

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

W.P.No.1412 of 2020

Rubina Amjad

**Versus**

Javaid Shafique Siddiqui and others

**Dates of Hearing:** 30.08.2021, 06.10.2021, 03.11.2021, 13.12.2021, 20.12.2021, 28.01.2022 and 13.09.2022

**Petitioner by:** Mr. Muhammad Nazir Jawad, Advocate

**Respondents by:** Ch. Muhammad Atiq and Ch. Muhammad Umar, Advocates for respondent No.1  
Syed Hasnain Ibrahim Kazmi, M/s Muhammad Akram Shaheen and Kalsoom Akhtar, Advocates for respondent No.2  
Mr. Iqbal Hassan, Advocate for C.D.A./respondent No.8  
Barrister Sara Seerat and Mr. Salaar Khan, Advocate, Amici Curiae  
Mr. Danish Ali, OG-II, representative of Askari Bank Limited/respondent No.6

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition the petitioner, Rubina Amjad, impugns the order dated 27.01.2020 passed by the Court of the learned Civil Judge, Islamabad, whereby her application under Section 12(2) of the Code of Civil Procedure, 1908 (“C.P.C.”) against the judgment and decree dated 08.02.2017, was dismissed.

2. The record shows that vide allotment letter No.CDA/EM-27(194)/71 dated 22.09.1971, the Capital Development Authority (“C.D.A.”) allotted Plot No.13-I, Markaz F-7, Islamabad to Mrs. Saeeda Shafique. After construction of a building on the said plot was completed, a lease deed was executed on 30.01.1985 between the C.D.A. and Mrs. Saeeda Shafique with respect to the said plot for a period of thirty-three years. It is not disputed that Mrs. Saeeda Shafique transferred 2/3<sup>rd</sup> share in the said plot to her two sons namely Pervaiz Shafique Siddiqui / respondent No.2 (“Pervaiz”) and Iqbal Shafique Siddiqui / respondent No.3 (“Iqbal”).

3. Mrs. Saeeda Shafique died on 08.01.2011. She was survived by her husband, Shafique A. Siddique, who died on 10.02.2017; three sons namely (i) Javaid Shafique Siddiqui / respondent No.1 (“Javaid”), (ii)

Pervaiz and (iii) Iqbal; and three daughters namely Rubina Amjad / petitioner (“Rubina”), Shahnaz Shafique Siddiqui / respondent No.4 (“Shahnaz”) and Gulnar Shafique Siddiqui / respondent No.5 (“Gulnar”). The Court of the learned Senior Civil Judge, Islamabad, on 08.01.2013, issued a succession certificate recognizing Mrs. Saeeda Shafique’s husband, three sons and three daughters as her legal heirs.

4. On 16.03.2013, Rubina filed a suit for declaration and separate possession through partition of Mrs. Saeeda Shafique’s properties before the Court of the learned Civil Judge, Lahore. Javaid, who was defendant No.2 in the said suit, raised an objection to the maintainability of the said suit on the ground that the properties situated in Islamabad could not have been made part of the subject matter of the said suit. Due to the said objection, Rubina withdrew the said suit only to the extent of the properties situated in Islamabad.

**SUIT NO.458/2015 TITLED “RUBINA AMJAD VS. SHAFIQUE A. SIDDIQUI ETC.” FILED BEFORE THE LEARNED CIVIL COURT AT ISLAMABAD:-**

5. On 05.01.2015, Rubina instituted a suit for declaration, cancellation of document, recovery of rental amounts / *mesne* profits, and permanent and mandatory injunction before the Court of the learned Civil Judge, Islamabad. In the said suit, Rubina had sought a declaration to the effect that all the legal heirs of Mrs. Saeeda Shafique are owners of her share in properties including commercial building on Plot No.13-I, Markaz F-7, Islamabad (“Property No.1”) and House No.1, Street No.4, Sector F-6/3, Islamabad (“Property No.2”) in accordance with the Islamic law of inheritance. Rubina had also sought a declaration to the effect that the memorandum of gift dated 14.12.2010, on the basis of which Javaid asserted ownership over 1/3<sup>rd</sup> share in Property No.1, was fake, fabricated, bogus, and liable to be cancelled. She had also sought a declaration to the effect that Javaid’s claim that Shafique A. Siddiqui, Shahnaz and Gulnar had orally gifted their respective shares in Property No.2 to him to be unlawful.

6. Javaid contested the said suit by filing a written statement wherein it was pleaded *inter alia* that 1/3<sup>rd</sup> share in Property No.1 belonging to Mrs. Saeeda Shafique had been orally gifted to him and that he had taken over

possession of the said share on 28.08.2010. It was also pleaded that the said oral gift was confirmed through a memorandum of gift dated 14.12.2010. Shafique A. Siddiqui (Mrs. Saeeda Shafique's widower) had also filed a written statement to Rubina's suit pleading that 1/3<sup>rd</sup> share in Property No.1 had been gifted by his wife to Javaid. As regards Property No.2, it was pleaded that Shafique A. Siddiqui, Shahnaz and Gulnar had orally gifted their shares in the said property to Javaid, and that an acknowledgment of the gift in this regard was executed by the said donors on 28.08.2012.

