

# **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Arshad Hussain Khan***  
***Mr. Justice Amjad Ali Sahito***

## **High Court Appeal No.131 of 2016**

Appellant : Mrs. Sara Ahmed Soomro D/o Ahmed  
Mian Soomro through Mr. Mukesh Kumar  
G. Karara, Advocate

Respondents : Mrs. Sarwat un Nisa & others  
through  
Mr. Raja Muhammad Safeer,  
Advocate for Respondent No.1

M/s. Muhammad Zeeshan Abdullah,  
Adnan Abdullah, Salim Salam Ansari  
& Okash Mustafa, Advocates for  
Respondents No.2, 3 & 5

Date of Hearing : 08.04.2026

Date of Judgment: 16.04.2026

## **J U D G M E N T**

**Amjad Ali Sahito, J.-** The instant High Court Appeal, instituted under Section 3 of the Law Reforms Ordinance, 1972, read with Section 15 of the Civil Procedure (Amendment) Ordinance, is directed against the judgment dated 28.03.2016, rendered in J.M. No.10 of 2009, filed under Section 12(2) of the Code of Civil Procedure, 1908, arising out of Suit No.702 of 2000, whereby the said Judicial Miscellaneous application, along with all pending applications, was dismissed.

2. Succinctly stated, the facts giving rise to the instant proceedings are that the appellant, Ms. Sara, being the daughter of Respondent No.1, Ms. Sarwat un Nisa, along with the said respondent, instituted Suit No.702 of 2000 against the respondents, seeking declaration, permanent injunction, and recovery of assets in respect of the properties left by her late father, Ahmed Mian Soomro. The said suit was initially contested; however, during its pendency, the appellant proceeded

abroad. Thereafter, a compromise application was filed, purportedly signed by Respondent No.1 both in her personal capacity and as attorney of the appellant. The said application was duly endorsed by the learned counsel for the parties and was allowed by the Court. Consequently, the suit was disposed of in terms of the compromise, and a decree was passed accordingly. Subsequently, upon her return to Pakistan in the year 2008, the appellant came to know of the said compromise and the decree passed pursuant thereto. It is her case that Respondent No.1, her mother, later apprised her that she had not received any share under the alleged settlement and that the compromise application had been filed without full knowledge and appreciation of the true facts and circumstances of the case.

3. Being aggrieved, the appellant instituted Judicial Miscellaneous No.10 of 2009 under Section 12(2) of the Code of Civil Procedure, 1908, seeking setting aside of the compromise decree on the grounds of fraud and misrepresentation. However, the said application was dismissed by the learned Single Bench. Feeling dissatisfied with the impugned order, the appellant has preferred the instant High Court Appeal, assailing the judgment dated 28.03.2016.

4. Mr. Mukesh Kumar G. Karara, learned counsel appearing on behalf of the appellant, contended that the impugned compromise decree is liable to be set aside, as the same was procured without lawful authority and through misrepresentation. He submitted that the Special Power of Attorney executed in favour of Respondent No.1 was restricted to a single property, i.e., the petrol pump property, and did not authorize her to enter into any compromise in respect of the entire suit or to deal with the other properties mentioned in the plaint. It was further argued that the compromise application encompassed properties beyond the scope of the suit, which, prima facie, renders the same unauthorized and illegal.

5. Learned counsel further contended that the Vakalatnama executed in favour of the learned counsel did not vest unfettered authority to enter into a compromise, particularly in relation to

properties not forming part of the subject matter of the suit. He emphasized that the appellant had no knowledge of the alleged compromise or the decree at the relevant time and only became aware thereof upon her return to Pakistan in the year 2008; hence, the question of limitation does not arise in the present case. In conclusion, he prayed that the impugned judgment be declared void and of no legal effect, and be set aside accordingly. In support of his contentions, he has relied upon the cases reported as *Moiz Abbas vs. Mrs. Latifa and others* (2019 SCMR 74), *Imam Din and 4 others vs. Bashir Ahmed and 10 others* (PLD 2005 Supreme Court 418), *Gulistan Textile Mills Ltd. and another vs. Soneri Bank Ltd. and another* (2018 CLD 203), *Muhammad Akhtar vs. Mst. Manna and 3 others* (2001 SCMR 1700), *Hassan Akhtar and others vs. Azhar Hameed and others* (PLD 2010 Supreme Court 657), *Fida Muhammad vs. Pir Muhammad Khan* (PLD 1985 Supreme Court 341), *Messrs Dadabhoy Cement Industries Limited and others vs. Messrs National Development Finance Corporation* (2002 CLC 166), *Mrs. Anis Haider and others vs. S. Amir Haider and others* (2008 SCMR 236), *Mst. Bibi Sahiba and 9 others vs. Mustaqir Shah and others* (2002 SCMR 1838), *Mst. Nasira Khatoon and another vs. Mst. Aisha Bai and 12 others* (2003 SCMR 1050), *Mst. Ashraf Bibi and others vs. Muhammad Amin and others* (2008 SCMR 1434) and *Syeda Abida Sultana vs. Sub-Registrar T. Division and 5 others* (2008 YLR 1900).

