08.2022 for setting aside the aforesaid judgment and decree. The said application was vigorously contested by the respondents through the filing of detailed objections, wherein the allegations levelled by the petitioners were emphatically denied. Upon affording the parties an adequate opportunity of hearing and after undertaking a comprehensive examination of the pleadings and material available on record in the light of the governing legal principles, the learned Trial Court, vide a detailed and well-reasoned order dated 08.11.2022, came to the conclusion that the compromise decree was vitiated by circumstances warranting the exercise of jurisdiction under Section 12(2), CPC. Consequently, the application was allowed, the judgment and decree dated 15.06.2021 were set aside, and the suit was restored to its original

position, namely, the stage immediately preceding the passing of the compromise decree, to be decided afresh strictly in accordance with law and after affording the parties full opportunity to substantiate their respective claims.

3. Feeling aggrieved by and dissatisfied with the order dated 08.11.2022, whereby the learned Trial Court had exercised its jurisdiction under Section 12(2), CPC and annulled the compromise decree dated 15.06.2021, the defendants/respondents preferred a revision petition before the learned District Judge by invoking the revisional jurisdiction vested therein. Upon hearing the parties and examining the controversy in its proper legal perspective, the learned Revisional Court, vide order dated 17.04.2023, partly accepted the revision petition. While refraining from finally adjudicating upon the merits of the allegations levelled by the parties, the learned Revisional Court was of the view that the controversy involved disputed questions of fact requiring evidentiary determination and, therefore, could not be conclusively resolved merely on the basis of the material then available on record. Consequently, the order passed by the learned Trial Court was set aside and the matter was remanded to the Court of first instance with a direction to frame the requisite issues and afford the parties an adequate opportunity to adduce evidence in support of and in rebuttal to their respective pleas, so that the application under Section 12(2), CPC could be adjudicated afresh upon a proper appreciation of the entire evidentiary matrix and in accordance with law.

4. The aforesaid remand order gave rise to a further round of litigation, whereupon both the petitioners and the respondents approached the learned High Court through independent constitutional petitions. Upon an exhaustive consideration of the controversy and the jurisdictional propriety of the impugned remand order, the learned High Court, vide judgment dated 29.05.2024, partly allowed the petitions, set aside the order dated 17.04.2023 passed by the Revisional Court, and remitted the matter to the said Court for reconsideration and adjudication afresh strictly in accordance with law and the observations contained in the judgment.

5. Consequent upon the remand by the learned High Court, the Revisional Court resumed seisin of the matter and, after reappraising the record and hearing the learned counsel for the parties at considerable length, proceeded to dismiss the revision petition vide order dated 20.08.2024. Resultantly, the order of the learned Trial Court allowing the application under Section 12(2), CPC and setting aside the compromise decree stood affirmed, thereby restoring the petitioners' challenge to the impugned decree and paving the way for the continuation of proceedings in accordance with law.

6. The respondents, remaining dissatisfied with the dismissal of their revision petition in post-remand proceedings, assailed the order dated 20.08.2024 before the learned High Court through a constitutional petition. The learned High Court, vide the impugned judgment dated 25.06.2025, was pleased to allow the petition, thereby reversing the concurrent findings recorded by the Courts below. Consequently, the order dated 08.11.2022 passed by the learned Civil Judge, whereby the application under Section 12(2), CPC had been allowed, as well as the order dated 20.08.2024 passed by the learned Additional District Judge-IX, Quetta, affirming the same, were set aside. As a necessary corollary thereof, the application under Section 12(2), CPC instituted by the present petitioners was dismissed, while the compromise order dated 15.06.2021 and the decree drawn pursuant thereto on 16.06.2021 were restored and revived with full legal effect.

07. Being aggrieved by, and dissatisfied with, the impugned judgment dated 25.06.2025, the petitioners—being the daughters and legal heirs of the deceased Abdul Rehman and Mst. Bibi Sabza—have invoked the jurisdiction of this Court through the instant Petition for Leave to Appeal.

8. We have heard the learned counsel for the parties at length and have carefully examined the record of the case.

9. The foundational compromise deed, upon which the judgment and decree dated 15.06.2021/16.06.2021 came to be founded and ultimately passed, forms part of the record at page 63 of the petition. A careful examination thereof reveals that the

alleged compromise instrument comprises three separate pages and is stated to have been executed on a stamp paper of Rs.100/- each page. The entire controversy in the present proceedings, and indeed the gist of the rival contentions advanced before this Court, centers around Clause No.2 of the said compromise deed at page 64 of the petition, the interpretation, scope and legal effect whereof lie at the heart of the dispute between the parties. The clause No.2 is hereby reproduced:

یہ کہ منکورہ بالا اراضی کے علاوہ فریقین کے پیش رو عبدالرحمن اور بی بی سبزہ کی جنتی بھی جائیداد متدعوہ و غیر متدعوہ فریق دونم، فریق سوئم اور فریق چہارم کی مشترکہ ملکیت ہوگی اور منکورہ بالا تینوں فریقین برابر کے شریک ہوں گے اور تمام جائیداد کو تینوں فریقین کے نام درج کروائینگے اور اس بابت جو کارروائی ضروری ہوئی کرینگے۔

10. According to the petitioners, the phraseology employed in the said clause, particularly the expression "غیر متدعوہ"<sup>1</sup>, is vague, uncertain and susceptible to divergent interpretations, and was deliberately incorporated to facilitate the subsequent exclusion and clandestine appropriation of certain inheritance properties which had not been specifically disclosed or brought within the contemplation of the compromise. The respondents, on the other hand, seek to ascribe a different connotation thereto and contend that the said stipulation constituted an integral part of the settlement consciously agreed upon by the parties. It is, therefore, the true import, ambit and legal consequences flowing from Clause No.2 of the compromise deed which constitute the epicenter of the present controversy and require careful judicial scrutiny in the light of the surrounding circumstances and the attendant facts appearing on the record.

11. A plain reading of Clause No.2 of the alleged compromise deed reveals that the same purports to embody a relinquishment by the petitioners, being the daughters and legal heirs of the deceased propositi, of their rights and interests in certain properties loosely described as "Ghair Mutadawia" properties. However, a careful examination of the language employed therein unmistakably demonstrates that the stipulation suffers from patent uncertainty and vagueness. The expression used is conspicuously devoid of any particulars capable of identifying, with

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<sup>1</sup> (Property not forming part of the suit or Property not in dispute)

any degree of precision or certainty, the subject matter of the alleged relinquishment. The clause neither furnishes a description of the properties purportedly excluded, nor specifies their location, boundaries, survey numbers, title documents, revenue particulars, or any other identifying features by reference to which the corpus of the alleged relinquishment could be ascertained with reasonable certainty. What renders the matter even more intriguing is the admitted position that the properties allegedly falling within the category of "Ghair Mutadawia" neither constituted part of the subject matter of the suit nor found mention in the plaint or any of the pleadings exchanged between the parties. In other words, the compromise purported to deal with rights and interests in properties which were never brought before the Court for adjudication and remained entirely outside the lis. Such an arrangement, couched in nebulous and indeterminate terminology, is ex facie susceptible to ambiguity and uncertainty and creates fertile ground for subsequent disputes and conflicting claims. Indeed, the absence of any specification regarding the identity, extent, nature or value of the properties allegedly relinquished renders the stipulation incapable of precise ascertainment and leaves its operation contingent upon conjecture and unilateral interpretation. A compromise intended to extinguish valuable proprietary rights, particularly inheritance rights accruing in favour of female heirs by operation of Islamic law, cannot be founded upon expressions so vague and elastic as to permit one party, at a later stage, to determine unilaterally the assets intended to fall within the ambit thereof. Such uncertainty strikes at the very root of consensus ad idem and substantially undermines the sanctity and enforceability of the purported arrangement. More importantly, it is a cardinal principle governing compromise decrees that a Court derives jurisdiction under Order XXIII Rule 3, CPC, only in relation to the subject matter of the suit and matters lawfully brought within the contemplation of the parties. It is difficult to comprehend how rights in unspecified and undisclosed properties, which neither formed part of the lis nor were ever described before the Court, could validly be extinguished through the employment of a generic and undefined expression. Such a stipulation, by reason of its inherent uncertainty and want of

specificity, prima facie appears incapable of conferring any legal sanctity upon the purported relinquishment and consequently invites strict judicial scrutiny.