**SUIT NO.153/2016 TITLED "JAVAID SHAFIQUE SIDDIQUI VS. PUBLIC AT LARGE ETC." FILED BEFORE THE LEARNED CIVIL COURT AT ISLAMABAD:-**

7. On 14.04.2016, Javaid filed a suit for declaration, partition and permanent injunction wherein it was pleaded that Shafique A. Siddiqui, Shahnaz and Gulnar had gifted their shares in Property No.2 to Javaid and had executed acknowledgments of the gift on 28.08.2012. In the said suit, it was prayed that in view of the said gift, Javaid be declared as the owner in possession of his own share as well as those of Shafique A. Siddiqui, Shahnaz and Gulnar in Property No.2. Javaid had also sought a direction to the C.D.A. to record himself, Pervaiz, Iqbal, and Rubina as co-owners of the said property. Javaid had also sought the partition of Property No.2 between himself, Pervaiz, Iqbal, and Rubina.

**SUIT NO.154/2016 TITLED "JAVAID SHAFIQUE SIDDIQUI VS. PUBLIC AT LARGE ETC." FILED BEFORE THE LEARNED CIVIL COURT AT ISLAMABAD:-**

8. On 14.04.2016, Javaid filed a suit for declaration, partition and permanent injunction wherein it was pleaded that Mrs. Saeeda Shafique had gifted her 1/3<sup>rd</sup> share in Property No.1 to Javaid and in this regard had executed a memorandum of gift on 14.12.2010. It was also pleaded that Shafique A. Siddiqui, Pervaiz, Iqbal, Shahnaz and Gulnar had executed acknowledgments dated 28.07.2012, 06.08.2012 and 06.07.2015 acknowledging the execution of the said memorandum of gift. In the said suit, Javaid prayed for a declaration to the effect that he is the absolute owner of Mrs. Saeeda Shafique's share in Property No.1 on the basis of the oral gift and memorandum of gift dated 14.12.2010.

**SETTLEMENT AND ACKNOWLEDGMENT AGREEMENT DATED 20.09.2016 (“SETTLEMENT AGREEMENT”):-**

9. It was during the pendency of civil suits No.458/2015, 153/2016 and 154/2016 that a settlement was arrived at between Rubina on the one hand and Javaid, Pervaiz and Iqbal on the other. The terms of this agreement show that the three brothers paid Rs.25 million to Rubina through (i) pay order No.01906871, dated 20.09.2016 for an amount of Rs.21 million drawn on Silk Bank Limited, and (ii) pay order No.03657006, dated 20.09.2016 for an amount of Rs.4 million drawn on Faysal Bank Limited, as *“full and final settlement of [Rubina’s] claims to meet all her deprivations in the past, if any and shares of Mr. Shafique A. Siddiqui (father) in any company at present or in the past and in Commercial and Residential buildings in Islamabad, [and] jewelry if any.”* Paragraphs 6(i) and (ii) of the said agreement show that Rubina was obligated to unconditionally withdraw the suit titled “Rubina Amjad Vs. Shafique A. Siddiqui etc.” pending before the learned Civil Court at Islamabad, and to file an application praying for the suit titled “Javaid Shafique Siddiqui Vs. Public at Large etc.” to be decreed, whereas paragraph 6(iii) of the said agreement shows that Rubina was obligated to withdraw her applications filed under Order I, Rule 10 C.P.C. in the ejectment petitions filed by Javaid and Iqbal against tenants in Property No.1. Furthermore, she was placed under an obligation to make all efforts and give a statement recognizing the petitioners in the said ejectment petitions to be the sole owners and landlords *“of the commercial building.”*

10. It is not denied that Rubina had issued a receipt for having received two pay orders for a cumulative amount of Rs.25 million from her brothers pursuant to the terms of the said agreement dated 20.09.2016.

11. The order sheet of both the suits instituted by Javaid (i.e., suits No.153/2016 “Javaid Shafique Siddiqui Vs. Public at Large etc.” and 154/2016 “Javaid Shafique Siddiqui Vs. Public at Large etc.”) reveal that Rubina’s counsel, on 21.09.2016, produced a copy of the settlement agreement dated 20.09.2016 as Exh.C/1 and applied for the said suits to be decreed in favour of Javaid. Rubina’s counsel also recorded his statement to the effect that he does not object to the said suits instituted

by Javaid being decreed. Accordingly, vide judgments and decrees dated 08.02.2017, the learned Civil Court decreed the said suits. The operative part of the judgment dated 08.02.2017 whereby civil suit No.154/2016 (which pertains to Property No.1) was decreed is reproduced herein below:-