6. On the other hand, Raja Muhammad Safeer, Advocate appearing on behalf of Respondent No.1 argued that the Respondent No.1 had no complete knowledge or proper understanding of the contents and implications of the compromise application at the time of signing the same; that the compromise was executed without full awareness of the material facts and without any independent benefit accruing to her therefrom. Learned counsel further argued that respondent No.1 did not receive any share or advantage out of the alleged settlement, which itself casts doubt on the genuineness and fairness of the compromise; that respondent No.1 cannot be held

to have consciously or validly consented to a compromise which neither protected her own interest nor that of the appellant.

7. Conversely, M/s. Muhammad Zeeshan Abdullah, Adnan Abdullah, Salim Salam Ansari, and Okash Mustafa, learned Advocates appearing on behalf of Respondents No.2, 3, and 5, have fully supported the impugned judgment and decree. It was contended that the compromise was validly executed, duly signed by the parties, their attorney, as well as the respective learned counsel, and was rightly acted upon by the Court.

8. Learned counsel for Respondents No.2, 3, and 5, while placing reliance upon their written synopsis, argued that the entire case set up by the appellant under Section 12(2) of the Code of Civil Procedure, 1908, is misconceived and an afterthought. It was submitted that the institution of the suit, engagement of counsel, and execution of the Vakalatnama are admitted facts, and the appellant's denial is confined only to the consent order dated 23.12.2004, which cannot be selectively impugned.

9. It was further contended that the compromise application was duly signed by the learned counsel for the appellant, and the Vakalatnama expressly conferred authority upon such counsel to enter into a compromise. Learned counsel emphasized that, in any event, under settled law, a counsel is deemed to possess such authority in the absence of any express restriction, and notably, no allegation of fraud has been levelled against the learned counsel concerned.

10. They next contended that the appellant has admittedly derived benefits from the compromise, particularly by disposing of the petrol pump property through a registered sale deed and receiving valuable consideration therefrom. It was further argued that the application under Section 12(2) CPC was filed belatedly and is clearly an afterthought, as the appellant remained silent for several years despite participating in post-decree proceedings and enjoying the monetary benefits flowing from the compromise.

11. Learned counsel also submitted that the inclusion of the petrol pump property in the compromise formed part of an overall settlement intended to obviate future disputes, including potential claims of benami ownership, and thus constituted a lawful and integral component of the compromise. Lastly, it was contended that even if certain properties were beyond the original scope of the suit, the same could validly be incorporated in a compromise under Order XXIII Rule 3 CPC, as a compromise essentially embodies an agreement between the parties, which the Court is bound to record in its entirety, provided it is lawful. In support of the contentions, learned counsel has relied upon the cases reported as Messrs Arokey Ltd. and another vs. Munir Ahmed Mughal and 3 others (PLD 1982 Supreme Court 204), ANSW Enterprises & 2 others vs. Askari Commercial Bank Ltd. Lahore through Head Office, Rawalpindi (2001 PSC 120), Mst. Bashiran Bibi and others vs. Jewni and others (1997 SCMR 1079), Order passed in CPLA Nos.962/2023 to 964/2023 [Riaz Hussain vs. Chairman Federal Land Commissioner Etc.] by Hon'ble Federal Constitutional Court of Pakistan.

12. We have heard the learned counsel for the parties at considerable length and, with their able assistance, have carefully perused the material available on record, including the written synopses submitted by the respective parties.

13. The pivotal controversy in the present matter pertains to the legality and validity of the compromise decree passed in Suit No.702 of 2000, and the allegations of fraud and misrepresentation as asserted by the appellant in proceedings under Section 12(2) of the Code of Civil Procedure, 1908. The case of the appellant is that the compromise application was filed without her knowledge and beyond the scope of authority conferred upon Respondent No.1, and that the same has resulted in the deprivation of her lawful share in the properties left by her deceased father.

