JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

1**.W.P. No.3702 of 2025**

Syed Shujat Ali Naqvi (deceased) through Legal Heirs

Versus

Additional District Judge (East), Islamabad and others

2**.W.P. No.3749 of 2025**

Mst. Syeda Ale-Fatima Naqvi (deceased) through Legal Heirs

Versus

Additional District Judge (East), Islamabad and others

Date of hearing	**07.09.2026**
Petitioners by:	Mr. Kashif Ali Malik, Mr. Qaisar Abbas Gondal and Barrister Gul Share, Advocates for petitioners in W.P No.3702 of 2025. Mr. Shajjar Abbas Hamdani, Advocate for the petitioners in W.P No.3749 of 2025.
Respondents:	Raja Aleem Abbasi, Advocate for the respondent No.1 Imran Pervaiz. Ms. Saba Saleem and Mr. Osama Rehman, State Counsels.

SARDAR MUHAMMAD SARFRAZ DOGAR, CJ:- Through this common judgment, this Court proceeds to decide the above-captioned constitutional petitions, as both arise out of the same order and decree dated 27.07.2023, the

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same proceedings under Section 12(2), C.P.C., and the consolidated order dated 17.02.2025, which was subsequently maintained through consolidated judgment dated 10.09.2025 passed by the learned Additional District Judge-V (East), Islamabad. The underlying controversy is, therefore, common, although the locus standi claimed by the petitioners in the two petitions rests on different legal foundations.

2. For the purpose of convenience, in this judgment, unless otherwise necessary, the petitioners in both the petitions shall be referred to as "**petitioners**" whereas the respondent namely Imran Pervez shall be referred to as "**respondent No.1**".

3. The chronological background leading to the filing of instant petitions is that respondent No.1 instituted a suit for specific performance of an alleged agreement to sell dated 22.10.2020, along with mandatory and permanent injunction, in respect of land measuring 24 kanals and 13 marlas situated in Mouza Sohan Dehati and land measuring 98 kanals situated in Mouza Khanna Kak, against an alleged total sale consideration of Rs.12,26,50,000/-.The suit was instituted against Syed Shujat Ali Naqvi, who claimed to be the owner of the subject properties. According to the record referred to in the petitions, an advocate entered appearance on his behalf on 17.07.2023 and filed a vakalatnama. Subsequently, on 24.07.2023, a consenting written statement was filed on behalf of Syed Shujat Ali Naqvi. The suit was ultimately decreed on the basis of consent by the learned Civil Judge, East, Islamabad, vide order and decree dated 27.07.2023. Thereafter, defendant-Syed Shujat Ali Naqvi, appeared in person before the learned trial Court and filed application under section 12(2) CPC wherein he challenged the order and

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decree, primarily on the allegation that he had neither authorized the counsel appearing on his behalf nor executed the alleged vakalatnama nor signed the consenting written statement. It was maintained that the decree had been procured through fraud, forgery, misrepresentation and concealment of material facts. During the pendency of the proceedings, Syed Shujat Ali Naqvi passed away on 25.01.2024 and was succeeded by the petitioners of W.P.No.3702 of 2025.

4. The petitioners in W.P No.3749 of 2025 claim to be the legal heirs of Mst. Syeda Ale Fatima Naqvi, who was stated to be a co-owner/co-sharer in the subject properties. They also filed an application under Section 12(2), CPC, seeking the setting aside of the judgment and decree dated 27.07.2023, inter alia, on the ground that their rights and interests in the properties had been adversely affected by a decree allegedly obtained through fraud and misrepresentation.

5. The applications filed under Section 12(2), CPC, were contested and the learned trial Court framed following consolidated issues:-

i. Whether Imran Pervaiz while concealing material fact succeeded to get decree dated 27.07.2023 while playing fraud and misrepresentation with the court and decree is liable to be set aside? **OPA**
ii. Whether instant application is incompetent in its present form and liable to be dismissed? **OPR**
iii. Whether the application filed by Syeda Aal-e-Fatima is competent in its present form and she has locus standi to file present application against judgment and decree? **OPA**

6. The parties produced their respective oral and documentary evidence. Upon conclusion of the proceedings, the learned Civil Judge, East, Islamabad, vide consolidated

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order dated 17.02.2025, dismissed the applications filed under Section 12(2), CPC.

7. Feeling aggrieved, the respective applicants preferred civil revisions which were adjudicated upon by the learned Additional District Judge, East, Islamabad, who, vide consolidated judgment dated 10.09.2025, dismissed the revisions and maintained the order of the learned Civil Court. Hence, the instant constitutional petitions, whereby the petitioners seek setting aside of the judgment and decree dated 27.07.2023, the consolidated order dated 17.02.2025 and the consolidated revisional judgment dated 10.09.2025.

8. Learned counsel for the petitioners of W.P No.3702 of 2025 contends that their predecessor the deceased Syed Shujat Ali Naqvi, was never served with summons in the original suit and had no knowledge of the proceedings. It is argued that an advocate, without any authority from him, filed a vakalatnama and subsequently submitted a consenting written statement, on the basis whereof the suit was decreed in an unusual and summary manner.