*“10. In sequence to above discussion the suit of plaintiff is hereby decreed as prayed for therefore, on the basis of memorandum of gift dated 14-12-2010 plaintiff is hereby declared owner in possession of 1/3<sup>rd</sup> share in commercial property bearing No.13-I, Sector F-7 Islamabad alongwith defendants No.4 & 5 and defendant No.10 is directed to record the name of plaintiff in the relevant record subject to codal and legal formalities. As the learned counsel for the plaintiff got recorded his statement and did not press the relief as to the partition therefore, to that extent the suit of plaintiff be dismissed. Decree sheet be accordingly framed. Parties are left to bear their own costs. File be consigned to record room after due completion.”*

12. As regards suit No.458/2015 instituted by Rubina, she filed an application on 21.09.2016 before the learned Civil Court for the withdrawal of the said suit. In the second paragraph of her application, it was pleaded that *“with the intervention of elders of the family, all illusions have been cleared and misunderstandings between the families have been removed and a settlement of all issues has been made effective between the parties.”* On 21.09.2016, the learned Civil Court recorded the statement of Rubina’s counsel to the effect that due to the settlement between the parties, the suit should be dismissed as withdrawn. Vide order dated 03.10.2016, the learned Civil Court allowed Rubina’s application for the withdrawal of her suit and consequently the said suit was dismissed as withdrawn.

**APPLICATION UNDER SECTION 12(2) C.P.C. FILED BY SHAHNAZ AGAINST THE JUDGMENT AND DECREE DATED 08.02.2017 WHEREBY SUIT NO.154 OF 2016 TITLED “JAVAID SHAFIQUE SIDDIQUI VS. PUBLIC AT LARGE ETC.” WAS DECREED:-**

13. On 09.09.2017, Shahnaz filed an application under Section 12(2) C.P.C. against the judgment and decree dated 08.02.2017 whereby suit No.154/2016 filed by Javaid with respect to Property No.1 had been decreed. Rubina contested the said application by filing a written reply. In the said reply, it was pleaded *inter alia* that even though Shahnaz had been in the knowledge of the civil suit that culminated in the passing of the judgment and decree dated 08.02.2017, she opted not to appear before

the Court or to join the proceedings. Furthermore, it was pleaded that Shahnaz had tried to mislead the Court by portraying that she had approached the Court for cancellation of the acknowledgment dated 06.08.2012 executed by her in favour of Javaid wherein she had admitted the execution of the memorandum of gift dated 14.12.2010 by her mother (Mrs. Saeeda Shafique) in favour of Javaid. Vide order dated 11.03.2019, the learned Civil Court disposed of the said application.

**APPLICATION UNDER SECTION 12(2) C.P.C. FILED BY RUBINA AGAINST THE JUDGMENT AND DECREE DATED 08.02.2017 WHEREBY SUIT NO.154 OF 2016 TITLED “JAVAID SHAFIQUE SIDDIQUI VS. PUBLIC AT LARGE ETC.” WAS DECREED:-**

14. On 25.11.2019 (i.e., two years and nine months after the judgment and decree dated 08.02.2017), Rubina filed an application under Section 12(2) C.P.C. assailing the judgment and decree dated 08.02.2017 passed in suit No.154/2016 titled “Javaid Shafique Siddiqui Vs. Public at Large etc.” which was with respect to Property No.1. In the said application, Javaid was respondent No.1 whereas Pervaiz and Iqbal were impleaded as respondents No.2 and 3, respectively. In the said application, Rubina’s version as regards the withdrawal of her suit and the decree passed in the two suits instituted by Javaid as well as her interpretation of the settlement agreement dated 20.09.2016 is set out in paragraph 6 of the said application which for the purposes of clarity is reproduced herein below:-

*“That during the pendency of abovementioned suits one filed by petitioner and two filed by respondent No.1 a broader consensus was reached between petitioner and respondents No.1 to 3 and it was agreed that abovementioned suit would be got decided as soon as possible and petitioner would not press of partition of suit property as well as a house No.1, Street No.4, Sector F-6/3, Islamabad which would be sold by the petitioner and respondents No.1 to 3 by themselves after adjustment of rights of other co-sharers but share of the petitioner be kept intact in both the properties and for past discriminations, deprivations and to earn the trust and to satisfy the past unjust treatment and to appease and console petitioner an amount of Rs.25 million were paid to the petitioner and a Settlement and Acknowledgment Agreement was prepared and filed in the suit and in pursuance of said settlement and assurance from the respondent No.1 to 3 that her share in the suit property i.e. commercial building No.13-I, Sector F-7 Markaz, Jinnah Super Market, Islamabad and house No.1, Street No.4, Sector F-6/3, Islamabad out of the legacy of predecessor in interest of petitioner (Saeeda Shafique) would remain intact and she would not press of partition of the abovesaid property now but after adjustment of rights of the other legal heirs and properties being owned by less co-sharers then they would be sold by the petitioner and*

*respondents No.1 and 3 by themselves which would attract a better bargain and price. Thereupon petitioner withdrew her suit for Declaration, Cancellation or Document, Recovery of Rental Amount / Mesne Profit, Permanent & Mandatory Injunction and Partition etc titled "Rubina Amjad ....Vs... Shafique A Saddiqui etc", and got recorded her conceded statements through counsels in both the suits titled "Javaid Shafique Saddique ...Vs... Public at Large etc" a Suit for Declaration, Partition and Permanent Injunction regarding suit property as well as house No.1, Street No.4, Sector F-6/3, Islamabad that she has no objection if both the suit are decreed in favour of respondent No.1."*

15. Vide order dated 27.01.2020, the learned Civil Court dismissed Rubina's application under Section 12(2) C.P.C. The said order was assailed by Rubina in a revision petition filed on 26.02.2020 before the Court of the learned District Judge, Islamabad. Rubina had not annexed the certified copies of the record along with her revision petition. Therefore, she sought the withdrawal of her revision petition with permission to file afresh. Vide order dated 27.02.2020, the Court of the learned Additional District Judge, Islamabad dismissed the revision petition with permission to file afresh.