12. The pivotal question which, therefore, falls for determination is whether a Court of law could validly exercise its jurisdiction to pass a decree on the basis of a compromise purporting to deal with unidentified, unspecified and indeterminate properties which neither formed part of the lis nor were capable of ascertainment from the terms of the compromise itself. Stated differently, the issue that squarely arises for consideration is whether the judicial imprimatur of the Court could be extended to a stipulation the subject matter whereof remained shrouded in uncertainty and was not amenable to identification by reference either to the pleadings or to the compromise document itself. Closely allied to the aforesaid question is the issue pertaining to the jurisdictional competence of the learned Trial Court. It is trite that a civil court derives its authority to adjudicate from the pleadings of the parties and the controversy brought before it for determination. Such jurisdiction is neither unbridled nor capable of being exercised beyond the confines of the lis. The learned Trial Court, while acting under Order XXIII Rule 3, CPC, was under a corresponding obligation to satisfy itself that the compromise sought to be recorded was lawful, certain and relatable to the subject matter of the suit. The question, therefore, assumes considerable significance as to whether the learned Trial Court could legitimately travel beyond the pleadings and confer legal sanctity upon rights and interests pertaining to properties which were never disclosed in the plaint, never brought within the ambit of the controversy, and consequently never subjected to judicial scrutiny or adjudication.

13. The matter assumes even greater significance when viewed in the context of the patent infirmities discernible on the face of the compromise deed itself. Admittedly, page Nos.1 and 2 of the alleged compromise do not bear the signatures or thumb impressions of any of the parties to the lis, nor are the same subscribed by any witness, identifier or counsel. Such omissions are not matters of mere formality or inconsequential irregularity. Rather, they go to

the very root of the integrity and continuity of the instrument and raise serious questions regarding the authenticity, completeness and enforceability of the stipulations purportedly contained therein. Indeed, if the unsigned pages are detached from the signed portion, the latter is rendered incapable of independent comprehension and deprived of any meaningful context.

14. Viewed cumulatively, these circumstances give rise to substantial questions touching not merely upon the interpretation of the compromise but upon the very jurisdiction of the Court to act upon such an instrument. Whether a decree could lawfully be founded upon a compromise relating to undisclosed and unascertained properties, and whether the terms contained in unsigned pages could be accorded judicial recognition without first establishing their due execution and authenticity, are questions which strike at the very foundation of the decree itself and, therefore, warrant the most anxious and rigorous judicial scrutiny.

15. It is a cardinal principle of the law of contracts and conveyancing that, in matters relating to immovable property, certainty of subject matter constitutes an indispensable precondition for the creation, recognition and enforcement of rights. An agreement purporting to create, extinguish, relinquish or otherwise regulate proprietary interests in immovable property must describe the subject matter with such reasonable certainty as would render the property capable of objective identification. The identity of the property sought to be dealt with cannot be left to conjecture, subsequent unilateral determination or speculative inference. Certainty in the corpus of the transaction is, therefore, not a matter of mere form but goes to the very essence and validity of the agreement itself. Thus, where a compromise purports to encompass immovable properties without identifying the same by reference to their location, boundaries, survey numbers, title documents, revenue particulars or other objective indicia of identification, such compromise remains inherently incapable of implementation and judicial enforcement. The uncertainty attending the subject matter is not curable by subsequent explanations or unilateral assertions of the parties, for the law does not countenance agreements whose operation is dependent

upon ambiguity or future speculation. Such indeterminacy strikes at the very root of consensus ad idem and deprives the arrangement of the certainty which the law insists upon in transactions affecting valuable proprietary rights.

16. By virtue of Section 29 of the Contract Act, 1872<sup>2</sup> agreements the meaning of which is uncertain or incapable of being made certain are void ab initio. The requirement of certainty assumes even greater significance where the transaction concerns immovable property and purports to extinguish vested inheritance rights, particularly those accruing by operation of law. A compromise couched in nebulous phraseology and relating to unidentified or indeterminate properties cannot, therefore, acquire legal efficacy merely because it has been incorporated into a judicial order. Indeed, the jurisdiction conferred upon a Court under Order XXIII Rule 3, CPC. is circumscribed by the existence of a lawful and enforceable compromise. A Court cannot, under the guise of recording a settlement, assume unto itself the authority to determine, transfer or extinguish proprietary rights in respect of properties whose identity remains unknown or incapable of ascertainment. Judicial imprimatur cannot be employed to breathe life into an agreement which the law itself regards as void. Consequently, a decree founded upon such an uncertain and indeterminate compromise is itself vitiated and cannot be sustained in the eye of law, for a Court lacks the jurisdiction to adjudicate upon, much less confer legal sanctity upon, rights pertaining to unidentified or unascertained immovable properties.

17. In the case at hand, the expression “Ghair Mutadawia” employed in Clause No.2 of the alleged compromise deed suffers from a patent and incurable uncertainty. The purported relinquishment embodied therein relates to properties which remain wholly unidentified and incapable of ascertainment from the terms of the compromise itself. The alleged relinquishment, therefore, rests upon a hazy and indeterminate foundation, leaving the identity of the property to conjecture and subsequent unilateral interpretation. Consequently, the agreement, to the extent that it purports to deal with such unspecified and

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<sup>2</sup> (Contract Act 1872 (Act IX of 1872), s 29 ('Agreements void for uncertainty')).

undisclosed properties, is rendered void for uncertainty and incapable of legal enforcement. In the absence of a clearly ascertainable subject matter, it is difficult to hold that the parties had attained consensus ad idem, which constitutes the very essence of a valid and enforceable agreement.

18. The law has consistently insisted that certainty of terms constitutes the cornerstone of contractual enforceability. Reference, in this regard, may usefully be made to G.H. Treitel, *The Law of Contract*<sup>3</sup>, wherein the learned author expounds the principle that an agreement lacking certainty by reason of vagueness or inability to ascertain its essential terms is devoid of enforceability. Similar principles have received judicial recognition in *Barkat Ram Case*<sup>4</sup>, wherein it was held that uncertainty relating to the essential subject matter renders an agreement incapable of enforcement.

19. Adverting to the facts of the present case, it is an admitted position that the suit instituted by the petitioners pertained exclusively to those properties specifically delineated in the plaint as constituting the estate left behind by the deceased propositi. Through the impugned compromise, however, an attempt appears to have been made to enlarge the scope of the decree beyond the confines of the lis by introducing the vague expression “Ghair Mutadawia”, ostensibly to encompass residual, undisclosed or subsequently discoverable properties without furnishing any particulars whatsoever. Such a stipulation, apart from being uncertain, was manifestly extraneous to the subject matter of the suit and incapable of lawful enforcement. The Court could either pass a decree in respect of the properties specifically brought before it for adjudication or decline the relief sought; however, it could not, under the guise of recording a compromise, confer legal sanctity upon rights pertaining to unidentified properties yet to be discovered or ascertained at some future point in time.

