IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

C.P No. S-226 of 2025
[Nisar Ahmed Bhatti v. Mst. Naseern Akhtar & others]

Petitioner:	Nisar Ahmed Bhatti through Mr.Ashfaque Nabi Qazi, Advocate.
Respondents No.1&2:	Mst. Nasreen Akhtar present in person along with respondent No.2.
Respondents No.3&4:	Through Mr. Muhammad Sharif Solangi, Assistant A.G. Sindh.
Date of Hearing:	10.12.2025.
Date of Judgment:	31.12.2025.

JUDGMENT

***RIAZAT ALI SAHAR, J*:** - Through this Constitutional Petition the petitioner, being aggrieved and dissatisfied with the impugned judgment and decree dated 17.09.2025, passed by the learned IInd Additional District Judge (MCAC), Sanghar in Family Appeal No.15 of 2025, whereby the appeal was dismissed and the judgment and decree dated 14.05.2025 passed by the learned Judge Family Court, Sanghar in Family Suit No.99 of 2024 were maintained, has invoked the constitutional jurisdiction of this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, to the limited extent that the learned Courts below have assumed jurisdiction not vested in them by law in directing transfer of ownership and possession of an immovable property (house) or, in the alternative, payment of Rs.2,500,000/-, allegedly on the basis of an entry in column No.17 of the Nikahnama—an issue which squarely raises a question of jurisdiction, legality and constitutional protection of

property rights warranting interference by this Court. Thus, seeking following reliefs:

> *"a. Send for the Record of Proceedings (R&P) of Family Suit No.99 of 2024 (Re-Mst. Nasreen Akhtar & others Vs. Nisar Ahmed Bhatti) from the learned Family Court, Sanghar and Family Appeal No.19 of 2025 (Re-Nisar Ahmed Bhatti Vs. Mst. Nasreen Akhtar & others) from the Court of learned IInd Additional District Judge (MCAC), Sanghar.*
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> *b. Quash and set aside the impugned judgments and decrees dated 17.09.2025 passed by the learned IInd Additional District Judge (MCAC), Sanghar and dated 14.05.2025 passed by the learned Judge Family Court, Sanghar, to the extent of the claim of respondents No.1 & 2 for recovery / transfer of the house with possession or, in the alternative, payment of Rs. 2,500,000/- (Rupees Two Million and Five Hundred Thousand).*
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> *c. Suspend the operation of the impugned judgments and decrees dated 17.09.2025 and 14.05.2025, to the extent of the claim of respondents No.1 & 2 for recovery / transfer of the house with possession or, in the alternative, payment of Rs. 2,500,000/-, during the pendency of this petition.*
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> *d. Pass any other order(s) deemed just, proper, and fit in the circumstances of the case."*

2. The gravamen of the case is that respondent No.1, after her first husband's death in 2012, contracted marriage with the petitioner on 03.05.2013 (Nikahnama dated 08.07.2013), whereafter the parties lived together and were blessed with a daughter, Kashaf Zehra, in 2015; disputes arose leading to an earlier Family Suit No.213 of 2017 for maintenance, which was amicably settled through a compromise decree dated 16.11.2017, pursuant to which the parties reunited and resumed cohabitation; subsequently, fresh matrimonial discord allegedly resurfaced, culminating in respondent No.1 leaving the matrimonial home in March 2024 and the petitioner pronouncing divorce in April 2024; thereafter, respondent No.1 instituted Family Suit No.99 of 2024 seeking, *inter alia*, maintenance, recovery of dowry and gold ornaments, and transfer with possession of a house allegedly promised under column No.17 of the Nikahnama; the learned Family Court, vide judgment and decree dated 14.05.2025, partly decreed the suit by awarding iddat and child maintenance

and, most significantly, by directing transfer of ownership and possession of the house in favour of respondents No.1 and 2 or, in the alternative, payment of Rs. 2,500,000/-; the petitioner challenged this decree through Family Appeal No.15 of 2025, which was dismissed by the learned IInd Additional District Judge, Sanghar on 17.09.2025; hence, being left with no efficacious alternate remedy and aggrieved specifically by the assumption of jurisdiction by the Courts below in relation to immovable property, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution.