9. It is contended that Syed Shujat Ali Naqvi neither engaged the counsel who appeared before the learned Civil Court nor executed the alleged vakalatnama nor signed the consenting written statement. According to the petitioners, his signatures were forged and the decree was consequently obtained through fraud, misrepresentation and collusion.

10. Learned counsel further submits that Syed Shujat Ali Naqvi, upon acquiring knowledge of the decree, appeared in person before the learned Civil Court and filed an application under Section 12(2), CPC. It is argued that this circumstance

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lends support to the petitioners' contention that he had neither authorized the earlier proceedings nor consented the decree.

11. It is further argued that the learned Courts below while deciding the application u/s 12(2) CPC failed to properly appreciate the oral and documentary evidence produced by the petitioners and reached conclusions based upon misreading and non-reading of the available material evidence.

12. Learned counsel for the petitioners in W.P No.3749 of 2025 submits that the predecessor-in-interest of these petitioners, namely Mst. Syeda Ale Fatima Naqvi, was a co-owner/co-sharer in the subject properties and that her legal heirs possessed a lawful interest therein. It is argued that the decree concerning the subject properties could not lawfully prejudice their rights, particularly when the decree itself is alleged to have been obtained through fraud and misrepresentation.

13. It is further contended on behalf of the petitioners that the learned Civil Court lacked territorial jurisdiction in respect of the properties situated outside the territorial limits of Islamabad. According to the learned counsel, the question of jurisdiction goes to the very root of the matter and was not properly addressed by the Courts below.

14. It is also argued that the learned Courts below failed to properly consider the objections regarding the alleged agreement to sell, payment of the sale consideration and the rights of the co-owners/co-sharers in the subject properties. The learned counsel, therefore, contends that the orders impugned in these petitions suffer from illegality and jurisdictional defects and are liable to be set aside in the exercise of constitutional jurisdiction.

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15. Conversely, the learned counsel for the respondent No.1/Imran Pervez argued in favor of the impugned order and judgment by vehemently contending that writ petition filed under article 199 of the Constitution is not maintainable after availing the remedy of revision by the petitioners. On merits, it was contended that the order passed in applications U/S 12(2) CPC was passed after adopting proper procedure and recording of evidence and the petitioners remained fail to point out fraud, misrepresentation or jurisdictional error. It was further argued that the Respondent No.1 entered into agreement to sell with the deceased Syed Shujat Ali Naqvi, who was exclusive owner of the property in question; therefore, there was no question to implead the petitioners as party in the suit. Even otherwise, the petitioners failed to establish their *locus standi* by filing the proof of legal heirship with Syed Shujat Ali Naqvi as well as Syeda Ale Fatima. The petitioners remained fail to produce the counsel who appeared on behalf of Syed Shujat Ali Naqvi and filed consenting written statement during the proceedings before the court. The petitioners have not taken any action against the said advocate. The petitioners also remained fail to produce the person who had informed about the passing of the impugned order in the suit, which tantamounts to withholding of best evidence in case of any fraud or misrepresentation on the part of respondent No. 1 or counsel of Syed Shujat Ali Naqvi and that the learned courts below after detailed discussion of every aspect of the matter, rightly dismissed the applications under section 12(2) CPC and Revision Petitions and that the petitioners have failed to point out any material illegality

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warranting interference by this Court in the exercise of its constitutional jurisdiction.

16. I have heard the arguments of learned counsel for the parties and have gone through the record with their able assistance.

17. Before proceeding in the matter in hand, it is apropos to discuss the scope of Section 12(2) CPC and question of maintainability of these petitions. For ease of reference, section 12(2) of CPC is reproduced hereunder:-

> "**12.Bar to further suit**.
> (1)……
> (2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit."

It is settled that Section 12(2), CPC., is neither an alternative appeal nor a disguised exercise in re-arguing the merits of an ordinary civil suit. It is an exceptional statutory remedy directed against the legitimacy of a judgment, decree or order where the foundational process has been vitiated by fraud, misrepresentation or want of jurisdiction. The Supreme Court has repeatedly emphasized that the remedy exists so that a court may itself undo a result procured through such illegality rather than to compel a party to embark upon a fresh and cumbersome suit. The authoritative recent exposition can be found in case law titled as "Hafiz Malik Kamran Akbar etc. v. Muhammad Shafi (deceased) through LRs etc.,"**(PLD 2024 Supreme Court 262)**, wherein the hon'ble Supreme Court explained that the expression "person" employed in Section 12(2) cannot be read narrowly so as to confine the remedy to the original judgment-debtor and his successors. It extends to

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any person adversely affected by the judgment, decree or order, whether or not he was a party to the original proceedings. The Supreme Court further reiterated that while framing of issues and full trial procedure are not mandatory in every matter under Section 12(2) CPC, where the nature of the allegations requires factual investigation, the court must adopt a procedure sufficient to determine the allegations fairly. Thus two propositions emerge with clarity. Firstly, Section 12(2) CPC is not an appeal against every factual or legal error in the original judgment. Secondly, the Court cannot defeat the statutory remedy by calling every genuine challenge to fraud or unauthorized proceedings an "ordinary dispute on merits". The controlling question is whether the impugned decree itself was brought about, maintained or rendered legally operative through one of the grounds specifically recognized by Section 12(2) CPC. This distinction was also lucidly maintained by the hon'ble Supreme Court of Pakistan in case titled as "Lahore Development Authority through Director General v. Arif Manzoor Qureshi and others"**(2006 SCMR 1530)**. In this case, although proceedings under Section 12(2) CPC., are not required to follow the complete procedure of a regular suit in every case, the hon'ble Supreme Court held that where the application disclosed serious allegations of fraud, collusion and misrepresentation, summary disposal without a proper inquiry was unjustified, particularly where the original decree itself had been passed without recording of evidence. The relevant portion of the judgment is reproduced hereunder:-