20. A compromise decree, notwithstanding its consensual character, cannot derive a higher sanctity than the agreement

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<sup>3</sup> (International Student Edition, 1995, Sweet & Maxwell)

<sup>4</sup> *Barkat Ram v. Anant Ram* (AIR 1915 Lahore 328),

upon which it rests. Where the compromise itself is infected with uncertainty and seeks to regulate rights in unidentified properties, the Court is devoid of jurisdiction to lend its imprimatur thereto. Regrettably, the learned Trial Court, while passing the compromise decree dated 15.06.2021/16.06.2021, failed to advert to the fact that Clause No.2 of the compromise lacked the certainty, precision and definiteness which the law inexorably demands in transactions affecting inherited rights. It overlooked the legal consequence flowing from Section 29 of the Contract Act, 1872, namely, that an agreement the meaning of which is uncertain or incapable of being made certain is void ab initio. Consequently, the decree founded upon such an uncertain and legally unenforceable stipulation was itself vitiated and could not be sustained in the eye of law, being predicated upon a compromise which, to the extent it purported to affect rights in unspecified and indeterminate properties, lacked legal efficacy from its very inception.

21. Another significant and highly relevant aspect of the present case is that, through the alleged compromise deed, the petitioners were purportedly divested not merely of a specified property but of their inheritance rights in respect of undisclosed, unspecified, and unascertained properties forming part of the estate left by their deceased predecessor. Such a course is, by its very nature, fraught with serious legal implications and warrants the closest judicial scrutiny, particularly where the consequence thereof is the permanent extinguishment of valuable inheritance rights of female legal heirs. Moreover, even if, for the sake of argument, the petitioners are females and are assumed to be *parda nasheen*<sup>5</sup> ladies, the record is conspicuously devoid of any evidence demonstrating that any close relative, independent adviser, or person enjoying their confidence was associated with the alleged compromise proceedings for the purpose of identifying them or explaining to them the true nature, scope, extent, and legal consequences of the compromise deed. Equally absent is any material suggesting that they were afforded independent advice or assistance from a disinterested and trustworthy source capable of safeguarding their interests and enabling them to make an

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<sup>5</sup> (Mulla, *Principles of Mohammedan Law*, 22nd edn (LexisNexis 2017) 635–636.)

informed and voluntary decision. In particular, there is nothing on record to indicate that they were made aware that, by virtue of the alleged compromise, they were surrendering their inheritance rights not only in known properties but also in properties which were neither specifically identified nor disclosed before them. Such omission assumes greater significance when viewed in the context of the settled principles governing transactions involving female heirs and *parda nasheen* women, where the beneficiary of the transaction bears a heavy burden to establish that the executants were fully apprised of the nature, extent, and consequences of the rights sought to be relinquished.

22. The record is also silent as to whether the attorney, through whom the purported compromise agreement was executed, faithfully disclosed and explained to them the contents, implications, and irreversible consequences of the alleged settlement, particularly when such compromise purportedly operated to permanently divest them of substantial inheritance rights in the estate left by their deceased mother.

23. It is by now a firmly entrenched principle of jurisprudence that where a transaction concerns a *parda nasheen*, illiterate, rustic, or otherwise vulnerable woman, the burden lies heavily upon the beneficiary thereof to establish, through cogent, convincing, and unimpeachable evidence, that the transaction was the product of her free, conscious, and informed consent. It must be affirmatively proved that she fully understood the nature of the document, its legal effect, the rights being relinquished thereunder, and the consequences likely to flow therefrom. Furthermore, it must be shown that she had the benefit of independent and disinterested advice, whether from a legal practitioner, a trusted male member of her immediate family, or another person capable of protecting her interests. See, *Ghulam Muhammad* case<sup>6</sup> wherein these principles were reiterated and applied with considerable emphasis.

24. In a society where, regrettably, female legal heirs are frequently deprived of their divinely ordained and legally protected

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<sup>6</sup> *Ghulam Muhammad v. Zohran Bibi and others* (2021 SCMR 19)

inheritance rights through subtle coercion, social pressure, manipulation, and fraudulent devices, the courts are under a heightened obligation to scrutinize transactions affecting such rights with utmost vigilance. The doctrine evolved for the protection of *parda nasheen* women is not a mere technical rule of evidence but a substantive safeguard designed to shield vulnerable females from exploitation and deprivation. See, *Phul Peer Shah* case<sup>7</sup>. Indeed, where a transaction involves an aged, illiterate, rural village woman observing *parda*, the burden resting upon the beneficiary becomes exceptionally onerous. Every suspicious circumstance surrounding such transaction must be satisfactorily dispelled through evidence of the highest degree, leaving no room for doubt, conjecture, or uncertainty.

25. It scarcely requires reiteration that the shares of inheritance in the estate of a deceased Muslim are neither uncertain nor dependent upon the whims of individuals. They are specifically prescribed by the Holy Qur'an and, upon the demise of a Muslim, his or her legal heirs acquire vested proprietary rights by operation of law. The Holy Quran is the supreme source of law in Pakistan under Article 227<sup>8</sup> of the Constitution. It would be advantageous to remind ourselves that the right of women to inherit is not a creation of domestic law, nor a concession flowing from social benevolence, but a divinely ordained and constitutionally guaranteed right. The Holy Qur'an unequivocally recognizes and protects the inherited rights of women and leaves no room for customs, traditions or familial arrangements to derogate therefrom. The following injunctions of the Holy Qur'an embody the immutable command of Almighty Allah in this regard:

*Surah An-Nisa (4:7):<sup>9</sup>*

*"For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, whether it be little or much—an obligatory share."*

*Surah An-Nisa (4:11):<sup>10</sup>*

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<sup>7</sup> *Phul Peer Shah v. Hafeez Fatima* (2016 SCMR 1225)

<sup>8</sup> ('Provisions relating to the Holy Quran and Sunnah')

<sup>9</sup> (*Holy Quran, Surah al-Nisa 4:7.*)

<sup>10</sup> (*Holy Quran, Surah al-Nisa 4:11.*)

*"Allah commands you concerning your children: for the male is a portion equal to that of two females. But if there are only daughters, two or more, for them is two-thirds of what he leaves; and if there is only one, for her is one-half."*

These divine injunctions leave no manner of doubt that the entitlement of female heirs to succeed to the estate of a deceased Muslim is neither discretionary nor dependent upon the will of other heirs. It is an obligatory right vested by Divine command, and any attempt to deprive women of such entitlement through coercion, fraud, concealment, or manipulative devices constitutes not only a violation of law but also a transgression against the express commands of Almighty Allah. 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.