14. It is an admitted position that the appellant/Plaintiff No.2 and her mother Mrs. Sarwat-un-Nisa/Plaintiff No.1/Respondent No.1 had instituted the suit No.702 of 2000, duly engaged

learned counsel, and executed a Vakalatnama authorizing such counsel to act and plead on her behalf. The compromise application on record bears the signatures of the learned counsel representing the appellant/Plaintiffs No.1 & 2, as well as Respondent No.1/Plaintiff No.1. Significantly, no allegation of fraud, collusion, or professional misconduct has been levelled against the said counsel or against Plaintiff No.1/Respondent No.1.

15. In these circumstances, the contention that the compromise was entered into without lawful authority is wholly untenable, particularly in view of the express authorization contained in the Vakalatnama empowering counsel to enter into a compromise. Moreover, the Special Power of Attorney available at page 405 of the record unequivocally demonstrates that the appellant had appointed her mother, Mst. Sarwat, as her lawful and special attorney with wide-ranging powers, including but not limited to swearing affidavits, making statements, producing oral and documentary evidence, entering into agreements, and compromising or compounding all disputes and matters pertaining to the subject property on her behalf.

16. Upon a specific query put to the learned counsel for the appellant as to whether any legal or penal proceedings had been initiated against Respondent No.1/Plaintiff No.1 for allegedly signing the compromise application on behalf of the appellant/Plaintiff No.2, and committed fraud with the appellant, it was candidly conceded that no such proceedings have been instituted.

17. A perusal of the record further reveals that on 23.12.2004, an application for urgent hearing was filed by Mr. Ch. Abdul Rasheed appearing on behalf of appellant/plaintiff No. 2 and Respondent No.1/plaintiff No.1 in Suit No.702 of 2000, which was allowed, and the matter was heard, culminating in an order of even date. It would be advantageous to reproduce the relevant portion of the said order to demonstrate that both the appellant and Respondent No.1 were fully aware of, and had acquiesced in, the compromise arrived at between the parties. *“It appears that*

*the parties have arrived at a settlement out of the court in terms of the agreement executed by and between them dated 12.2.2000 and 18.2.2000 excepting penalty clause therein. Parties herein agree to abide by the agreement arrived at by them. Through this application parties also seeks appointment of Official Assignee as Receiver/Commissioner to implement the terms and condition of the compromise arrived at between them. By consent Official Assignee is appointed as Receiver/Commissioner for the purpose of administration and distribution of properties amongst the legal heirs of Late Ahmed Mian Soomro in terms of this compromise application.”*

18. Further, on 11.01.2000, J.M. No. 39/2005 under Section 12(2), C.P.C. was instituted by one Mr. Iftikhar Soomro in respect of property, namely Plot Nos. 1, 2 and 3, Railway Quarters Road, Karachi. The said judicial miscellaneous application was subsequently disposed of vide consent order dated 11.03.2008, whereby the Karachi property was deleted from the list of properties mentioned in the compromise application.

19. Furthermore, the conduct of the appellant unequivocally establishes that she not only had full knowledge of the compromise but also acted upon the same. The record reveals that, shortly after the passing of the order, the appellant proceeded to sell the Petrol Pump property through a registered sale deed and received valuable consideration therefrom. The sale Deed was also signed by Mrs. Sarwat-un-Nisa as witness. Moreover, her own pleadings reflect that she accepted certain payments in pursuance of the settlement. Such conduct is manifestly inconsistent with her plea that she was unaware of the compromise or that the same was procured through fraud.

20. It is by now a settled proposition of law that, in the absence of any express limitation or prohibition, counsel duly engaged in a matter is deemed to possess the authority to enter into a compromise on behalf of his or her client. This principle has been consistently affirmed by the superior courts, holding that acts performed by duly authorized counsel within the ambit of the Vakalatnama are binding upon the client. The underlying

rationale of this doctrine is to ensure certainty and finality in judicial proceedings and to preclude parties from subsequently resiling from actions validly undertaken on their behalf.