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> "5. We have heard the learned counsel for the parties at length and have also perused the available record. **We find that the application under section 12(2), C.P.C. of the petitioner disclosed serious allegations of fraud, collusion and misrepresentation culminating into the judgment and decree dated 22-7-1998. From the very nature of the allegations of the petitioner, summary disposal of the application under section 12(2), C.P.C. was not justified.** In the facts and circumstances of the case, it was necessary for the trial Court to have framed necessary issues and recorded evidence of the parties **particularly when the judgment and decree, dated 22-7-1998 had also been passed without recording evidence of the parties**. The learned counsel for the petitioner as well as the Director-General of the Authority brought to our notice that an inquiry had also been held and finalized as directed by this Court in respect of the property in dispute. The impugned judgment passed by the High Court is not sustainable at law."
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> (Emphasis supplied)

18. The same principle was applied in case law titled as "Muhammad Aslam and others v. Mst. Kundan Mai and others" **(2004 SCMR 843)**, where a consent decree was successfully challenged under Section 12(2) CPC. The hon'ble Supreme Court rejected the narrow proposition that a separate action was required merely because the challenge involved the fraudulent manner in which the decree had been procured. Upon the decree being set aside, the original suit was to be treated as pending for decision on its merits. The relevant portions are hereby reproduced for ready reference:-

> "4. We have noticed that the learned Judge in Chamber of the High Court has held that as a consequence of the setting aside of the consent decree the suit in which the same was passed shall be deemed to be pending which shall be decided on its own merits.
> 5. We have heard the learned counsel for the petitioners and have perused the record. It would be appropriate to reproduce subsection (2) of section 12, C.P.C. which reads as under:-

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> "12(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not a separate suit."
>
> A bare reading of this provision would show that **it was not necessary that fraud in obtaining the decree should have been played on the Court which passed the decree but if a decree had been obtained through fraud between the parties inter se by concealment of true facts, the same could also be set aside. The learned Additional District Judge while passing the order in revision petition ignored the fact that the filing of suit by the respondents would have served no purpose, for, consequence of setting aside of the decree was that the suit in which the same was passed would be deemed to be pending and the question of validity, existence or otherwise of the TamleekNama was to be decided on merits inter se between the parties**, therefore, the order passed by the trial Court in, setting aside the decree was unexceptional in law and it has been rightly so held by the High Court in the impugned judgment."

The legal position may, therefore, be summarized that Section 12(2) CPC is not a second appeal; but neither it is a procedural incantation through which a decree founded upon a fraudulent or unauthorized process is insulated from scrutiny.

19. Now adverting to the question of maintainability of instant writ petitions. Learned counsel for the respondent No.1 argued that the remedy provided by law i.e. revision has been availed by the petitioners, therefore, instant petitions are incompetent. This Court cannot accept the preliminary objection raised by the learned counsel for the respondent in the broad terms. The mere fact that applications under section 12(2), C.P.C. were dismissed by the learned trial Court and the revisions preferred thereagainst were subsequently dismissed by the learned revisional Court does not, by itself, operate as an absolute bar to the constitutional jurisdiction of

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this Court under Article 199 of the Constitution. The law does not recognize the revisional order as enjoying an immunity from constitutional scrutiny merely by reason of its having been passed in exercise of revisional jurisdiction. There is no cavil with the proposition that Article 199 cannot be invoked as a substitute for an appeal or a second revision merely to secure reappraisal of facts or substitution of one possible view for another. However, where the impugned order of the revisional Court, or the order affirmed thereby, suffers from a jurisdictional defect, patent illegality, material procedural irregularity, violation of the governing law or an error of law falling within the recognized parameters of certiorari, the constitutional jurisdiction of this Court is not ousted merely because the statutory revisional remedy has already been availed and exhausted. In case law titled as "Qamar-ud-Din v. Muhammad Din and others" (**PLD 2001 SC 518**), as subsequently reiterated in "Muhammad Anwar and others v. Mst. Ilyas Begum and others" (**PLD 2013 SC 255**), the Hon'ble Supreme Court recognized that the mere decision of a revision does not, by itself, constitute a bar to invoking the constitutional jurisdiction in an appropriate case. The same principle was reiterated in "Muhammad Ashraf Butt and others v. Muhammad Asif Bhatti and others" (**PLD 2011 SC 905**), wherein it was held that a revisional order suffering from patent error, misapplication or non-application of the correct law, or other grave illegality, can be corrected by the High Court in exercise of its constitutional jurisdiction.