26. The constitutional architecture of the Islamic Republic of Pakistan equally manifests an unwavering commitment towards the protection of property rights in general and the rights of women in particular. The Constitution of 1973, being the supreme law of the land, furnishes a comprehensive domestic legal framework for the protection and enforcement of women's property and inheritance rights;

*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 24: No person shall be compulsorily deprived of his property save in accordance with law, and no property save in accordance with law shall be compulsorily acquired or taken possession of save for*

*a public purpose, and save by the authority of law which provides for compensation therefor.*

*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.*

27. The protection of women's property rights is firmly embedded in a range of international human rights instruments, which, though differing in their legal character, collectively establish binding obligations and authoritative interpretative standards relevant to the present controversy. The Universal Declaration of Human Rights, 1948 (UDHR), though not a treaty, is widely regarded as reflecting customary international law and constitutes an authoritative exposition of fundamental rights. Article 17 guarantees the right to property and protection against arbitrary deprivation, Article 2 prohibits discrimination on the basis of sex, and Article 16 affirms equality of rights between men and women during marriage and upon its dissolution, encompassing proprietary entitlements. Pakistan, having participated in its adoption, recognizes its normative value as an interpretative aid to constitutional rights.<sup>11</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)<sup>12</sup>, ratified by Pakistan in 1996, is the principal international instrument on women's rights. It obliges State Parties to eliminate discrimination in all forms (Article 2), ensure equality before the law (Article 15), and secure women's equal rights in respect of ownership, administration, and disposal of property (Article 16(1)(h)).

The International Covenant on Civil and Political Rights, 1966 (ICCPR)<sup>13</sup>, acceded to by Pakistan in 2010, guarantees equality

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<sup>11</sup> (Universal Declaration of Human Rights, adopted 10 December 1948, UNGA Res 217 A(III), arts 2, 16 and 17.)

<sup>12</sup> (CEDAW — Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18 December 1979 (UN Doc. A/RES/34/180). It is often described as the international bill of rights for women. Pakistan ratified CEDAW on 12 March 1996. CEDAW obligates State Parties to eliminate discrimination against women in all areas, including property ownership, inheritance, and access to financial credit.)

<sup>13</sup> (ICCPR — International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966 (UN Doc. A/RES/2200A(XXI)), entered

before the law and equal protection without discrimination (Articles 3 and 26), as further clarified by the Human Rights Committee, which emphasizes effective protection of women's property rights in law and practice. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)<sup>14</sup>, ratified by Pakistan in 2008, similarly ensures equal enjoyment of economic and social rights, reinforcing women's access to economic resources and property as part of an adequate standard of living and economic empowerment. Soft law instruments, including the Beijing Platform for Action, 1995 and the Sustainable Development Goals, particularly SDG<sup>15</sup> 5(a), further articulate global consensus on securing women's equal access to ownership, inheritance, and control over property and economic resources. Regionally, the Cairo Declaration on Human Rights in Islam, 1990, and the SAARC<sup>16</sup> Social Charter, 2004, also recognize property rights and gender equality principles, reinforcing the broader international commitment to non-discrimination and equitable access to property rights. Collectively, these instruments constitute a coherent international framework affirming the equal proprietary rights of women and reinforcing the obligation of States, including Pakistan, to ensure their effective protection through domestic legal and judicial measures.

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into force 23 March 1976. Pakistan acceded to the ICCPR on 23 June 2010. Article 3 requires States to ensure equal rights of men and women. Article 26 provides for equality before the law and equal protection of the law without discrimination.)

<sup>14</sup> ICESCR — International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966 (UN Doc. A/RES/2200A(XXI)), entered into force 3 January 1976. Pakistan ratified the ICESCR on 17 April 2008. Article 3 requires States to ensure equal rights of men and women in the enjoyment of all economic, social and cultural rights set forth in the Covenant, including rights pertaining to property and housing.)

<sup>15</sup> (Beijing Platform for Action, 1995 — A comprehensive action agenda adopted at the Fourth World Conference on Women held in Beijing, China, 4–15 September 1995, under the auspices of the United Nations. Strategic Objective A.2 addresses women's equal access to land, natural resources, and economic assets. SDG — Sustainable Development Goals, adopted by the United Nations General Assembly on 25 September 2015 (UN Doc. A/RES/70/1). Goal 5 (Gender Equality), specifically Target 5.a, requires States to undertake reforms to give women equal rights to economic resources and access to ownership and control over land and other forms of property.)

<sup>16</sup> (Cairo Declaration on Human Rights in Islam, 1990 — Adopted by the Organization of the Islamic Conference (now Organization of Islamic Cooperation, OIC) on 5 August 1990. It affirms that all persons are equal in terms of basic human dignity and recognizes property rights within the framework of Islamic Sharia. SAARC — South Asian Association for Regional Cooperation, established by the SAARC Charter signed in Dhaka on 8 December 1985. The SAARC Social Charter, 2004 was adopted at the Twelfth SAARC Summit in Islamabad. It commits member States, including Pakistan, to promote gender equality and the empowerment of women, including in relation to property rights.)

28. Comparative constitutional jurisprudence further reinforces the protection of women's property rights through express constitutional guarantees and judicial enforcement mechanisms in several jurisdictions of persuasive relevance. The Constitution of India, 1950 provides a useful comparative framework. Article 14 guarantees equality before law and equal protection of law, while Article 15 prohibits discrimination on inter alia the ground of sex. Article 300A, introduced by the Forty-Fourth Amendment, protects the right to property against deprivation except by authority of law.<sup>17</sup> The Constitution of the Republic of South Africa, 1996 adopts an expressly transformative equality framework. Section 9 prohibits unfair discrimination on grounds including gender and sex, while Section 25 protects property rights.<sup>18</sup> The Constitution of Bangladesh, as amended in 2011, similarly guarantees equality before law (Article 27), prohibits discrimination on grounds including sex (Article 28), and recognizes the right to property (Article 42). Bangladesh's constitutional framework, sharing a common subcontinental legal heritage, reflects an evolving commitment to gender equality in property relations through both constitutional and legislative reforms.<sup>19</sup> The Constitution of Turkey, 1982 (as amended), provides another instructive model. Article 10 mandates equality before law and imposes a positive obligation on the State to eliminate discrimination. Legislative reforms, particularly the Turkish Civil Code, 2001, introduced a regime of equal marital property rights through the "participation

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<sup>17</sup> (Article 14 of the Constitution of India, 1950 — Provides that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15(3) permits the State to make special provisions for women and children. Article 300-A provides that no person shall be deprived of property save by authority of law. The Hindu Succession (Amendment) Act 2005 amended the Hindu Succession Act 1956 to grant daughters equal coparcenary rights in ancestral property.)

<sup>18</sup> (Section 9 of the Constitution of the Republic of South Africa, 1996 — The Equality Clause. Section 9(1) provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9(3) prohibits unfair discrimination on grounds including gender, sex, and marital status. Section 25 (the Property Clause) provides that no one may be deprived of property except in terms of law of general application. Section 9(2) permits measures designed to promote the achievement of equality, including measures in favour of women.)

<sup>19</sup> (Article 27 of the Constitution of Bangladesh (as amended in 2011) — Provides that all citizens are equal before law and entitled to equal protection of law. Article 28 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 28(2) provides that women shall have equal rights with men in all spheres of the State and of public life. Article 28(4) permits the State to make special provisions in favour of women. The Muslim Family Laws Ordinance 1961 applies in Bangladesh as well as Pakistan, as both countries were part of unified Pakistan at the time of its enactment.)

in acquired property” system, ensuring equal entitlement of spouses to property accumulated during marriage.<sup>20</sup> Collectively, these comparative constitutional developments demonstrate a clear international and regional trend towards recognition and enforcement of substantive equality in property and inheritance rights, particularly in favour of women, and provide persuasive interpretative guidance in the adjudication of similar constitutional questions.