3. Learned counsel for the petitioner contended that the impugned judgments and decrees, to the extent they direct transfer of ownership and possession of an immovable property or, in the alternative, payment of Rs. 2,500,000/-, are wholly without lawful authority and suffer from patent lack of jurisdiction, as the Family Courts Act, 1964 does not empower a Family Court to create, declare, or enforce title in immovable property on the basis of an entry in column No.17 of the Nikahnama or a purported Qasamnama; that Entry No.9 of the Schedule to the Act, 1964 ("personal property and belongings of the wife") is residuary and confined only to property already vested in or owned by the wife during subsistence of marriage and cannot be stretched to cover a mere promise or future obligation for transfer of property; that the house in question was neither pleaded nor proved as dowry or personal property of respondent No.1, and the Courts below gravely erred in treating the claim as an actionable claim by impermissibly importing concepts from the Transfer of Property Act, 1882; that the earlier compromise decree dated 16.11.2017, being a judicially sanctioned contract, could not be bypassed and any alleged breach thereof could only give rise to an independent cause of action in accordance with law; that the purported Qasamnama was not even executed inter se spouses nor proved in accordance with law so as to confer family jurisdiction; that the findings recorded are inconsistent with pleadings, based on conjectures and surmises, and result in an arbitrary, confiscatory

direction offending Articles 4, 10-A, 23 and 24 of the Constitution; and that the case squarely falls within the recognized exceptions to constitutional restraint as the Courts below assumed jurisdiction not vested in them by statute, warranting interference by this Court.

4. Conversely, learned Assistant Advocate General, Sindh assisted by respondent No.1 supported the impugned judgments and decrees and argued that upon institution of the family suit, summons were duly issued and served upon the petitioner/defendant in accordance with law, whereafter he appeared before the learned Family Court and filed his written statement, which was taken on record; that in his defence the petitioner unequivocally admitted the factum of marriage, fixation and payment of dower, as well as the paternity of respondent No.2, while merely setting up a plea of disobedience on the part of respondent No.1 and baldly denying allegations of maltreatment without substantiating the same; that although the petitioner acknowledged the earlier family suit of 2017, he unsuccessfully attempted to downplay the legal effect of the compromise effected therein, despite the admitted fact that subsequent separation had, in effect, rendered the compromise infructuous; that the petitioner failed to establish his allegation that the list of dowry articles was fabricated or false; that the plea regarding divorce having been demanded by respondent No.1 was a self-serving assertion, unsupported by cogent evidence; that the petitioner himself admitted the existence of conditions recorded in the Nikahnama, and his plea that the same were "managed" was rightly disbelieved by the Courts below; that the petitioner's admitted payment of a meagre sum of Rs.3,000/- to his daughter did not discharge his legal obligation of proper maintenance; that his plea of limited means was belied by the evidence on record notwithstanding his claim of being a retired government servant drawing pension; and that the two sons of respondent No.1 from her previous marriage were rightly held disentitled to maintenance, thereby demonstrating that the learned Family Court exercised its jurisdiction judiciously. It was thus contended that the impugned

judgments are well-reasoned, based on proper appreciation of pleadings and evidence and call for no interference in constitutional jurisdiction.

5. Heard and record perused. At the outset, it may be observed that the factum of marriage between the petitioner and respondent No.1, fixation and payment of dower and the paternity of respondent No.2 (minor daughter) stand admittedly established from the petitioner's own written statement. These admissions are material and binding, leaving no room for controversy on the subsistence of marital obligations during the relevant period.

6. At this stage, the Court may observe that constitutional jurisdiction is not meant to provide a parallel appellate forum. The Supreme Court has consistently deprecated interference at interlocutory or intermediate stages, holding that fragmentary adjudication delays justice and defeats legislative intent (*Mushtaq Hussain Bokhari*, *Mohtarma Benazir Bhutto*). Reliance placed upon *Mushtaq Hussain Bokhari v. The State* (1991 SCMR 2136) *Mohtarma Benazir Bhutto v. The State* (1991 SCMR 1447). Likewise, it is settled that Article 199 cannot be invoked to circumvent an express or implied statutory bar or to compensate for absence of further appeal (*Syed Saghir Ahmed v. Province of Sindh (1996 SCMR 1165)*). The Supreme Court in *Arif Fareed v. Bibi Sara 2023 SCMR 413* has unequivocally held that the Family Courts Act, 1964 places a legislative full stop after the appellate stage, and constitutional jurisdiction is not to be used as a substitute for a second appeal. This principle has been reaffirmed in *M. Hamad Hassan v. Mst. Isma Bukhari 2023 SCMR 1434*, wherein routine invocation of Article 199 in family matters was expressly discouraged as being destructive of the object of expeditious family justice. The constitutional petition is maintainable as an exception, because the Family Court lacked lawful jurisdiction to decree the transfer of an immovable house (or alternate Rs. 2,500,000 compensation) based solely on a Nikahnama stipulation. Such a claim does not fall within the matrimonial causes enumerated in the Family Courts Act, 1964,