16. The Code of Civil Procedure (Amendment) Act, 2020 was enacted on 18.02.2020, Section 15 whereof substituted Section 115 C.P.C. with the following:-

*"115. Revision.--Any party aggrieved by an order under Section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case may be, may within thirty days of the said order may file a revision to the High Court on an obvious mis-apprehension of law or in respect of a defect in jurisdiction."*

17. On 19.05.2020, Rubina filed the instant writ petition against the order dated 27.01.2020 whereby the learned Civil Court dismissed her application under Section 12(2) C.P.C.

18. It may be mentioned that on 28.04.2020, Rubina has filed yet another suit for declaration, partition / administration, permanent and mandatory injunction against *inter alia* her brothers before the Court of the learned Civil Judge, Lahore. In paragraph 6 of the said suit, it is pleaded that her brothers had *"managed and maneuvered fabricated documents and statements and by attributing to [the petitioner] in the name of alleged compromise, settlement and relinquishment etc."* and that her brothers

tried to usurp her share in her mother's inheritance in properties including Property No.1.

19. Learned counsel for the petitioner / Rubina, after narrating the facts leading to the filing of the instant petition, submitted that Javaid had asserted ownership rights over 1/3<sup>rd</sup> share in Property No.1 on the basis of an oral gift by Mrs. Saeeda Shafique and the memorandum of gift dated 14.12.2010; that Mrs. Saeeda Shafique's signatures on the said memorandum of gift are forged; that on 14.12.2010, Mrs. Saeeda Shafique was unwell and she died 25 days later, *i.e.* on 08.01.2011; that the medical report from the Doctors Hospital and Medical Centre, Lahore shows that Mrs. Saeeda Shafique was 76 years old when she was admitted in the hospital between 12.11.2010 and 16.11.2010 and between 11.12.2010 until her death on 08.01.2011; that the said report also shows that Mrs. Saeeda Shafique had undergone Haemodialysis for acute renal failure and had been Tracheostomised on 31.12.2010; that Mrs. Saeeda Shafique could not have been in a fit mental or physical state to have executed the memorandum of gift while admitted in hospital; that during the proceedings before the learned Civil Court, Rubina relied on handwriting expert's report dated 08.05.2015 according to which Mrs. Saeeda Shafique's signatures on the memorandum of gift dated 14.12.2010 are forged; that the learned Civil Court had issued summons to the handwriting expert to appear before the Court on 25.02.2016; that before the handwriting expert could be cross-examined, Settlement Agreement dated 20.09.2016 was executed between Rubina and her three brothers; that the said Settlement Agreement cannot be interpreted in a manner as to cause Rubina's share in Property No.1 that she inherited from her mother to be relinquished in Javaid's favour; that Rubina does not deny having received Rs.25 million from her brothers but this amount was in lieu of "past deprivations" and not for her share in Property No.1; that Rubina had never authorized Bashir Ahmed, Advocate to file a reply to Shanaz's application under Section 12(2) C.P.C.; that Rubina's signatures on the said reply are forged; that Rubina could not take action against Bashir Ahmed, Advocate since he had passed away; that although Rubina's lead counsel was Muhammad Rizwan Awan, Advocate, he was



not to be blamed because he had been asked by Bashir Ahmed, Advocate not to attend the proceedings before the Court; that Rubina had filed the application under Section 12(2) C.P.C. within the limitation period provided by law; that the learned Civil court erred by not framing issues and recording evidence before dismissing Rubina's application under Section 12(2) C.P.C.; and that since Rubina has been deprived of her due share in the inheritance from her mother in Property No.1, the impugned order dated 27.01.2020 is liable to be set-aside.

