

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

C.P No. S-252 of 2026  
*[Abdul Ghaffar v. Nazeer Ahmed & others]*

1. For orders on M.A. No.857/2026.
2. For orders on office objections.
3. For orders on M.A. No.858/2026.
4. For orders on M.A. No.859/2026.
5. For hearing of main case.

**22.04.2026**

Mr. Altaf Sachal Awan, Advocate for petitioner.

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**RIAZAT ALI SAHAR, J-** Urgency is granted. The petitioner has challenged the order dated 09.04.2026 passed by the learned Additional District Judge-IV, Shaheed Benazirabad, whereby the earlier orders dated 23.12.2025 passed by the learned Senior Civil Judge-III were maintained. Through the said concurrent findings, the petitioner's application under Section 12(2), C.P.C. was dismissed and his objections to the execution of decree in favour of respondent No.1 were rejected.

Briefly stated, respondent No.1/plaintiff instituted F.C. Suit No.66 of 2019 for declaration, cancellation, possession and permanent injunction against the petitioner and others. The suit was decreed vide judgment dated 27.04.2024. According to the plaint, respondent No.1 had entered into an agreement dated 24.11.2016 for sale of land measuring 04.20 acres, bearing Survey Nos.369/3 and 365/2 to 4, situated at Deh Chak No.03 Suhailo, Taluka Daur, for consideration of Rs.980,000/-. An amount of Rs.250,000/- was received as earnest money and possession was delivered to the petitioner. The balance sale consideration was payable in installments, with the stipulation that in default, the agreement would stand cancelled and possession would be restored. Since the petitioner allegedly defaulted in payment and failed to vacate the land, the suit was filed.

Learned counsel for the petitioner contended that both Courts below failed to appreciate that fraud vitiates all judicial proceedings. It was argued that once allegations of fraud were raised under Section 12(2), C.P.C., the Trial Court was bound to hold a proper inquiry, frame issues and record evidence. It was further submitted that material

evidence, particularly Faisla dated 07.01.2019 and subsequent settlement of 2022, was ignored and misread. According to learned counsel, respondent No.1 had assured settlement, induced the petitioner not to pursue the matter, and thereafter dishonestly obtained decree, which constituted fraud within the meaning of Section 12(2), C.P.C.

I have heard learned counsel for the petitioner and examined the available record.

Admittedly, no document has been placed on record to show that the petitioner filed any appeal against the main judgment dated 27.04.2024 before the competent appellate forum. The record further reflects that the petitioner had actively contested the suit, filed written statement and his counsel cross-examined the plaintiff. However, he failed to lead his own evidence. Therefore, the contention that the decree was procured behind his back or by concealment does not appear tenable. The plea regarding Faisla/settlement is also contradictory in nature. On one hand, the petitioner asserts that settlement was reached in late 2022 and he left for Balochistan relying thereon, while on the other hand he alleges concealment of such facts. A litigant cannot be permitted to approbate and reprobate simultaneously. It is settled law that proceedings under Section 12(2), C.P.C. are not a substitute for regular appeal. Unless clear, cogent and convincing evidence of fraud, misrepresentation or want of jurisdiction is shown, a decree passed by a competent Court cannot be reopened through collateral proceedings. Mere bald allegations or verbal assertions are insufficient to dislodge a decree otherwise passed after due trial. The decree in question remained operative and executable, as no stay or suspension order was obtained from any competent forum. A decree of a competent Court carries presumption of legality and correctness unless set aside in accordance with law. No illegality, material irregularity or perversity has been pointed out in the concurrent findings recorded by both Courts below warranting interference by this Court in constitutional jurisdiction. Consequently, this petition, being devoid of merit, is dismissed in *limine* along with pending applications.

**JUDGE**