absent proof that the house was part of dower or the wife's property. The Family Court's assumption of jurisdiction over the house was **ultra vires** and liable to be struck down.

7. It stands admitted that the Nikahnama's Column 17 recorded a promise of a house, not any property already delivered to the wife as dower or dowry. The petitioner's own pleadings confirmed that the house was never transferred and was neither pleaded nor proven as part of dower or as "personal property" belonging to Respondent No.1 during marriage. The impugned judgments show that the Courts below nonetheless treated this future promise as an "actionable claim," effectively creating a property right for the wife. This treatment directly contradicted the pleadings and the Family Courts Act's limited jurisdiction, which is confined to matters listed in its Schedule (e.g. dissolution of marriage, dower, maintenance, etc.) and does **not** generally extend to enforcing contractual promises of immovable property. The petitioner specifically objected that Entry No.9 of the Schedule ("personal property and belongings of the wife") could not be stretched to cover a mere promised house, as that residuary category only covers property already vested in the wife. These uncontroverted facts and objections on record establish that the claim for the house was outside the Family Court's domain.

8. Superior courts have consistently held that a Family Court cannot assume jurisdiction to decide matters beyond the Schedule of the Family Courts Act. In *Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan* (PLD 2016 SC 613), the Supreme Court reiterated that an undertaking in a Nikahnama to transfer property to the wife can **only** be decreed by a Family Court if it is essentially part of the dower or a gift in consideration of marriage. In other words, if an immovable property is effectively included in the dower (or given as a marital gift), it falls *"within the exclusive domain of the Family Court"*. Conversely, where the property is not proven as dower or an already gifted asset, such a promise remains a civil contractual claim outside the Family Court's jurisdiction. The Supreme Court's judgment in *Syed Mukhtar Hussain Shah v. Saba*

Imtiaz (PLD 2011 SC 260) squarely governs here: it approved the view that Entry 9 (personal property of wife) is a **residuary provision** covering only property acquired by or vested in the wife during marriage – ***"such as her clothes, ornaments… or anything gifted to the wife"*** – *and* ***"definitely does not cover any amount or property which is not yet the property of the wife and she only has a claim to recover… on the basis of [a] special condition in the Nikahnama."*** Accordingly, a merely promised benefit or contingent claim "cannot be equated as 'personal property and belonging of the wife'" and falls outside Family Court jurisdiction. Where a Family Court nonetheless decrees such an extraneous claim, it acts **without lawful authority**, rendering its judgment infirm. The Supreme Court has noted that an order passed without jurisdiction is **void** and a nullity in law. It is equally settled that there can be "no estoppel against the statute"– jurisdiction cannot be conferred by consent, acquiescence or procedural lapse. Therefore, notwithstanding the general bar on constitutional interference in family matters after appellate remedy, this Court may intervene to correct a patently **jurisdictional error**. In *Bahadur Khan v. Federation of Pakistan* (2017 SCMR 2066), it was affirmed that no one can be estopped from asserting or denied protection of a right that the law itself confers. Here, the petitioner's challenge raises precisely such a legal question of jurisdictional competence and property right, which falls within the recognized exceptions for writ interference despite concurrent findings. The impugned decrees, to the extent of the house, emanated from a court **acting beyond its lawful mandate**, and thus cannot be sustained under the law.