20. On the other hand, learned counsel for respondent No.1 / Javaid submitted that at no material stage did Rubina challenge the Settlement Agreement dated 20.09.2016; that Rubina does not deny receipt of Rs.25 million in the form of pay orders pursuant to the terms of the said Settlement Agreement; that Rubina's conduct of filing an application dated 21.09.2016 for the unconditional withdrawal of suit No.458/2015 establishes that as a result of the Settlement Agreement she was left with no share in Property No.1; that Rubina does not deny her signatures on the said application wherein it was clearly pleaded that she did not want to pursue her suit; that the said application for unconditional withdrawal of suit No.458/2015 filed by Rubina was allowed by the learned Civil Court vide order dated 03.10.2016; that Rubina's counsel had also recorded his statement on 21.09.2016 before the learned Civil Court to the effect that she had no objection if suit No.154/2016 filed by Javaid was decreed; that as a result of the said statement, Javaid's suit was decreed by the learned Civil Court on 08.02.2017; that Rubina has not filed an appeal against the said judgment and decree dated 08.02.2017; that Rubina was well aware about the import of the said judgment and decree since she had resisted her sister Shahnaz's application under Section 12(2) C.P.C. against the said judgment and decree; that in Rubina's reply to Shahnaz's said application, it was clearly pleaded that the said judgment and decree was validly passed; that the said reply bears Rubina's signatures which have not been subjected to scrutiny by a handwriting expert; that the application under Section 12(2) C.P.C. has been filed by Rubina with inordinate delay and with the purpose to extort more money from Javaid; and that the interpretation that Rubina wants to give the Settlement

Agreement is contrary to the explicit language of the same. Learned counsel for Javaid prayed for the writ petition to be dismissed with costs.

21. Learned counsel for respondent No.2 / Pervaiz adopted the arguments of the learned counsel for Javaid.

22. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 18 above and need not be recapitulated.

23. In suit No.458/2015 filed by Rubina, she had prayed for *inter alia* a declaration to the effect that she along with other legal heirs of Mrs. Saeeda Shafique are owners of Property No.1 and Property No.2 in accordance with the Islamic law of inheritance. She had also sought a declaration to the effect that the memorandum of gift dated 14.12.2010 on the basis of which Javaid claimed to be the owner of 1/3<sup>rd</sup> share in Property No.1 was fake, fabricated and bogus and liable to be cancelled.

24. Rubina does not deny the execution of the Settlement Agreement dated 20.09.2016 with her three brothers, including Javaid. Paragraph 6(i) of the said Agreement shows that Rubina was obligated to unconditionally withdraw suit No.458/2015.

25. On 21.09.2016, Rubina filed an application for the unconditional withdrawal of suit No.458/2015. In the said application, it has been pleaded *inter alia* that she does not want to pursue her suit as *“all illusions have been cleared and misunderstandings between the family have been removed and a settlement of all issues has been made effective between the parties.”* The said application has admittedly been signed by Rubina.

26. The said application was allowed by the learned Civil Court, and consequently suit No.458/2015 filed by Rubina was dismissed as withdrawn vide order dated 03.10.2016. The said order has not been recalled at any material stage.

27. Now, Rubina had filed an application under Section 12(2) C.P.C. to challenge the judgment and decree dated 08.02.2017, whereby suit No.154/2016 filed by Javaid was decreed. In the said suit, Javaid had prayed for a declaration to the effect that he was the owner of 1/3<sup>rd</sup> share

in Property No.1 on the basis of a memorandum of gift dated 14.12.2010 executed by his mother, Mrs. Saeeda Shafique, in his favour. The said judgment and decree was passed after Rubina executed the Settlement Agreement dated 20.09.2016 with her three brothers, including Javaid. This Settlement Agreement was produced before the learned Civil Court as Exh.C/1. Paragraph 6(ii) of the said Agreement obligated Rubina to file an application before the learned Civil Court praying for the suit filed by Javaid to be decreed. After the learned Civil Court recorded the statement of Rubina's counsel on 21.09.2016 to the effect that Rubina had no objection if the said suit was decreed, the learned Civil Court vide judgment and decree dated 08.02.2017 decreed the said suit.

28. By filing an application under Section 12(2) C.P.C. against the said judgment and decree Rubina is, in effect, re-agitating the very same claim of ownership of a share in Property No.1 which she had prayed for in suit No.458/2015 which she had unconditionally withdrawn. Rubina having withdrawn the said suit without permission of the Court to file afresh, had relinquished her claim agitated therein and was precluded from re-agitating the same claim in subsequent proceedings.

29. In suit No.154/2016 instituted by Javaid, he asserted his ownership rights over 1/3<sup>rd</sup> share in Property No.1 on the basis of an oral gift said to have been made by his mother in his favour and supplemented by a memorandum of gift dated 14.12.2010. He also asserted that other than Rubina, his siblings and father had executed an acknowledgment of the said gift. In suit No.458/2015 instituted by Rubina, she terms the said memorandum of gift as *"a bogus and fabricated document and the same have been prepared by [Javaid] with a malafide intention to deprive the plaintiff as well as other legal heirs from their lawful rights."* Upon unconditionally withdrawing the said suit, Rubina would be deemed to have abandoned the said assertion. Additionally, by giving consent for suit No.154/2016 instituted by Javaid to be decreed, Rubina would be deemed to have accepted Javaid's plea that his mother's 1/3<sup>rd</sup> share in Property No.1 had been gifted to him.