29. The statutory framework in Pakistan, read harmoniously with Islamic jurisprudence, constitutional guarantees, and international obligations, provides comprehensive protection of women’s property and inheritance rights. The Muslim Personal Law (Shariat) Application Act, 1937<sup>21</sup> gives statutory recognition to Muslim personal law in matters of inheritance and succession, thereby ensuring enforcement of the Quranic principles of *faraid*, which mandate fixed and defined shares for women. The Act expressly displaces contrary customary practices, and ensures that no Muslim woman may be deprived of her rightful inheritance on the basis of local or customary norms. The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 extended the application of Muslim personal law to agricultural land, thereby abolishing the historical exclusion of women from inheriting such property in several regions. Judicial pronouncements of the superior courts have consistently affirmed that exclusion of women from inheritance of agricultural land is repugnant to Islamic injunctions and constitutionally impermissible.<sup>22</sup> The Muslim

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<sup>20</sup> (Article 10 of the Constitution of Turkey, 1982 (as amended) — Provides that all individuals are equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Following constitutional amendments in 2001 and 2004, the provision was strengthened to add that men and women have equal rights, and that the State is obliged to ensure that this equality exists in practice. Article 35 guarantees the right to own and inherit property.)

<sup>21</sup> (Muslim Personal Law (Shariat) Application Act, 1937 — Enacted by the British Indian Legislature on 7 October 1937 (Act No. XXVI of 1937). Section 2 provides that notwithstanding any custom or usage to the contrary, in all questions relating to intestate succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy, bastardy, family relations, wills, legacies, gifts, religious and charitable endowments (waqf), the rule of decision shall be Muslim Personal Law (Shariat) where the parties are Muslims.)

<sup>22</sup> (West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 — Enacted as Act V of 1962 to extend the operation of Muslim Personal Law to agricultural land in West Pakistan. Prior to this Act, custom and usage (rather than Muslim Personal Law) governed succession to agricultural land, which frequently excluded women from inheriting land. The 1962 Act was a significant reform, bringing agricultural land within

Family Laws Ordinance, 1961 introduced significant procedural and substantive reforms, including the principle of representation in inheritance under Section 4, ensuring that descendants of a predeceased son, including female heirs, are entitled to inherit his share. This reflects a progressive reinforcement of women's succession rights within the statutory framework.<sup>23</sup> The Transfer of Property Act, 1882<sup>24</sup> ensures formal equality in property transactions by recognizing the legal capacity of women to acquire, hold, and transfer immovable property. Although procedural and socio-cultural barriers may persist in practice, the statutory framework itself does not discriminate on the basis of sex. The Succession Act, 1925<sup>25</sup> governs intestate succession for non-Muslims in Pakistan. While it provides a general framework for distribution of estates, it has been subject to judicial and academic scrutiny regarding disparities affecting widows and female heirs, prompting constitutional interpretation to ensure conformity with equality guarantees. The Protection Against Harassment of Women at the Workplace Act, 2010<sup>26</sup>, though not directly concerned with property rights, plays an important enabling role by safeguarding women's participation in the economic sphere, thereby facilitating their ability to acquire and retain property through lawful means.

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the scope of Islamic inheritance law and thereby recognising daughters' and widows' rights to inherit land.)

<sup>23</sup> (Muslim Family Laws Ordinance, 1961 — Promulgated as Ordinance VIII of 1961 on 15 July 1961. Section 4 introduced the principle of representational succession, providing that where a son predeceases his father, the share that would have gone to the son passes to his children (including daughters). Section 5 regulates polygamous marriages through a registration requirement. Section 7 requires registration of talaq (divorce). These provisions were designed to protect women's rights within the family and have been interpreted by the courts as mandatory and non-derogable.)

<sup>24</sup> (Transfer of Property Act, 1882 — Originally enacted by the British Indian Legislature as Act IV of 1882, it remains in force in Pakistan. Section 5 defines 'transfer of property' as an act by which a living person conveys property to one or more other living persons. Section 6 provides that property of any kind may be transferred, subject to specified exceptions. The Act recognises the legal capacity of women (whether married or unmarried) to transfer and receive property, consistent with the principle of formal equality in property transactions.)

<sup>25</sup> (Succession Act, 1925 — Enacted as Act XXXIX of 1925. It governs intestate and testamentary succession for non-Muslims in Pakistan, including Christians, Hindus (in some matters), Parsis, and persons married under the Special Marriage Act. Part V (Intestate Succession) establishes detailed rules for distribution of property among heirs. Section 33 governs distribution where the intestate leaves a widow and lineal descendants. The Act does not apply to Muslims (who are governed by Muslim Personal Law), Hindus (largely governed by the Hindu Succession Act before partition), or Buddhists in respect of intestate succession.)

<sup>26</sup> (Protection Against Harassment of Women at the Workplace Act, 2010 — Enacted as Act IV of 2010. It establishes a legal framework for protecting women from harassment in the workplace. While primarily concerned with dignity and employment rights, the Act contributes to women's economic security and thereby reinforces their capacity to acquire, hold, and manage property independently. It provides for inquiry committees at the workplace level and an Ombudsperson for Protection Against Harassment of Women at the Workplace.)

Finally, The Punjab Enforcement of Women’s Property Rights Act 2021 represents a targeted legislative intervention addressing the persistent gap between formal legal entitlement and actual enforcement. It establishes institutional mechanisms, including a dedicated commission and special courts, and introduces penal consequences for wrongful deprivation of women’s property rights, thereby operationalizing constitutional and Islamic mandates in practical terms. Communally, these enactments reflect a coherent legal regime aimed at securing substantive equality for women in matters of property, inheritance, and economic empowerment, while reinforcing both constitutional guarantees and Islamic principles of justice.

30. Comparative jurisprudence from England and other Commonwealth jurisdictions, as well as the European Court of Human Rights<sup>27</sup>, provides persuasive interpretative guidance on the evolving contours of property rights, particularly in the context of gender equality and family relations. In *Radmacher v. Granatino* [2010] UKSC 42, the UK Supreme Court<sup>28</sup> held that pre-nuptial agreements regulating property rights upon divorce are, in principle, enforceable where freely entered into and fair. The Court emphasized party autonomy in the regulation of financial arrangements within marriage, including the capacity of a wife to voluntarily determine proprietary consequences, subject to the overarching requirement of fairness. In *Stack v. Dowden* [2007]<sup>29</sup>

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<sup>27</sup> (ECHR — European Court of Human Rights, established under the European Convention on Human Rights, 1950 (ECHR), with its seat in Strasbourg, France. *Marckx v. Belgium* (1979) 2 EHRR 330 — Decided by the European Court of Human Rights on 13 June 1979. The Court held that Belgium's laws governing the legal status of children born outside marriage and their mothers' inheritance rights violated Article 8 (right to respect for family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights, read together with Article 1 of Protocol No. 1 (protection of property). The case established that discriminatory inheritance regimes based on birth status breach international human rights standards.)

<sup>28</sup> (*Radmacher v. Granatino* [2010] UKSC 42 — Decided by the UK Supreme Court on 20 October 2010. The Court held by a majority of eight to one that where a pre-nuptial agreement is freely entered into by both parties with a full appreciation of its implications, the agreement should be given decisive weight unless it would be unfair to hold the parties to it. The decision represented a significant development in English family property law and recognized party autonomy in regulating matrimonial property rights.)

<sup>29</sup> (*Stack v. Dowden* [2007] UKHL 17 — Decided by the House of Lords on 25 April 2007. Baroness Hale, delivering the leading judgment, held that where a family home is conveyed into the joint names of cohabitants without any declaration of their respective beneficial interests, the beneficial interests will follow the legal title and be held equally, unless the contrary intention is established. The decision established that the constructive trust doctrine can recognise unequal beneficial interests where the parties' conduct demonstrates a common intention inconsistent with equal sharing, thereby protecting women's property contributions in non-marital cohabitation.)