20. The position is also demonstrated by the recent pronouncement by the august Federal Constitutional Court of

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Pakistan in "Mian Tahir Raza v. Mubasher Ahmad and others" **(Civil appeal No.112 of 2023 decided on 18.03.2026) (2026 CJ Review 20).** Therein, the order dismissing an application under section 12(2), C.P.C. and the revisional order affirming the same had been challenged before the High Court under Article 199. The constitutional petition was not held incompetent merely because the statutory revisional remedy had been availed; rather, the petition was examined on the touchstone of whether any jurisdictional defect had been demonstrated in the orders of the Courts below. The petition failed because no such defect was established. The distinction is decisive**.** The dismissal of a constitutional petition for want of a jurisdictional error is one thing; holding the petition itself to be non-maintainable merely because a revision has previously been decided is quite another. The former is consistent with the settled limits of Article 199; the latter would amount to reading into the Constitution an absolute bar which the constitutional text does not contain and which the authoritative jurisprudence does not recognize.

21. The objection raised by learned counsel for the respondent No.1 is still less persuasive in the peculiar circumstances of the present case as the deceased Syed Shujat Ali Naqvi did not voluntarily accept or acquiesce in the decree which is the subject-matter under challenge. The contention of the learned counsel for the petitioners in application under section 12(2) CPC before the learned trial Court was that the decree itself had been procured through an unauthorized and collusive appearance of an advocate, who purportedly

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represented the deceased and submitted a written statement conceding the claim of respondent No.1/plaintiff. Upon acquiring knowledge of the decree, the deceased Syed Shujat Ali Naqvi himself approached the learned trial Court and invoked section 12(2), C.P.C., thereby placing the alleged fraud, collusion and want of lawful authority directly before the Court. His death during pendency of those proceedings resulted merely in substitution of his legal representatives; it did not alter the nature of the controversy or convert the proceedings into an appellate challenge to a decree knowingly accepted by him.

22. In such circumstances, the constitutional jurisdiction cannot be shut out at the threshold by characterizing the proceedings as an impermissible second appeal or revision. The question whether the Courts below correctly exercised the jurisdiction vested in them under section 12(2), C.P.C., particularly in relation to an allegation which goes to the very foundation of the decree and the authority of the person who purportedly represented the deceased Syed Shujat Ali Naqvi, is a separate question to be examined. The petitioners must, of course, satisfy the settled parameters of certiorari and cannot seek a mere reappraisal of the original suit; but that limitation governs the extent of interference, and does not render the constitutional petitions inherently non-maintainable.

23. For the foregoing reasons, the objection raised by learned counsel for respondent No.1 is turned down. The instant constitutional petitions are maintainable. The question whether the impugned orders disclose such jurisdictional

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illegality, patent error of law, procedural infirmity or other defect as would warrant interference under Article 199 shall be examined independently.

24. Adverting to the merits of instant petitions. The perusal of impugned order as well as impugned judgment reveals that the courts below principally reasoned that the petitioners had failed to establish fraud, misrepresentation or want of jurisdiction by tangible evidence; that Mr.Zeeshan Abbasi, the advocate, who alleged to have acted in collusion with the plaintiff/respondent No.1 has not been produced; that one of the witnesses relied upon by the petitioners was not regarded as independent; that no forensic report comparing signatures/thumb impressions of late Syed Shujat Ali Naqvi had been produced; and that the power of attorney/vakalatnama appearing on the court record bore the signatures and thumb impression of late Syed Shujat Ali Naqvi. In relation to the petitioners of W.P no.3749 of 2025, tracing their claim through Mst. Syeda Ale-Fatima Naqvi, the learned Trial Court substantially took the view that since there was no agreement between those petitioners and the plaintiff/respondent No.1, and they were not parties to the original suit, therefore, they had no locus standi to invoke Section 12(2), C.P.C.

25. The pivotal question revolves around the authority of the person, who represented Syed Shujat Ali Naqvi/defendant No.1 in original suit and not only filed Vakalatnama on his behalf but also filed conceding written statement in favour of respondent No.1. It is worth mentioning here that there is an

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important distinction between a client who admits having appointed an advocate but disputes a particular tactical step, and a client who promptly and categorically denies *having appointed the advocate at all*. In the first situation, the ordinary rules concerning counsel's implied authority may assume significance. In the second, the Court must first establish whether the representative relationship itself existed or not.

26. Now adverting to the peculiar aspects of the matter in hand, the record reveals that the original decree dated 27.07.2023 was not the result of a contested trial. No issues were framed. No evidence was recorded. No statement of defendant No.1 in person was recorded. The decree followed because the learned Trial Court accepted the proposition that Syed Shujat Ali Naqvi/defendant No.1 had, through his counsel, admitted the respondent No.1/plaintiff's claim and consented to a decree. The very foundation of the decree was, therefore, the validity of the representation attributed to defendant No.1.Once the principal i.e. Syed Shujat Ali Naqvi himself came before the same Court on 01.09.2023 and expressly stated that he had neither entered into the agreement nor engaged any counsel, the controversy ceased to be peripheral. The pivotal question, therefore, is not merely whether a written statement carrying a concession was placed before the learned Trial Court, but whether such concession could, in the peculiar circumstances of the case, constitute a lawful and binding foundation for a decree affecting the substantive rights of the deceased. The distinction is material. A concession made in judicial proceedings may undoubtedly