30. Rubina does not deny the execution of the Settlement Agreement. She, however, disputes the interpretation of the Settlement Agreement

that the rest of her family gives it. The interpretation that Rubina places on the said Agreement is encapsulated in paragraph 6 of her application under Section 12(2) C.P.C. She pleads that the Settlement Agreement was a *“broader consensus”* between herself and her brothers, and that it was agreed that the one suit filed by Rubina and the two suits filed by Javaid *“would be got decided as soon as possible and petitioner would not press [for] partition”* of Property No.1 and Property No.2 which would be sold by Rubina and her three brothers after the adjustment of the rights of other co-sharers. Furthermore, it has been pleaded that Rubina’s share in the said properties was to be kept intact in both the properties and for the past *“discriminations, deprivations and to earn the trust and to satisfy the past unjust treatment and to appease and console [the] petitioner an amount of Rs.25 million were paid to the petitioner.”*

31. I have read and re-read the Settlement Agreement but have not been able to bring myself to give it an interpretation which is in consonance with the one being given to it by Rubina. The said Agreement does not provide for Property No.1 to be sold or Rubina’s share in the said property to be kept intact after their sale. Clause 9 of the said Agreement, however, provides that Rubina shall sign a sale deed of Property No.2 whenever it is sold subject to receiving the sale proceeds of her share in the property from the prospective buyer. Rubina does not dispute that after the execution of the Settlement Agreement, Property No.2 was indeed sold and she received her entire share in the sale consideration. Unlike clause 9, there is no provision in the Settlement Agreement for the sale of Property No.1 or for Rubina to receive any of the proceeds from the sale of Property No.1.

32. In construing terms of an agreement, the conduct of the parties thereto is of vital importance. In the case of Sandoz Limited Vs. Federation of Pakistan (1995 SCMR 1431), it was held that *“it is a well settled proposition of law that in case of any ambiguity in a contract document, the Court in order to resolve it and to ascertain the real intention of the parties, can have resort to the correspondence preceding and/or subsequent to the execution of the contract document, conduct of the parties and the attending circumstances.”* Additionally, in the case of Al-

Abdullah Construction (Pvt.) Ltd. Vs. WAPDA (2003 YLR 1535), the Hon'ble High Court of Sindh *inter alia* held as follows:-

*“23. The language of a provision of contract has to be interpreted in a manner to gather the intent of the parties. But, at the same time, the eventualities which are not covered should also be read into it by examining the conduct of the parties.”*

33. After the Settlement Agreement was executed Rubina's counsel, namely Muhammad Rizwan Awan, Advocate, whose authority Rubina has not questioned at any stage, on 21.09.2016, produced a copy of the Settlement Agreement as Exh.C/1 and had his statement recorded that Rubina has no objection if suit No.154/2016 was decreed in Javaid's favour. On the very same day, the same counsel for Rubina filed an application for the withdrawal of suit No.458/2015 filed by Rubina and had his statement recorded that since the contesting parties had settled their disputes, the said suit was being withdrawn on the instruction of Rubina. Incidentally, the application under Section 12(2) C.P.C. against the judgment and decree dated 08.02.2017 passed in civil suit No.154/2016 was filed by Rubina through Muhammad Rizwan Awan, Advocate, who was the counsel on the basis of whose statement dated 21.09.2016 civil suit No.458/2015 was withdrawn and civil suit No.154/2016 was decreed.

34. The withdrawal of Rubina's suit No.458/2015 and the decree passed in suit No.154/2016 is clearly commensurate with the terms of the Settlement Agreement which obligated Rubina to unconditionally withdraw her suit on 21.09.2016 and to file an application conceding to Javaid's suit No.154/2016 being decreed in his favour. For the purposes of clarity, paragraph 6(i) and (ii) of the Settlement Agreement are reproduced herein below:-

- “i. To unconditionally withdraw her suit titled Robina Amjad vs. Shafique A. Siddiqi and others pending in the court of Mr. Shoaib Akhtar, Civil Judge (West), Islamabad which is next fixed for 21-09-2016 by moving an application and giving a No Objection / Statement before the court herself or through her counsel.*
- ii. To make a prayer before the court of Mr. Shoaib Akhtar, Civil Judge (West), Islamabad for decreeing the suit titled Javaid Shafique Siddiqi Vs. Public at large and others which is also fixed for 21-09-2016. In this respect she will move an Application on Behalf of Mrs. Robina Amjad / Defendant No.3 for passing of decree in favour of the plaintiff.”*

35. It may also be mentioned that Rubina's brothers had filed ejectment petitions against tenants in Property No.1. Rubina had filed applications under Order I, Rule 10 C.P.C. to be impleaded as a party in the said petitions. The Settlement Agreement also obligated Rubina to make a statement recognizing her brothers as the sole owners and landlords of Property No.1. For the purposes of clarity, paragraph 6(iii) of the said Agreement is reproduced herein below:-

*“iii. That she will withdraw all her objections and applications filed under Order I Rule 10 of the C.P.C. or else, whatsoever in ejectment petitions titled Iqbal Shafique Siddiqi Vs. Aqueel Hassan and others and Javaid Shafique Siddiqi vs. MCR (Pvt.) Ltd. both pending in the court of Mr. Salman Badar, Rent Controller, Islamabad both fixed for 21-09-2016 and be out of it. She will also make all out efforts and give a statement herself or through counsels in favour of the Petitioners recognizing them to be the sole owners and claimants and landlords, of the commercial building by submitting applications and doing the needful, whatever, is required.”*

36. Rubina's recognition of her brothers as the sole owners of Property No.1 leaves no doubt that as a result of the Settlement Agreement, she was left with no share in Property No.1.