UKHL 17, the House of Lords developed the doctrine of constructive trust to recognize beneficial ownership of property in circumstances where legal title does not reflect actual contributions. The Court held that equity will not permit legal ownership to defeat a substantiated beneficial interest arising from direct or indirect contribution, a principle which has informed equitable relief in analogous disputes involving spousal property rights. Jointly, these authorities underscore a consistent comparative principle: property rights, particularly in familial and inheritance contexts, must be interpreted in a manner that ensures substantive fairness, protects legitimate expectations and contributions, and prohibits discriminatory or arbitrary deprivation. These principles provide persuasive guidance for the interpretation and enforcement of property rights within domestic constitutional frameworks. The rights of inheritance constitute a sacred trust under Islamic injunctions as well as a constitutionally protected inherited entitlement under the law. Unfortunately, experience demonstrates that female heirs are often deprived of their lawful inheritance through fabricated documents, fraudulent statements, engineered settlements, and other devices, occasionally facilitated by interested individuals and public functionaries. Such practices strike at the very foundations of justice and cannot be countenanced by a court of law.

31. The judicial conscience of the Court cannot remain indifferent to the recurring phenomenon whereby female heirs are deprived of their lawful shares under the guise of relinquishment deeds, family settlements, compromise agreements, gifts, maintenance arrangements, bridal considerations, monetary payments, or other ostensible transactions. Any arrangement which has the effect of depriving a female heir of her lawful inheritance, without strict proof of free, informed, and independent consent, is liable to be viewed with the gravest suspicion and subjected to the most exacting judicial scrutiny. It is well settled the principle that that no female legal heir can be deprived of her inheritance merely on the basis of a relinquishment deed, compromise, gift, maintenance allowance, payment of money,

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customary understanding, or any similar arrangement unless the transaction satisfies the strict legal requirements governing the relinquishment of inherited rights and is proved to have been executed voluntarily, consciously, and with full understanding of its implications. In the absence of such proof, the entire process becomes legally unsustainable and liable to be declared void and of no legal effect. Particularly where a purported relinquishment or compromise is executed by a female residing under the influence, authority, or dependence of her father, brother, husband, or other male relatives, the Court must exercise exceptional caution. Judicial experience reveals that documents ostensibly evidencing consent are often procured through social pressure, emotional coercion, undue influence, or exploitation of ignorance and dependency. Consequently, such instruments cannot be accorded unquestioning sanctity merely because they bear signatures or thumb impressions. Any failure to ensure complete transparency, independent advice, informed consent, and freedom from undue influence would render the transaction vulnerable to challenge and liable to be struck down.

32. This Court deems it imperative to reiterate that the protection and effective enforcement of the inheritance rights of women is not merely a matter of statutory concern but constitutes a solemn constitutional and religious obligation. Under the constitutional framework, read in conjunction with the unequivocal injunctions of Islam, it is incumbent upon the State to ensure the meaningful, effective and unhindered realization of inherited rights vested in women by operation of law. Such rights are not a matter of grace or concession flowing from human beneficence; rather, they are divinely ordained entitlements, expressly and categorically enshrined in the Holy Qur'an. Any attempt to deprive a woman of her lawful share in inheritance is, therefore, not only an affront to the rule of law but also a transgression against the explicit commands of Almighty Allah. The pernicious customs and entrenched societal practices which, under one pretext or another, deprive women of their legitimate shares in inheritance find no sanction either in the teachings of Islam or in the canons of justice and equity. It is, therefore, the

sacred constitutional obligation of the State and all its instrumentalities to dismantle and eradicate such practices by establishing effective, accessible and proactive mechanisms whereby women are informed of their inheritance rights and are enabled to secure the same without being compelled to traverse the labyrinth of protracted and expensive litigation. The State must ensure that female legal heirs are identified, approached and facilitated through institutional arrangements designed to secure to them the full and timely realization of their lawful entitlements.

33. Simple disputes concerning inheritance, which ought to be resolved with expedition and sensitivity, frequently remain embroiled in avoidable procedural complexities and are subjected to endless rounds of litigation. Such state of affairs serves only to embolden those who seek to capitalize upon delay and procedural technicalities to perpetuate illegality. Courts, being guardians of justice and protectors of the weak and vulnerable, must remain vigilant to ensure that substantive rights are not sacrificed at the altar of procedural formalism.

34. The true measure of a civilized society lies in the manner in which it safeguards the rights of those most susceptible to exploitation. Likewise, the strength and legitimacy of a constitutional order are reflected in its commitment to uphold the principles of equality, faith and social justice. A State which fails to protect the inheritance rights of women abdicates not only its constitutional responsibilities but also its moral and religious obligations. Conversely, a legal system which zealously safeguards such rights vindicates the commands of Almighty Allah, reinforces the rule of law, and affirms the constitutional promise that justice, equity and fair play shall govern all spheres of national life. The abhorrent practice of depriving women of their inheritance, by whatever means employed, must therefore be condemned in the strongest possible terms and eradicated with unwavering resolve.

35. Turning back to the facts of the instant case, another aspect of the matter, which has occasioned considerable judicial disquiet and merits anxious scrutiny, relates to the patent infirmities and suspicious features discernible *ex facie* from the compromise

document itself. These defects are neither trivial nor inconsequential; rather, they strike at the very integrity, continuity and authenticity of the instrument upon which the entire edifice of the petitioners' claim rests. Such intrinsic deficiencies, viewed in conjunction with the attendant circumstances and the conduct of the parties, are sufficient to arouse grave doubts regarding the genuineness of the document and, therefore, cannot be lightly brushed aside or relegated to the realm of mere technical irregularities. A meticulous examination of the instrument reveals that page Nos. 1 and 2 thereof are conspicuously devoid of the signatures or thumb impressions of any of the parties to the lis, their learned counsel, attesting witnesses, identifiers, or any endorsement indicative of due execution.

36. It is a settled principle of evidentiary jurisprudence that where a document consists of multiple pages, the absence of signatures or marks of identification upon some of its constituent parts creates a legitimate apprehension regarding interpolation, substitution or subsequent manipulation. In such circumstances, the burden lies heavily upon the propounder of the document to establish, through cogent and convincing evidence, that all its pages formed part of one indivisible transaction, were contemporaneously produced with a common object and purpose, and were duly executed or acknowledged by the executants with full knowledge of their contents.

37. The first page of the alleged compromise, being unsigned by any person whatsoever, is, by itself, devoid of evidentiary value, while the second page equally suffers from the absence of signatures of the alleged beneficiaries and contains no indicia of acceptance or authentication. More significantly, neither page bears the signatures of any attesting witness, identifier or marginal endorsement capable of connecting the same with the signed portion appearing on page No.3. Such glaring deficiencies strike at the very root of the integrity and authenticity of the instrument and substantially diminish its probative worth.

38. It is indeed a matter of common occurrence in this jurisdiction that parties executing unregistered documents fail to

observe the salutary practice of subscribing their signatures upon each page of the instrument. Such omissions are generally attributable to ignorance of the procedural safeguards governing execution, authentication and notarization.