21. In such circumstances, the onus squarely rests upon the party alleging lack of authority to establish that specific restrictions had been imposed upon the counsel, thereby negating the presumption of authority. Reliance is placed in the case of Hassan Akhtar and others v. Azhar Hameed and others [PLD 2010 SC 657], wherein the Hon`ble Supreme Court of Pakistan held as under:

*“13. It is by now well-settled that an Advocate has authority to make statement on behalf of his client, which is binding upon the client, unless there is any thing contrary in the Vakalatnama putting restriction on the authority of the Advocate to compromise or abandon claim on behalf of the client. The Advocate's power in the conduct of a suit allows him to abandon the issue, which in his discretion, advisable in the general interest of his client.”*

*“16. Where Vakalatnama is given, the counsel empowered to compromise the suit without any express authority from his client unless such powers are specifically countermanded by the client.”*

22. As regards the contention of the appellant that she was residing abroad and, therefore, had no knowledge of the compromise, the same does not, in the peculiar facts and circumstances of the present case, advance her cause. The record reflects that Respondent No.1, who is none other than the appellant's mother, was actively participating in the proceedings. It also stands acknowledged during the course of evidence that, notwithstanding her residence abroad, the appellant continued to be duly represented through engaged counsel.

23. It is further observed that the stance adopted by learned counsel for Respondent No.1, to the effect that she had no proper knowledge of the contents of the compromise and did not derive any financial benefit therefrom, does not inspire confidence. If such a contention is accepted at face value, it gives rise to several serious and unanswered questions: as to why Respondent No.1

appended her signature to the compromise application; why she failed to inform the appellant, her real daughter, about such a material development in the pending litigation; and why she remained silent and did not take any steps to challenge the compromise at any stage, particularly when, according to her own case, she derived no benefit therefrom. Such conduct is inherently inconsistent and does not advance the appellant's case.

24. Learned counsel for Respondents No.2, 3, and 5 has invited our attention to page 419 of the court file and contended that both the appellant and Respondent No.1 were fully aware of the compromise decree. This contention finds support from the case diary dated 15.12.2008, recorded by the Official Assignee, wherein the attendance of the appellant, Mrs. Sara Ahmed, and Respondent No.1 is reflected in the following terms: "*The plaintiff along with Mst. Sarwat-un-Nisa and Mst. Sarah Soomro is present.*" In such circumstances, the plea of complete ignorance cannot be accepted as a matter of course.

25. Moreover, the argument that the application under Section 12(2) CPC was filed upon discovery of fraud is not borne out from the appellant's own conduct. If, as alleged, she remained unaware of the compromise until the year 2008, it is inconceivable that she could, at the same time, deal with properties forming part of the settlement, receive consideration therefrom, and participate in proceedings connected thereto. Such contradictory conduct renders her plea wholly untenable.

26. We also find substance in the contention that the inclusion of the Petrol Pump property formed part of a comprehensive settlement between the parties, intended to resolve all existing as well as apprehended disputes, including claims relating to ownership. It is a settled principle that a compromise under Order XXIII Rule 3 CPC may extend beyond the strict confines of the suit, provided it constitutes a lawful agreement between the parties.

27. In the totality of the circumstances, the plea of fraud and misrepresentation appears to be an afterthought, raised only after the appellant had already availed the benefits flowing from the compromise. The appellant cannot be permitted to approbate and reprobate, accepting the beneficial aspects of the settlement while subsequently seeking to challenge the same when it no longer suits her convenience.

28. We are also mindful of the settled principle that proceedings under Section 12(2) CPC are not to be invoked as a substitute for an appeal, nor to reopen concluded transactions on the basis of belated and unsubstantiated allegations. The compromise in question pertains to a transaction which has already been acted upon, rights have accrued thereunder, and third-party interests may also have intervened. Any interference in such circumstances would unsettle settled matters and run contrary to the doctrine of finality of litigation.

29. We have also given anxious consideration to the case law relied upon by learned counsel for Respondents No.2, 3, and 5, which, in our considered view, squarely applies to the facts of the present case. It is by now well-settled that jurisdiction under Section 12(2) CPC is a special and extraordinary remedy, to be construed strictly and invoked only where a clear case of fraud, misrepresentation, or lack of jurisdiction is made out. In the present case, apart from bald and unsubstantiated assertions, no material has been brought on record to demonstrate that the compromise was vitiated by fraud or misrepresentation, particularly when no allegation of any nature whatsoever has been levelled against the learned counsel, who admittedly signed the compromise application on behalf of the appellant and Respondent No.1, nor against Respondent No.1 herself, who had also appended her signature thereto on behalf of the appellant.

30. The case laws relied by learned counsel for the appellant are distinguished from the facts and circumstances of the case; hence, the same are not applicable in the present case.

31. In view of the foregoing discussion, we are in agreement with the findings recorded by the learned Single Judge, who has rightly concluded that no case for interference under Section 12(2) CPC was made out. Resultantly, we find no merit in the instant appeal. The same is hereby dismissed, and the order passed by the learned Single Judge is maintained.

**JUDGE**

**JUDGE**

KAMRAN/PS