9. Enforcing a promise of immovable property recorded in a Nikahnama – when that property was neither acknowledged as dower nor transferred as a gift to the wife – lies outside the statutory jurisdiction of Family Courts. The Family Courts Act, 1964 (as amended) enumerates specific matrimonial causes and while it allows recovery of dower and of a wife's personal property, it does not

empower Family Courts to adjudicate a contractual claim for a new property interest that was never realized during the marriage. The law's intent is to resolve personal and pecuniary rights arising out of marriage (e.g. unpaid dower, maintenance, dowry articles), not to create fresh titles to real estate based on ancillary promises. In the present case, the house in Column 17 was not identified as part of the dower bargain (mehr) – indeed, the Nikahnama separately fixed and notes the dower which has been paid – nor was the house ever conveyed to Respondent No.1. It remained at most an ***'executory promise'***. Following the Supreme Court's guidance, the Family Court could only have entertained this claim **if and only if** the house were proven to be **consideration of marriage (mehr)** or a gift given in lieu of dower. But Respondent No.1 neither pleaded nor established such characterization. Treating the naked promise as an "actionable claim" or creating a debt on divorce was legal error, since the legislature pointedly did **not** include "actionable claims" in the Family Court's jurisdiction. To hold otherwise would allow the "Special Conditions" column of a Nikahnama (Column 17) to become an all-encompassing lever for relief even on matters foreign to the Family Court's limited domain – a result the Supreme Court has disapproved by emphasizing that the *form* or placement of an entry in Nikahnama is not conclusive, rather it is the **substance and intent** that controls. Here, the substance of the stipulation was a contractual promise of property, enforceable (if at all) through a civil suit for specific performance or damages, but **not** a demand for "recovery of dower or property belonging to wife" cognizable by the Family Court. Therefore, the courts below fell into jurisdictional error by decreeing the transfer/compensation of the house. This Court, in exercise of constitutional review, can and must rectify such a patent illegality. The petitioner's case is thus maintainable and succeeds on the point of jurisdiction: the impugned judgments, insofar as they relate to the house in Column 17, are declared to have been passed **without lawful authority** and are liable to be set aside.

10. The petitioner's unequivocal **admissions** in the pleadings – affirming the fact of marriage to Respondent No.1, the fixation and payment of the dower (mehr), and the paternity of the minor daughter (Respondent No.2) – are **binding and conclusive** upon him. These admitted facts required no further proof in the trial and squarely established the fundamental marital relationships and obligations in this case. The law holds that matters judicially admitted by a party stand proved against that party without the need of additional evidence.

11. In his written statement before the Family Court, the petitioner categorically **admitted** that he married Respondent No.1 and that a dower was agreed and paid and further acknowledged that Respondent No.2 is their legitimate daughter. He did not dispute the nikah or the parentage of the child at any stage. These points were thus never in issue. The only defenses he raised were allegations of the wife's disobedience and denial of mistreatment – but notably, **no denial whatsoever** of the marriage or the agreed dower amount appears on record. To the contrary, the petitioner "unequivocally admitted" the core facts establishing the marriage tie and its basic incidents (including dower and paternity). He also acknowledged the prior family suit of 2017 and the compromise effected therein, effectively conceding the continuity of the marital relationship until the eventual divorce. These solemn admissions by the petitioner in his pleadings and testimony relieved the wife of any burden to prove those foundational facts. They form part of the record and have been relied upon by both the Family Court and appellate court, correctly, as incontrovertible proof of the marriage and the petitioner's status as husband/father during the relevant period.

12. It is a well-settled rule that **admitted facts need not be proved**. The Supreme Court has repeatedly held that a fact expressly admitted in a party's pleadings or evidence is taken as established and requires no further proof. For instance, in *Muhammad Akram v. Altaf Ahmad* (PLD 2003 SC 688), it was

observed that when a material fact stands admitted in the record, *"the fact which is taken to be admitted need not be proved"*. Likewise, the Supreme Court has noted under Order VIII Rule 5, C.P.C., that *"admitted facts need not be proved, especially when such admission has been made in the written statement."* An admission in a judicial proceeding is treated as the **best evidence** against the maker, and it binds him unless he satisfactorily explains it away. In the present case, the petitioner's admissions (marriage, specified dower, paternity) were clear and unconditional. As such, under the law they dispense with formal proof of those facts and are **conclusive** for purposes of this litigation (barring fraud or a permitted retraction, which is neither alleged nor evident here). The cited authorities – including *Watan Party v. Federation of Pakistan* (PLD 2011 SC 997) and *Muhammad Iqbal v. Shamim* (2016 SCMR 2062) – underscore that courts must give full effect to acknowledged facts in the record, as admissions define the scope of dispute and no party can be allowed to contradict its own veracity in absence of cogent justification. Here, the petitioner's acknowledgment of the nikah and dower crystallizes Respondent No.1's status as lawful wife and confirms her entitled rights (such as maintenance during marriage, etc.), while the admission of paternity establishes the child's legitimacy and the petitioner's duty to maintain her. These fundamentals being **settled by admission**, the Family Court rightly treated them as proven, focusing the trial only on the contentious issues (maintenance quantum, the house promise, etc.).