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have consequences in law; however, before a Court acts upon such concession and proceeds to extinguish or materially affect the rights of a litigant, it is incumbent upon the Court to satisfy itself that the concession is genuine, lawful, conscious and made by a person duly authorized to bind the party concerned. The Hon'ble Supreme Court has emphatically underscored this judicial obligation in "Misbah Khanum v. Kamran Yasin Khan" (**2022 SCMR 1629**). The case is particularly instructive as the decree for specific performance therein had been passed upon a conceding statement made by an alleged attorney of the owner. The august Court, after examining the record, found that the alleged authority had not been legally proved and that the Courts below had proceeded mechanically upon the statements of the purported attorney. It was, in this context, categorically observed that even while deciding a matter on the basis of a compromise or a conceding statement, the Court is required to examine the legality and genuineness of the matter brought before it, and that mechanical action without application of judicious mind is not expected from a Judicial Officer.

27. The aforesaid principle is not an incidental observation; it goes to the very root of the judicial process. Consent, concession or admission cannot become a substitute for the judicial satisfaction which the law requires before a decree is passed. The Court does not merely act as a recording agency whenever a statement purporting to concede the claim is placed before it. Rather, it remains the adjudicating authority and is required to ascertain whether the person making the statement possesses the requisite authority, whether the

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statement genuinely emanates from the party whom it purports to represent, and whether the proposed decree is otherwise lawful. The requirement assumes greater significance where the consequence of the alleged concession is the creation, transfer or extinguishment of substantive rights in immovable property.This principle finds further support from "Umar Bakhsh and 2 others v. Azim Khan and 12 others" (**1993 SCMR 374**), wherein the Hon'ble Supreme Court, while considering the requirements of Order XXIII, Rule 3, C.P.C., held that the Court must be satisfied that the suit has actually been adjusted by a lawful agreement or compromise. The august Court declined to treat an incomplete and disputed arrangement as a concluded compromise and emphasized that the Court can act upon a compromise only when the requisite consent has attained the character of a lawful and operative adjustment. The ratio is significant for present purposes because it underscores a broader judicial principle i.e. a decree cannot validly rest upon a purported consent unless the Court is satisfied as to its existence, legality and binding character. The same principle was subsequently applied in "Muhammad Nawaz through L.Rs. and others v. Muhammad Khan and others" (**2016 CLC Note 62**), where a decree in a suit for specific performance had been passed on the basis of a conceding written statement attributed to an alleged attorney. The Court, while relying upon ***Umar Bakhsh*** (supra), took serious exception to the fact that the parties had neither been summoned nor appeared before the Trial Court for recording their statements and that the decree had been passed merely on the strength of the alleged conceding written statement.

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28. In the present case, the decree was not the culmination of a contested trial in which the respondent No.1 established his entitlement to specific performance through legally admissible evidence. Its foundation was the conceding written statement allegedly submitted on behalf of Syed Shujat Ali Naqvi,. The very basis of such representation has been called into question by the petitioners, who assert that the deceased neither authorized such surrender of his rights nor consciously submitted to the decree and that the proceedings culminating in the decree were the product of collusion. Once the foundation of the decree itself was thus specifically assailed, it was incumbent upon the Court seized of the matter to examine the alleged authority and the circumstances in which the concession came to be made, rather than treating the written statement as conclusive merely because it formed part of the judicial record.

29. The record further reveals an unusual sequence in passing of decree in original suit. The suit was instituted on 12.07.2023; summons were ordered to be issued and the matter was fixed for 17.07.2023; an advocate then appeared on behalf of defendant No.1; a written statement conceding the claim was subsequently filed; and within a month the alleged principal personally appeared and denied both the agreement and the engagement of counsel. The sequence by itself may not establish fraud, but it creates a serious evidentiary controversy which cannot lawfully be resolved merely by pointing to the fact that a document called a “vakalatnama” is physically available in the court file.The court file is evidence of what was placed before the Court; it

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is not, by its mere existence, conclusive proof that the alleged principal executed every document placed therein. When the execution of the very instrument by which authority is claimed is directly repudiated, the Court is required to adjudicate that repudiation with appropriate care. The hon'ble Supreme Court's jurisprudence on counsel's authority reinforces this conclusion. In case titled as "Abdul Shakoor and others v. Haroon and others"**(2008 SCMR 896)**, the hon'ble Supreme Court declined to treat a compromise entered into through counsel as binding where the authority was conditional and the factual foundation for the compromise had not been established. It was emphasized that the power to settle and compromise ultimately resides in the parties and that counsel's authority must be considered in the context in which it was conferred.

30. More recently, the Lahore High Court in case titled as "Falak Sher and others v. Hashmat Bibi and others"**(PLD 2025 Lahore 414)**, reiterating earlier hon'ble Supreme Court authorities including "Muhammad Hussain v. Mst. Hanaf Ilahi"**(2005 SCMR 1121)** and *supra* **Abdul Shakoor**, held that a power of attorney must be strictly construed; valuable rights cannot be taken away merely because counsel makes a statement of compromise unless authority to take that step is established. The Court stressed the need for maximum care where a party's substantive rights are being extinguished on the basis of counsel's statement.