37. Rubina, through her application under Section 12(2) C.P.C., has sought the setting-aside of the judgment and decree dated 08.02.2017 only to the extent whereby her share in Property No.1 inherited from her mother stood surrendered in favour of Javaid. Rubina asserts that the said decree was obtained through fraud, misrepresentation and concealment of material facts. The grounds taken by Rubina, in her application under Section 12(2) C.P.C., do not mention the particulars of fraud or misrepresentation.

38. She has pleaded that the Settlement Agreement could not have been interpreted such as to result in the surrender of Rubina's share in Property No.1. Furthermore, it has been pleaded that the receipt of Rs.25 million by Rubina was in consideration of *“past deprivations, unjust treatment and embezzlements”* by her brothers and could not be treated as consideration for her share in Property No.1. These grounds pertain to the merits of the case which cannot be reopened through an application under Section 12(2) C.P.C. It is well settled that a decree cannot be challenged on merits by filing an application under Section 12(2) C.P.C., which was limited in scope and could be invoked for setting-aside a

decree on the ground of fraud, misrepresentation or want of jurisdiction. A Court, while dealing with an application under Section 12(2) C.P.C., cannot sit as a Court of appeal but has to see whether the order, judgment or decree has been obtained by fraud or misrepresentation or passed by a Court having no jurisdiction over the matter. Reference in this regard may be made to the law laid down in the cases of Sardar Khan Vs. Muhammad Idrees (PLD 2008 SC 591), Province of Punjab Vs. Muhammad Rashid (1988 MLD 2560), and Office Incharge, Market Committee Vs. Arsalah Khan Brothers (2004 CLC 1427).

39. Rubina, in her application under Section 12(2) C.P.C, has also pleaded that her brothers, in connivance with her counsel Bashir Ahmad Chaudhary, Advocate, had defrauded her as well as the Court by giving a wrong interpretation to the Settlement Agreement. She has asserted that her signature on the reply to Shahnaz's application under Section 12(2) was forged. Even if it is assumed that the reply to Shahnaz's application under Section 12(2) C.P.C. had not been filed on Rubina's instruction or that Rubina's signature on the said reply was forged, this fact does not have any bearing on the question whether the judgment and decree dated 08.02.2017 was procured by exercising fraud or misrepresentation. This is because the said reply was filed on 19.10.2017 which is more than seven months after the passing of the said judgment and decree. An event subsequent to the passing of the judgment and decree cannot be made the basis for challenging it under Section 12(2) C.P.C.

40. After the statement of the learned counsel for Rubina was recorded by the learned Civil Court, it did not straight away decree suit No.154/2016 instituted by Javaid but adjourned the matter for further proceedings since the other defendants in the said suit had to be heard. It is not disputed that the learned Civil Court also recorded the statements of the learned counsel for Shafique A. Siddiqui (defendant No.2), Pervaiz (defendant No.4) and Gulnar (defendant No.7). As regards Iqbal (defendant No.5) and Shahnaz (defendant No.6), they were proceeded against *ex-parte* after resorting to substituted service of summons through publication. The learned Trial Court proceeded cautiously by framing issues and recording evidence. It was not until 08.02.2017 that

suit No.154/2016 was decreed. As regards Rubina / defendant No.3 and defendants No.2, 4 and 7 in suit No.154/2016, the said decree would be treated as a consent decree since it was based on the conceding statements of the learned counsel for the said defendants. It is well settled that a consent decree cannot be challenged in an appeal. It is only where such a decree is obtained due to fraud having been played on the Court that an application under Section 12(2) can be filed. It is apposite at this stage to refer to the following case law:-

- (i) In the case of Abdul Hakim Vs. Shamim Mushtaq (1986 CLC 2611), the position taken by the applicant in his application under Section 12(2) C.P.C. was that the compromise deed between the parties had entitled the respondent to 25 acres but under the decree passed by the Court he received 100 acres. The compromise deed had been filed in the Court along with an application under Order XXIII, Rule 3 C.P.C. The Hon'ble High Court of Sindh took the view that these allegations did not make up a case for fraud or misrepresentation, and that the terms of the settlement between the parties were mentioned in the application under Order XXIII, Rule 3 C.P.C. Furthermore, it was held that since a consent decree was passed on the basis of the said application, it cannot be held that the decree was without jurisdiction.
- (ii) In the case of Muhammad Munir Ahmed Vs. Anwaar ul Haq (2020 YLR 232), it was held *inter alia* that a party that takes a benefit under a consent decree of the Civil Court by executing it in his favour does not have a lawful justification to create hurdles in the way of the other party to get benefits under the same decree. The conduct of a party to question a decree under which he had obtained benefit was termed as shameful and reprehensible.
- (iii) In the case of Mazhar Majid Vs. Ather Majid (2021 YLR 651), a consent decree based on a compromise was challenged by one of the parties to the compromise through an application under Section 12(2) C.P.C. The appeal against the dismissal of the said application was dismissed by the Hon'ble High Court of Sindh with the following observations:-