13. The petitioner's binding admissions decisively shape the outcome on several issues. The factum of marriage being admitted means there was a valid marital contract; hence, Respondent No.1 was indeed the petitioner's wife until divorce, entitled to all legal protections that status entails. The admission that a dower was fixed and paid confirms that the obligation of mehr was settled – there is no dispute of any unpaid dower in this case (and indeed Respondent No.1 did not sue for unpaid dower). This also undercuts

any suggestion that the house in Column 17 was part of ***dower***; the petitioner's own stance was that the dower was a separate, specified amount which he has already discharged. Furthermore, by acknowledging paternity of the minor child, the petitioner accepts an ongoing legal responsibility to maintain and care for her. He cannot evade child support by later questioning the parentage or legitimacy of the minor – that door is firmly closed by his admission. In sum, these admissions simplify the adjudication and narrow the scope of controversy. No evidentiary proof was required to establish the marriage or the child's lineage, as the petitioner's sworn acknowledgment sufficed. The courts below, therefore, committed no error in treating these points as **settled**. Indeed, to do otherwise (i.e. to ignore or look behind the admissions) would have been contrary to law. The petitioner is held to his own averments. Consequently, the existence of a valid marriage between the parties and the petitioner's paternity of Respondent No.2 are **irrefutably proven**, and the petitioner remains accountable for the obligations flowing therefrom (maintenance of wife during the subsistence of marriage, past maintenance of the minor, etc., as determined by the Family Court). Any argument attempted by the petitioner to disown these obligations stands negated by his own admissions and is thus legally untenable.

14. A distinction must be drawn between two categories of stipulations in a Nikahnama: (i) those that form an integral part of the dower arrangement or are given in lieu of dower, and (ii) those that are mere promises or conditions collateral to the marriage**.** The former category – if established by evidence or admitted – is enforceable by the Family Court as dower or as the wife's property, whereas the latter category – a bare promise of some benefit (especially if contingent or to take effect in the future) – is not enforceable under the Family Courts Act. In the present case, the undertaking to transfer a house recorded in Column 17 of the Nikahnama falls in the second category (a contractual promise separate from dower) and thus cannot be enforced as a matrimonial

claim. Had the house been proved as part of the dower (mehr) or as an adjustment/substitution for dower, the Family Court could decree it; but absent such proof, the condition remains a non-dower promise, outside the Family Court's purview.

15. The Nikahnama (marriage contract) in question specified a monetary dower (which was nominal and has been paid), and separately, in its Column 17, noted an additional term that a **house would be given** to the bride. Notably, this house was *not* recorded in the dower columns (Columns 13–16 of the standard form) and was not described as part of the mehr settlement. In fact, the first appellate Court explicitly found that the Nikahnama showed a dower of Rs.2000 which was paid, and treated the house stipulation as a condition beyond dower**.** The wife's own pleading in Family Suit No.99/2024 claimed the house as having been "promised" to her, implying it was never delivered nor considered paid dower**.** There is no indication in the evidence that any portion of the cash dower was forgiven in exchange for the house, or that the house was ever transferred to Respondent No.1 at or after marriage. Thus, on the record, the house remained a *future obligation* contingent upon the marriage, rather than an asset that had become the wife's property. This factual posture contrasts with scenarios where a Nikahnama condition is actually an adjustment of dower – for example, when a bride accepts a property in place of a cash dower, or when an entry in the Nikahnama explicitly states that a certain property is given *in lieu of mehr*. Here, no such language of substitution or adjustment appears in Column 17; it stands as an independent promise. Indeed, the petitioner's stance (as reflected in his written statement and appeal) was that the house condition was "managed" by the wife's side and not a part of the dower contract. The courts below, despite this, proceeded to enforce the condition, effectively recharacterizing it as if it were part of the wife's entitlements. This recharacterization finds no support in the record. On the contrary, the admitted facts (a token cash dower already discharged, and no prior transfer of the house) and the pleadings confirm that the house was at best

a **collateral contractual term** – not an unpaid dower item. Therefore, the house falls outside the scope of "dower" or "property belonging to the wife," and its inclusion in the Family Court decree lacked a factual or legal foundation.