31. The same principle finds particularly forceful expression in the recent decision of the august Federal Constitutional

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Court in "Riaz Hussain through Legal Representatives v. Chairman Federal Land Commissioner and others"**(C.P.L.A. Nos.962-964 of 2023, order dated 02.12.2025)**, where the august Court examined Order III Rule 4 of C.P.C. and the nature of a vakalatnama, observing that while a vakalatnama authorizes an advocate to represent a litigant, unilateral compromise affecting the substantive rights of the client cannot automatically be attributed to the advocate in the absence of the requisite authority.

32. It is noteworthy that these precedents/authorities do not warrant the proposition that an advocate never possesses any implied authority in civil proceedings. They do, however, establish a more fundamental proposition i.e. *where the authority itself is specifically denied, and the judgment was rendered solely on the basis of the disputed representative act, the Court must determine the authority rather than presume it for the very purpose of deciding whether the challenge to that authority is genuine.* This requirement was unfortunately not satisfied in this case.

33. So far as the contention of learned counsel for respondent No.1 that the burden of proving fraud rests upon the person who alleges it, and that the petitioners, having failed to produce the advocate who purportedly represented deceased Syed Shujat Ali Naqvi, have withheld the best available evidence, thereby attracting an adverse inference against themselves, is concerned, there can be no cavil with the general proposition that a person alleging fraud, misrepresentation or collusion is ordinarily required to

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establish the same through legally admissible evidence. Equally, the production of the advocate who purportedly represented the deceased in the proceedings culminating in the impugned decree would, in the ordinary course, have been a relevant piece of evidence. However, the submission of learned counsel proceeds on an assumption which, in the peculiar circumstances of the present case, cannot safely be made the basis of an adverse inference as the advocate in question is not a neutral or independent witness whose non-production can, in the circumstances, automatically be attributed to the petitioners. On the contrary, he is the very person who purportedly represented the deceased Syed Shujat Ali Naqvi, allegedly filed the vakalatnama on his behalf, submitted the conceding written statement and thereby became instrumental in the proceedings which culminated in the decree under challenge. More importantly, the authority of the said advocate to act on behalf of the deceased was itself challenged by the deceased during his lifetime. Once the very authority under which the advocate purportedly acted became the subject-matter of dispute, it would be wholly unsafe to proceed on the premise that the said advocate was, in law or in fact, a witness available to and within the control of the petitioners, or that his testimony necessarily constituted evidence which the petitioners could be expected to produce in support of their case. The submission founded upon illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984, therefore, requires to be examined in the light of the statutory language itself, which is as under:-

> **129. Court may presume existence of certain facts.–** The Court may presume the existence of any fact which it

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> thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> Illustrations
>
> The Court may presume—
> (a)…..
> (b)…..
> (c)…..
> (d)…..
> (e)…..
> (f)……
> (g) that evidence **which could be** and **is not produced** would, if produced, be unfavourable to the person who withholds it;

The illustration (g) specifically postulates that evidence "which could be and is not produced" would, if produced, be unfavourable to the person who withholds it. The expression "could be" is of considerable significance. The illustration does not mandate an adverse presumption merely because a particular witness has not entered the witness-box; rather, the Court must first be satisfied, in the circumstances of the particular case, that the evidence was in fact available to, or reasonably producible by, the party against whom the inference is sought to be drawn and that its non-production warrants such inference. In the present case, no sufficient basis has been demonstrated for holding that the advocate concerned was a witness whom the petitioners could reasonably be expected to produce, particularly when he is the person whose alleged unauthorized intervention constitutes a material part of their grievance. The petitioners are not relying upon him as the source of their allegation; rather, they challenge the very authority and conduct attributed to him. To treat his non-production, in these circumstances, as withholding of the "best evidence" would, reverse the factual

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complexion of the controversy. It would effectively require the petitioners to establish their allegation through the testimony of the very person against whom the allegation is directed, while overlooking the surrounding circumstances appearing from the record.

34. The matter assumes more significance because the alleged representation did not remain confined to the filing of the vakalatnama or conceding written statement. It has come on record, and has not been effectively controverted during the course of arguments by the learned counsel for the respondent No.1, that the same counsel/advocate who purportedly represented deceased Syed Shujat Ali Naqvi had filed an application on behalf of respondent No.1/plaintiff for submission of the remaining/balance sale consideration. This conduct, viewed prima facie and in conjunction with the disputed authority of the advocate to represent the deceased, furnishes an additional circumstance.

35. It is equally important that the original court did not record any statement of Syed Shujat Ali Naqvi in person before passing the decree. The entire decree rested on the conceding written statement and the statement of counsel. This sharply distinguishes the present matter from cases in which the defendant personally appears before the Court, acknowledges the claim, understands the consequences and voluntarily consents to a decree. The decision of this Court in case titled as "Hamid Nasrullah Ranjha v. The Civil Judge, Islamabad-West and others" **(2024 MLD 10)**, is instructive in this regard. In that case too, a suit for specific performance

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was decreed on the basis of the defendant's apparent consent, but the subsequent Section 12(2) CPC proceedings disclosed circumstances calling into question the authenticity and legal foundation of the decree. This Court held the impugned order and original decree unsustainable, allowed the application under Section 12(2) CPC and restored the main suit, also recognizing the right of the affected person to seek joinder under Order I Rule 10(2), C.P.C.