39. Equally disturbing is the role performed by the Notary Public in the present case. Although the pages of the alleged compromise agreement bear the seal and signatures of the Notary Public, there is nothing on record to indicate that the latter discharged his professional obligations with the degree of care and circumspection expected of him. Before affixing his seal and authenticating any document, it was incumbent upon the Notary Public to satisfy himself that every page of the instrument had been duly subscribed by the executants and that no blank, unsigned or unauthenticated page formed part thereof. The act of mechanically stamping and attesting a document without ensuring that each constituent page bears the signatures or acknowledgment of the parties not only undermines the sanctity of the process of authentication but also defeats the very purpose for which the institution of notarial certification exists.

40. We have observed, with profound concern, that such laxity and mechanical discharge of notarial functions have become increasingly prevalent, thereby facilitating disputes relating to interpolation and fabrication of documents. A Notary Public is not expected to function as a mere rubber stamp; rather, being an officer entrusted with the solemn responsibility of authenticating instruments intended to be relied upon in legal proceedings, he is under a corresponding obligation to exercise reasonable diligence and to ensure strict compliance with the elementary safeguards of execution. Any casual or perfunctory approach in this regard has the potential of eroding public confidence in the process of notarization itself and warrants serious introspection by the concerned regulatory authorities.

41. The absence of signatures on page Nos.1 and 2, coupled with the absence of any identifier, attesting witness or connecting endorsement, and the mechanical authentication thereof by the Notary Public without ensuring due execution, collectively

constitute circumstances which render the genuineness and reliability of the alleged compromise document highly doubtful. In such circumstances, no prudent Court, exercising equitable and discretionary jurisdiction, would readily place implicit reliance upon a document suffering from such patent infirmities unless its authenticity is first established through clear, cogent and unimpeachable evidence.

42. A Notary Public is not an ordinary individual whose attestation may be viewed as a mere ministerial or mechanical act bereft of legal significance. Rather, a Notary is a statutory functionary appointed under the authority of law for the discharge of solemn and quasi-public duties entrusted to him by the legislature. In Pakistan, the appointment of a Notary is regulated by the Notaries Ordinance, 1961 (XIX of 1961) (hereinafter referred to as "the Ordinance, 1961"), and the power to appoint a Notary is vested in the Provincial Government. The office of a Notary thus carries with it not only the imprimatur of the State but also a corresponding obligation to discharge the functions attached thereto with utmost care, circumspection and fidelity.

43. The functions and responsibilities of a Notary Public are delineated under section 8 of the Ordinance, 1961. Clause (a) thereof expressly authorizes a Notary to "verify, authenticate, certify or attest the execution of any instrument", while subsection (2) further mandates that no act enumerated under subsection (1) shall be deemed to constitute a notarial act unless the same is performed under the signature and official seal of the Notary concerned. The legislative scheme, therefore, leaves no room for doubt that the function of a Notary Public is not confined to the mechanical affixation of his seal and signature. Rather, the very purpose underlying the institution of notarial authentication is to provide assurance regarding the due execution and authenticity of the instrument sought to be verified. Indeed, the office of a Notary Public is founded upon public confidence and the presumption that a person appointed under the authority of law would exercise the degree of diligence expected from one discharging a public function. The acts of verification, authentication and attestation contemplated by section 8 of the Ordinance, 1961, necessarily

imply that the Notary must satisfy himself that the document presented before him has been duly executed by the persons purporting to be its executants and that the instrument sought to be authenticated is complete, free from patent irregularities and bears all indicia of due execution. In the case in hand, although the alleged compromise document bears the signatures and official seal of the Notary Public, it is manifest from the record that page Nos.1 and 2 thereof are conspicuously devoid of the signatures or thumb impressions of any of the parties, their counsel, witnesses or identifiers. Such patent defects were readily discernible from the face of the instrument itself. In these circumstances, it was incumbent upon the Notary Public, before exercising his statutory function of authentication, to ensure that each constituent page of the document had been duly executed and that no unsigned or unattested pages formed part of the instrument. The omission to undertake such elementary scrutiny and the mechanical act of affixing the official seal and signature upon a document suffering from patent deficiencies amount to a failure to discharge the obligations inherent in the office of a Notary Public. Any casual or perfunctory approach in the performance of such functions not only defeats the very object of the Ordinance, 1961, but also undermines public confidence in the authenticity and reliability of documents bearing notarial certification. Such practices, if left unchecked, have the potential to facilitate interpolation, fabrication and fraudulent manipulation of documents, thereby striking at the administration of justice itself.

44. It is also pertinent to observe that, in comparative notarial practice, particularly in jurisdictions such as the United Kingdom and other European States, a well-settled and consistently adhered-to safeguard is the authentication of each page of a multi-page instrument. In such jurisdictions, where a document extends beyond a single page, the Notary Public not only affixes his seal and signature upon the instrument but also ensures that every page thereof is duly signed or initialed by the executants and is brought within the ambit of notarial authentication. Furthermore, it is a common and established practice that the Notary certifies on the concluding page that the instrument comprises a specified

number of pages, thereby excluding any possibility of subsequent substitution, interpolation, or tampering. This practice is reflective of the broader jurisprudential commitment in those jurisdictions to maintain the integrity, continuity, and authenticity of documentary evidence, particularly where such documents are intended to affect legal rights of parties. The emphasis upon page-wise authentication operates as a safeguard against fraud and ensures that the instrument is read and construed as one composite and indivisible document.

45. In contrast, the practice commonly observed in Pakistan, particularly in relation to unregistered and privately executed instruments subjected to notarial attestation, does not always conform to the aforesaid standards. It is not uncommon that documents consisting of multiple pages are neither signed nor initialed on each page by the executants, nor is there consistent certification by the Notary Public indicating the total number of pages forming part of the instrument. This deviation from best notarial practice creates an evidentiary vulnerability, as it leaves room for doubt regarding the integrity of the document and opens the possibility, however unintended, of substitution or manipulation of pages after execution.

46. The other pivotal question, however, is whether the ingredients contemplated by section 12(2), CPC namely fraud, misrepresentation or want of jurisdiction, are discernible from the factual matrix of the case. It scarcely requires reiteration that fraud, by its very nature, is seldom susceptible of direct proof and ordinarily manifests itself through surrounding circumstances, attendant conduct and the cumulative effect of facts which, when viewed in conjunction, lead to an irresistible inference of deceit.

47. The petitioner alleged that the respondents ingeniously substituted the same objective through the insertion of the vague and undefined expression "غير مندعوپہ", thereby preserving for themselves a conduit through which concealed properties could ultimately be appropriated to the exclusion of the petitioners. Even assuming, arguendo, that the petitioners were fully conscious of the import and legal ramifications of the expression "غير مندعوپہ", a

question of considerable significance nevertheless arises as to why no prayer was ever made before the executing Court for transfer of the said properties in favour of the judgment-debtors if indeed such transfer constituted an integral part of the compromise. The record unmistakably reveals that the respondents maintained studied silence during the execution proceedings and deliberately allowed the same to culminate in an order declaring complete satisfaction of the decree. Such conduct, viewed in its entirety, furnishes compelling circumstances indicative of an intention to withhold material facts and thereby perpetrate a fraud upon both the petitioners and the Court itself. Particular significance attaches to the final order passed by the executing Court on 30.11.2021, wherein it was categorically observed that the decree had been implemented in letter and spirit and that nothing further remained to be executed. If, as is now sought to be suggested, the properties allegedly falling within the category of "غير متدعويہ" were also intended to be transferred pursuant to the compromise, nothing prevented the respondents from seeking such implementation before the executing Court itself. Their conspicuous silence at that stage and their subsequent procurement of Mutation No.217 dated 01.07.2022, behind the back of the Court and nearly eight months after the closure of execution proceedings, constitute circumstances too eloquent to be ignored. Their conduct attracts the principle embodied in Article 114 of the Qanun-e-Shahadat Order, 1984<sup>30</sup>, and disentitles them from asserting rights which are plainly inconsistent with the solemn declaration of the executing Court that nothing further remained to be implemented. The employment of an undefined and indeterminate expression such as "غير متدعويہ", bereft of any particulars regarding the nature, extent, value or identity of the properties sought to be excluded, appears, prima facie, to have been deliberately designed to create a reservoir of uncertainty capable of being exploited for ulterior and unlawful advantage. Thus, the cumulative effect of the circumstances discussed hereinabove gives rise to a strong

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<sup>30</sup> **Qanun-e-Shahadat Order 1984, art 114.** Article 114 provides: "When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

inference that the element of fraudulent concealment permeated the transaction from its inception and continued unabated throughout the execution proceedings.