*“It is a settled proposition of law that decrees obtained on the basis of consent/compromise are not challengeable until and unless the same are proved to be obtained by way of fraud and misrepresentation. In the instant case, as noted above, no occasion either of playing fraud or that of misrepresentation has been pointed out as, firstly, the case was duly represented by the attorney of the appellant and, secondly, how could there be an occasion of playing fraud when all the parties have entered into a compromise by filing a proper application and then duly appearing before the learned Single Judge in support of their compromise application. In the instant case it is not even remotely suggested that the attorney appearing for the appellant and entering into a compromise in any way not his attorney or there were some motivation of fraud or misrepresentation by him so as to prefer the application under section 12(2), C.P.C. Neither it has been proved that the contents of the application were unlawful or void nor was it proved that the said application in any way lacks legal sanctity. For application under section 12(2), C.P.C. the onus heavily lies upon a person filing the said application that the order of the Court has been obtained by way of fraud or misrepresentation, which onus as seen from the impugned order and from the record, is totally lacking. The aspect of entering into the compromise due to pressure being exerted from other side also appears to be not borne out from the record. Is the appellant so naive not to take care of his legal rights to adopt the legal procedure in accordance with law against the other party as available to him.”*

**(Emphasis added)**

41. Given the facts and circumstances of this case, I am of the view that the filing of the application under Section 12(2) C.P.C. was motivated by Rubina’s regret in executing the Settlement Agreement, withdrawing suit No.458/2015 and agreeing to suit No.154/2016 being decreed. This, in my view, is nothing but sheer abuse of the process of the Court. The learned counsel for Rubina was candid in his submission that the present-day value of Rubina’s share in Property No.1 is much more than what was paid to her under the Settlement Agreement. In paragraph 7 of the Settlement Agreement Rubina had undertaken *“to be available to support her brothers always and every time before all relevant forums including but not limited to CDA and else in regards with transfer or any other proceedings regarding commercial property at Islamabad.”* Instead of fulfilling her undertaking, Rubina has embroiled her brothers in vexatious and wasteful litigation.

42. The scope and application of Section 12(2) cannot be extended beyond the grounds of fraud, misrepresentation and the defect of jurisdiction enumerated therein. The misuse to which Section 12(2) C.P.C.

has been subjected to by unscrupulous litigants could not have been explained in terms better than by the Hon'ble Mr. Justice M. Shaiq Usmani (as he then was) while speaking for the Hon'ble High Court of Sindh in the case of Izzat Khan Vs. Province of Sindh (1999 YLR 1180). In the said case, it was held as follows:-

*“The intention of the legislature in introducing this amendment was to prevent unnecessary litigations arising from concluded legal proceedings. But instead of having the desired effect, I am constrained to observe this provision has led to an increase in litigations inasmuch as almost every other decree is now being challenged under this provision either directly by one of the parties or through a proxy. Such was obviously not the intention of legislature when this provision was introduced. Indeed the current practice is a mockery of the laudable objectives for which the provision came into effect. There is no doubt, that a decree of a Court must have sanctity once it has obtained finality even though such a decree may be ex parte or a compromise decree and it is only when there is fraud and mis-representation on the face of the record so apparent and manifest that even a person with a rudimentary knowledge of law would be able to observe that such fraud has taken place that the application under section 12(2) should be allowed to proceed further. In fact what I wish to emphasize is that this ingredient of the provision must be very strictly construed.”*

43. The *amici curiae* came up with well researched material on the case but the thrust of their conclusion was that an unconscionable bargain should not be permitted to deprive a woman of her inheritance rights. In the case at hand Rubina, in her application under Section 12(2) C.P.C., has not asserted that the Settlement Agreement was unconscionable or that she was coerced to enter into the same. Rubina is not a down-trodden illiterate woman who could not appreciate the import and meaning of the agreement that she was signing. She is an educated woman who, two years and nine months after the judgment and decree dated 08.02.2017, filed the application under Section 12(2) C.P.C. in an effort to undo the consequences of the Settlement Agreement. One of the consequences of the said Agreement was the withdrawal of suit No.458/2015 and her consent to suit No.154/2016 being decreed. She had admittedly received Rs.25 million from her brothers by virtue of the said Agreement. True, the value of her share from her mother's 1/3<sup>rd</sup> share in Property No.1 may have increased in the three years and two months after the execution of the Settlement Agreement but this appreciation in the value of the said property cannot become a valid cause for holding that the judgment and

decree dated 08.02.2017 passed in suit No.154/2016 had been obtained by fraud.

44. Finding the instant writ petition not just to be bereft of merit but sheer abuse of the process of the Court, the same is **dismissed** with costs throughout.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 21/09/2022**

**(JUDGE)**

**APPROVED FOR REPORTING**

*Qamar Khan\**