36. The present case presents an even more compelling feature. In this case, the original defendant i.e. Syed Shujat Ali Naqvi did not merely subsequently remain silent or advance a technical objection. He appeared in person after the decree and categorically denied both the agreement and the engagement of counsel. Upon this development, the operation of ex-parte proceeding dated 24.07.2023 and ex-parte decree dated 27.07.2023 was suspended by the Trial Court itself vide order dated 01.09.2023. It would be contrary to the protective purpose of Section 12(2) CPC to hold that such a denial can be brushed aside unless the applicant produces a handwriting expert, summons the advocate and produces the person who first informed him about the decree, when the Court itself had the power and duty to test the foundational question of authority on the evidence already before it. However, the learned Trial Court reasoned, in substance, that the applicants ought to have obtained a forensic comparison of the disputed signatures/thumb impression and that their failure to do so left their plea of forgery unproved. This approach is legally unsustainable in the form in which it was applied as the expert evidence is one of the modes of proof and not the exclusive

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mode of proof. The record contained an especially significant specimen signature and thumb impression of Syed Shujat Ali Naqvi when on **01.09.2023**, after the decree, he personally appeared before the Court and his signature and thumb impressions were obtained on the judicial record. That was an obvious contemporaneous source of comparison. The applicants were not required, as a matter of law, to produce a forensic report as the only possible means of impeaching the disputed signature. The Court itself possessed the power to undertake comparison, or it could have obtained expert assistance if it considered that course necessary. More importantly, the question was not merely whether the signature on the disputed document "looked like" the signature of Syed Shujat Ali Naqvi. The deeper question was whether the document represented his free and informed act of appointing counsel to concede a suit of extraordinary financial magnitude involving extensive immovable property. A signature cannot be viewed in isolation from the legal act it is alleged to authenticate. The consequence attributed to the document must itself invite judicial scrutiny. The Hon'ble Supreme Court's decision in case titled as "Mst. Nazeeran and others v. Ali Bux and others" **(2024 SCMR 1271)**, is also relevant in respect of quantum of evidence to prove fraud. The hon'ble Supreme Court explained that there is no special or rigid quantum of evidence required to establish fraud; what matters is whether the evidence placed before the Court is reliable and sufficient to justify the conclusion. The generalized allegations cannot shift the burden, but equally the law does not require some predetermined class of evidence before fraud can ever be found.

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37. The present petitioners did not rest their case upon a bare allegation. Their case rested upon a cumulative evidentiary pattern namely the manner in which the suit was instituted; the immediate appearance of a purported counsel on the first date fixed for service; the absence of personal appearance of the defendant; the decree without framing of issues or recording of evidence; the description of the decree as a "consent decree"; the subsequent immediate repudiation by the alleged consenting principal; the suspension of the decree by the Trial Court; and the continuing dispute over the authenticity and authority of the documents through which consent was attributed to him. When these circumstances are viewed cumulatively, these are found to be sufficient for serious judicial determination. The courts below treated each individual deficiency in the petitioners' evidence as fatal, instead of asking whether the evidence taken as a whole rendered the respondent's version sufficiently doubtful that the original decree could safely be allowed to stand.

38. In addition to above, it is necessary to mention here that fraud, particularly fraud upon a judicial process, is ordinarily proved through *circumstances*. It is often unrealistic to demand direct evidence of a clandestine agreement between the alleged wrongdoers. The correct question is whether the proved circumstances form a coherent chain from which the Court can safely infer that the decree was not the product of a genuine and authorized concession. In the present case, the answer to that question is in the negative. So far as the respondent's version is concerned, the respondent has not demonstrated a legally reliable basis for attributing to Syed

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Shujat Ali Naqvi the extraordinary decision to admit a claim of over twelve crore rupees and consent to transfer extensive immovable property without any personal appearance before the Court.

39. Now, adverting to the second writ petition No.3749 of 2025, which presents a distinct legal question i.e. locus standi of heirs of the deceased Mst. Syeda Ale Fatima Naqvi. The learned Trial Court rejected the application of the heirs of Mst.Syeda Ale-Fatima substantially on the basis that the alleged agreement was between the plaintiff and Syed Shujat Ali Naqvi; therefore, according to the Court, the heirs of Ale-Fatima had no locus standi to challenge the decree. In the case law titled as "Hafiz Malik Kamran Akbar v. Muhammad Shafi" **(PLD 2024 SC 262)**, the hon'ble Supreme Court of Pakistan held that the expression "person" in Section 12(2) CPC extends to *any person adversely affected by the judgment, decree or order*, irrespective of whether that person was a party to the original proceedings. Therefore, the relevant question is not *"whether these petitioners were parties to the original agreement?"* The relevant questions are *"whether they claim a legally recognizable interest in the subject matter?"* and *"whether the decree could adversely affect that interest?"* This distinction is fundamental. If a litigant could obtain a decree concerning the entire property by deliberately or inadvertently omitting an affected co-owner/co-sharer, the protective purpose of Section 12(2) CPC would be defeated by the very fact of non-joinder of said co-owner/co-sharer.