16. Our jurisprudence has evolved clear principles regarding such Nikahnama conditions. In *Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz* (PLD 2011 SC 260), the Supreme Court authoritatively settled that a promise in a Nikahnama which gives rise only to a **conditional or future claim** (such as payment of money or transfer of property upon divorce or other event) does **not** fall under the Family Court's jurisdiction. The Court approved the view that Entry 9 of the Family Courts Act's Schedule (personal property of wife) is a **residuary clause** meant to cover property the wife has acquired *during marriage*, and **"definitely… does not cover"** something which *"is not yet the property of the wife and she only has a claim to recover"* on the basis of a Nikahnama condition. In that case, a stipulation that the husband would pay Rs 100,000 to the wife on divorce was held unenforceable by a Family Court, as it was essentially a penalty or conditional gift not part of the agreed dower. The Family Court had no jurisdiction over such an "actionable claim," and the proper remedy (if any) lay in a civil court for breach of contract. Conversely, where a Nikah contract condition is **integral to dower**, the courts have enforced it as such. In *Mst. Kaneezan Begum v. Muhammad Farooq* (2014 MLD 1479), a High Court allowed the wife's claim to agricultural land mentioned in Nikahnama **Column 16**, because the record showed that land was given *"in lieu of dower"* – making it part of the dower bargain. The Court noted that Column 16 of the form is meant for adjustments in dower, and the entry there stated the wife was given certain land and gold ornaments **as dower** (beyond the token cash mehr). Thus, that land became the wife's personal property, squarely falling within Item 9 of the Schedule, and the Family Court rightly decreed it.

17. The High Court set aside the appellate court's contrary view, emphasizing that once property is proved to be given in lieu of dower, it is **treated as dower** recoverable through a Family Suit. The Supreme Court took a similar approach in *Muhammad Bashir v. Mst. Saman Naz* (PLD 2015 SC 243), observing that the *form* or column of the Nikahnama in which a particular item is recorded is not dispositive; the real test is the **intention** of the parties and the **nature of the arrangement**. If it emerges that an immovable property was contemplated as part of the dower (even if listed in the "special conditions" column), then the wife becomes owner of that property upon marriage and can claim it through a Family Court. On the other hand, if the property was not intended as dower but was a separate undertaking, it would not automatically transfer ownership to the wife and might require invocation of general contract remedies. This interpretative principle was explicitly affirmed in *Muhammad Jamil v. Mst. Farhat* (PLD 2016 SC 613 as reported), where the Supreme Court held that an *"undertaking given in the Nikah Nama that certain property/land shall be transferred in the name of the wife"* could be construed as part of dower **or** as a marital gift – and *"therefore, it would fall within the exclusive domain of the Family Court to pass a decree in relation to such property/land."* However, that ruling is premised on the undertaking indeed being in consideration of marriage (i.e. a term of the marriage contract itself). The Court in *Yasmeen Bibi's case* went on to caution that if the lower forums erroneously refuse to treat such a dower/gift condition as within jurisdiction, they fall into error. Implicit in that reasoning is the converse: where the condition cannot fairly be seen as dower or marital gift, enforcing it in a Family suit would be beyond the law. Our case aligns with the latter scenario. The house stipulation was not characterized as dower in the Nikah Nama; indeed, the prompt dower was separately fixed. Therefore, under the above precedents, the promise of the house does not enjoy the status of "unpaid dower" or "property of the wife" – it remains a contractual stipulation. The balance of authority (including the Supreme Court's pronouncements in 2011 and 2015) leads to the conclusion that such

a stipulation, lacking the legal character of dower, is not enforceable through a Family Court decree. The proper course for the aggrieved wife would be to seek remedy in a Civil Court for breach of contract or other applicable law, if so advised, rather than in a Family Court whose jurisdiction is confined to the explicit heads in the Schedule.