As regards the objection concerning maintainability, the mere fact that section 12(2), CPC. employs the words "decree" and "final order" cannot be construed in a pedantic or unduly restrictive manner. The order whereby the execution proceedings were finally terminated and satisfaction of the decree was recorded undeniably possessed all the attributes of a final order determining the rights and obligations of the parties. Consequently, the controversy in hand squarely falls within the ambit of section 12(2), CPC. Equally devoid of substance is the contention that the learned Trial Court misapplied section 29 of the Contract Act, 1872. A compromise decree passed under Order XXIII Rule 3, CPC is founded upon an agreement between the parties and derives its efficacy from the lawfulness of the underlying compromise. The jurisdiction conferred upon the Court under the said provision is circumscribed by the requirement that the compromise must be lawful. It follows, therefore, that where the agreement itself is vitiated by uncertainty, fraud or misrepresentation, the decree founded thereupon cannot enjoy a higher sanctity than the agreement from which it emanates. A void agreement cannot be transmuted into a valid and enforceable instrument merely by reason of its incorporation into a judicial decree. Indeed, a harmonious and conjoint reading of section 12(2), CPC, Order XXIII Rule 3, CPC and the provisions of the Contract Act, 1872 unmistakably leads to the conclusion that the Court's jurisdiction to pass a compromise decree is conditioned upon the existence of a lawful and certain agreement. Consequently, a decree founded upon an uncertain stipulation or procured through fraud and misrepresentation is, in contemplation of law, a decree suffering from an inherent jurisdictional defect and is thus amenable to challenge under section 12(2), CPC.

48. In view of the foregoing discussion, this Court is of the considered opinion that the view adopted by the High Court, whereby the writ petition was allowed, is not sustainable in law. The High Court proceeded on the premise that the compromise

between the parties constituted an admitted fact and that the petitioners had neither specifically denied the terms thereof nor disputed the authority of the attorney who allegedly represented them. Such an approach, fails to take into account the well-settled jurisprudential framework governing the protection and enforcement of inheritance rights of women, which requires courts to adopt a heightened standard of scrutiny in cases involving alleged relinquishment or compromise of such rights.

49. The High Court, while setting aside the well-reasoned judgments rendered by the learned Trial Court and the Revisional Court, appears to have failed to properly appreciate the legal consequences arising from the disputed compromise and the attendant allegations of fraud and misrepresentation. The orders passed by the Trial Court, being discretionary in nature and founded upon a proper appreciation of the material on record, were not amenable to interference in writ jurisdiction in the absence of any jurisdictional defect, perversity, or misreading of evidence. The Revisional Court, having exercised its jurisdiction in accordance with settled principles, had rightly affirmed the view taken by the Trial Court; however, the High Court, in exercise of writ jurisdiction, erroneously substituted its own view without demonstrating any illegality or material irregularity in the concurrent findings of the subordinate courts.

50. It is a settled principle that the jurisdiction of the High Court under constitutional or writ jurisdiction is supervisory in nature and is not intended to function as a court of appeal for reappraisal of evidence or substitution of factual findings, particularly where such findings are based upon a lawful exercise of discretion and are supported by the record. In the present case, no legal infirmity, jurisdictional excess, or manifest perversity has been shown to justify interference with the concurrent findings of the Trial Court and the Revisional Court.

51. Consequently, the petition is allowed and converted into an appeal, which is hereby accepted. The impugned judgment dated 25.06.2025 is declared to be not sustainable in law and is accordingly set aside. The suit shall stand revived, and the parties

shall be at liberty to file an amended plaint, if so advised, incorporating therein all other properties belonging to both the propositi, so that the entire controversy between the parties may be finally and comprehensively adjudicated upon in accordance with law.

52. Before parting with this judgment, accordingly, all courts, revenue authorities, and other forums entrusted with the adjudication, recognition, or enforcement of inheritance rights, particularly those concerning female legal heirs, shall exercise heightened vigilance and judicial scrutiny in such matters and are directed to ensure compliance with the *following indispensable safeguards* while examining any compromise, relinquishment, family arrangement, settlement, gift, mutation, consent statement, or other instrument having the effect of affecting, curtailing, compromising, or extinguishing the inheritance rights of women:

- i. All courts and revenue authorities shall, while adjudicating instruments affecting inheritance rights of female heirs, apply a rule of heightened judicial scrutiny, treating such matters as involving vulnerable class protection.
- ii. No presumption of validity shall arise merely from execution, attestation, registration, mutation, or appearance of consent, unless the same is supported by strict proof of voluntariness and informed understanding.
- iii. The burden shall remain heavily upon the beneficiary of the transaction to affirmatively establish, through credible and unimpeachable evidence, that the instrument represents a free, informed, and conscious act of the executant.
- iv. Courts shall ensure that it is proved on record that the executant had clear knowledge of the nature of the transaction and the exact inheritance rights being affected or relinquished.
- v. It must be established that the executant had access to independent, competent, and disinterested advice, sufficient to enable informed decision-making free from influence or dependence.
- vi. Any transaction shall be scrutinized to exclude the presence of coercion, fraud, misrepresentation, undue influence, or familial or social domination.
- vii. Where consideration is alleged, courts shall require strict proof that it was lawful, real, adequate, and actually received in a verifiable manner.
- viii. The contents of all documents must be shown to have been read over, explained, and translated in a language fully understood by the executant.
- ix. Courts shall verify that the executant was afforded a reasonable opportunity for reflection and consultation, without haste or pressure.

- x. Any transaction that is prima facie unconscionable, one-sided, or disproportionately prejudicial to the female heir shall be subjected to strict disapproval unless fully justified by clear evidence.
- xi. All suspicious or doubtful circumstances surrounding the transaction must be satisfactorily explained by the beneficiary; otherwise, adverse inference shall follow.
- xii. In all such cases, courts must record an affirmative finding of voluntariness and informed consent before upholding any deprivation of inheritance rights.
- xiii. Revenue authorities shall exercise similar caution at the stage of mutation and shall not sanction entries affecting inheritance unless the above safeguards are demonstrably complied with.

Failure to establish the foregoing requirements would render the transaction susceptible to challenge and would deprive the beneficiary of the presumption of validity ordinarily attached to formally executed instruments. Consequently, it shall be incumbent upon all Courts, revenue authorities, and other administrative officials dealing with matters concerning the inheritance rights of women to ensure strict compliance with these principles.

In the end, we appreciate the considerable assistance rendered by Dr. Muhammad Mumtaz, Research Officer, which deserves special acknowledgment.

**CHIEF JUSTICE**

**JUDGE**

**Islamabad,**  
04.06.2026  
APPROVED FOR REPORTING  
*RajaAhsan/-*