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40. The petitioners tracing their claim through Mst. Syeda Ale-Fatima placed before the Court the relevant family tree and revenue record to substantiate their asserted connection with the property. Even if ultimately their exact proprietary share required determination, that circumstance did not deprive them of standing to challenge a decree which purported to operate against the very property in which they claimed an inherited share.

41. This Court's decision in supra mentioned *Hamid Nasrullah Ranjha*'s case, further demonstrates the principle. An affected person who was not effectively a party to the original adjudication was nevertheless permitted to invoke Section 12(2) CPC, and the original decree was set aside so that the substantive controversy could be determined after affording the affected party an opportunity to participate.

42. The Supreme Court's exposition in *supra* **PLD 2024 SC 262** makes the matter even clearer: Section 12(2) CPC is precisely designed to permit the Court to examine the validity of a decree at the instance of a person who is adversely affected by it, even though such person did not appear in the original litigation. Consequently, the conclusion of the courts below that the heirs of Mst. Syeda Ale-Fatima had no locus standi merely because they were not parties to the agreement is legally *erroneous*.

43. There is also a significant factual development which deserves separate treatment. The record now before this Court contains the judgment and decree dated **06.05.2024** in Civil Suit No.3908 of 2024, whereby the learned Civil Judge,

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Rawalpindi declared the surviving heirs of Syed Shujat Ali Naqvi. The judicial record identifies Syeda Saba Fatima Naqvi and the legal representatives of deceased Syed Sakhawat Ali Naqvi and Syeda Qamar Fatima Naqvi as the persons entitled to inherit the estate, subject to the qualification recorded in the decree concerning any heir inadvertently left out.

44. The learned Additional District Judge, while maintaining the Trial Court's order, placed reliance on the alleged failure of the petitioners to establish their "connectivity" with the deceased. That reasoning loses much of its force in light of the judicial declaration now forming part of the record. More importantly, the heirship decree is not being invoked here to reopen the merits of any succession dispute. It is relied upon for the limited purpose of demonstrating the petitioners' representative capacity and their entitlement to continue the legal challenge after the death of Syed Shujat Ali Naqvi.

45. It is settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, stands automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws. Reliance in this regard is placed on cases cited as "Nawab Syed Raunaq Ali etc. Vs. Chief Settlement Commissioner & Others" **(PLD 1973 SC 236).** Similarly, it has been held in case law titled as **"**Lahore Development Authority Vs. Firdous Steel Mills (Pvt.) Limited" **(2010 SCMR 1097)** that:-

> 10. It is settled proposition of law that **fraud cannot be directly proved, it has to be inferred from the surrounding**

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> **circumstances and conduct of the parties. It is also well-settled law that fraud vitiates the most solemn proceedings**. Reference may be made to the following cases:-
>
> > (i) Talab Hussain and others v. Member Board of Revenue and others 2003 SCMR 549, (ii) Lal Din and another v. Muhammad Ibrahim 1993 SCMR 710 and (iii) Chief Settlement Commissioner Lahore v. Raja Muhammad Fazil Khan and others PLD 1975 SC 331."
>
> **(Emphasis supplied)**

Reliance in this respect can also be placed upon case law titled "Sindh Irrigation and Drainage Authority Vs. Government of Sindh and others" **(2022 SCMR 595)**.

46. In view of the foregoing discussion, both W.P. No.3702 of 2025 and W.P. No.3749 of 2025 are **allowed**. Consequently:-

(i) the consolidated judgment dated 10.09.2025 passed by the learned Additional District Judge (East), Islamabad in Civil Revision Nos. UN/126407 and UN/126385 is set aside;

(ii) the consolidated order dated 17.02.2025 passed by the learned Civil Judge Class-I (East), Islamabad on the applications under Section 12(2), C.P.C. is set aside;

(iii) the order and decree dated 27.07.2023 passed in the original suit titled "Imran Pervez v. Syed Shujat Ali Naqvi and others" is likewise set aside;

(iv) the original suit shall stand restored to the stage immediately preceding the alleged admission/consent upon which the impugned decree was passed;

(v) the learned Trial Court shall ensure proper substitution of the legal heirs of deceased Syed Shujat Ali Naqvi and shall consider, in accordance with law, the application of the heirs of Mst. Syeda Ale-Fatima Naqvi for their impleadment as necessary and/or proper parties under Order I Rule 10, C.P.C., insofar as their asserted proprietary interest is concerned;

(vi) the learned Trial Court shall thereafter proceed with the suit strictly in accordance with law;

(vii) while deciding the revived suit, the learned Trial Court shall remain uninfluenced by any observations contained

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in the present judgment concerning the ultimate validity of the alleged agreement to sell, the proprietary shares of the parties, or any other issue which falls to be determined on evidence; and

(viii) any amount deposited by the plaintiff pursuant to the earlier proceedings shall remain subject to the final adjudication of the revived suit and shall not be released or appropriated merely on the strength of the annulled decree.

47. The learned Trial Court is directed to proceed with the restored suit expeditiously, preferably without granting unnecessary adjournments, keeping in view the age of the litigation and the nature of the property involved, within four months from the receipt of copy of this judgment. The parties are directed to appear before the learned court below on **01.10.2026**.

(CHIEF JUSTICE)

*Shamroz Ali**

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APPROVED FOR REPORTING

(CHIEF JUSTICE)