18. The enforcement of Nikahnama conditions hinges on their true nature**.** The Family Court's jurisdiction, though broadened over time (e.g. to include matters "arising out of the Nikah Nama" in some provincial amendments), is fundamentally tied to matrimonial rights like dower, maintenance, dowry articles, etc. A **promise of an immovable property** can straddle the line between a *term of dower* and a *collateral contract*, and it is the court's duty to ascertain on which side of the line a given case falls. In making that determination, the labels of Nikahnama columns are not conclusive – the Courts look at intent and the surrounding circumstances. Here, all indications are that the house was a **collateral promise**. It was not merged into the dower amount; no part of the mehr was left unpaid against it; nor was possession of the house given to the bride at marriage (as would occur if it were treated as dower in property form). The petitioner's prompt payment of the small cash dower and the silence of the record on any subsequent transfer suggest that both parties treated the house as a goodwill promise, perhaps to be fulfilled in the marriage's course, but not as a pre-condition for the marriage contract itself**.** Thus, legally, the wife did *not* become owner of the house upon marriage – unlike in a true dower case where ownership of the dower property vests in the wife immediately upon nikah (even if possession is deferred). Enforcing this promise in a Family Court effectively grants specific performance of a contract for land, which lies outside the limited scope of family litigation. The Supreme Court's exhortation in *Saba Imtiaz's case* is pertinent: to import the concept of *"actionable claim"* into family jurisdiction (as the Courts below did by analogizing the wife's right to an unpaid conditional benefit) is to impinge on legislative intent. The legislature chose not to list such contractual damages or conditional

benefits in the Family Courts Act. Allowing Family Judges to decree land transfers on these terms would not only contravene the statutory scheme but could also encourage misuse of the Nikahnama form for matters better suited to civil adjudication. On the other hand, where spouses **deliberately frame part of the dower in non-monetary form** (e.g. a plot, house, or gold given or promised as dower), the Courts rightly give effect to that – treating the item as dower with all attendant legal consequences. Our legal system, mindful of protecting wives' rights, will not allow a husband to renege on dower by arguing it was merely in "conditions" column. But neither will it allow a wife to obtain, via Family Court, an item that was never meant as dower or transferred as gift**,** simply because it was written in the Nikahnama. That is precisely the balance struck in precedent. Applying that balance here, the just result is to hold that the house entry in Column 17, being a non-dower promise**,** was not enforceable under the Family Courts Act. The Family Court ventured beyond its jurisdiction in ordering **a** transfer of title or payment of Rs. 2.5 million as substitute for the house. Such relief can only be granted by a Civil Court of general jurisdiction (upon proof of a binding contract and breach, etc.), not by a Family Court whose powers are circumscribed to the personal law rights of spouses. Therefore, the Nikahnama's condition about the house, while valid as an agreement between the parties, was **not justiciable** in the Family suit. The courts below erred in law by treating it as if it were an extension of dower or a marital obligation. This Court must correct that error by vacating the decree for the house. This does not leave the wife remediless – she remains free to pursue any appropriate civil claim. It simply maintains the correct separation of fora: Family Courts for matrimonial entitlements, Civil Courts for contractual enforcement**.**

19. Given the foregoing findings, the impugned judgments of the Courts below cannot be sustained to the extent of the house in question. The Family Court had no jurisdiction to decree transfer of the immovable property or to award Rs. 2,500,000 in lieu thereof, and

accordingly that portion of its decree (and of the appellate judgment affirming it) is **null and void ab initio**. It is an established principle that a decree by a Court lacking subject-matter jurisdiction is a legal nullity and must be struck down. Consequently, the judgment & decree dated 14.05.2025 passed by the learned Judge, Family Court, Sanghar in Family Suit No.99/2024 and the judgment & decree dated 17.09.2025 passed by the learned IInd Additional District Judge, Sanghar in Family Appeal No.15/2025 are **modified** as follows: the direction ordering the petitioner to transfer ownership and possession of the house (mentioned in Column 17 of the Nikahnama) to Respondent No.1 (and Respondent No.2) or, in the alternative, to pay Rs.2,500,000/- is hereby **set aside** for want of lawful jurisdiction. The rest of the Family Court's decree – pertaining to maintenance (iddat period maintenance for Respondent No.1 and past maintenance for the minor) and recovery of dowry articles – was not challenged before this Court and remains **intact** and in force. The petitioner is relieved from compliance only to the extent of the aforementioned property transfer/compensation clause, which is declared to have been passed without authority.

20. In view of the wife's claim regarding the house, it is observed that she may seek her remedy before the competent civil forum, if so advised, to enforce any contractual right in accordance with law. This Court makes no comment on the merits of such a claim. Each party shall bear its own costs. The petition stands **disposed of** in these terms.

JUDGE