Stereo. H C J D A 38.

JUDGMENT SHEET

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

W.P. No.173/2021

Jawad Ali Shah, etc. **Versus** Mst. Sarwat Fatima, etc.

J U D G M E N T

Date of Hearing:	14.11.2024
Petitioners by:	Mr. Muhammad Afzal Khan Jadoon, Advocate.
Respondent No.1 by:	Syed Masood ul Hassan Bukhari, Advocate.

Anwaar Hussain, J. The petitioners before this Court are persons, with special abilities and admittedly, are children of late Syed Sajjad Husain Shah. They have approached this Court through their guardian/next friend whereas respondent No.1, namely, Mst. Sarwat Fatima ("**the respondent**") is widow of late Syed Sajjad Hussain Shah. The petitioners, have mounted challenge to the concurrent findings of the Courts below, whereby the respondent was held entitled to recovery of Rs.300,000/-, as dower, in suit instituted by her for recovery of the said amount.

2. Brief facts of the case are that the respondent instituted the above referred suit for recovery on the strength of entry recorded in column No.15 of her *Nikahnama* with late Syed Sajjad Hussain Shah. The suit was contested by the petitioners, on the ground that the said entry in the *Nikhanama* was interpolated by the respondent. After the framing of issues and recording of the evidence, the suit was decreed by the learned Judge Family Court, Rawalpindi, *vide* judgment and decree dated 07.12.2019, and when appeal was preferred by the petitioners, the same was dismissed by the Appellate Court below, *vide* judgment dated 31.08.2020.

3. Learned counsel for the petitioners, *inter alia*, contends that the impugned judgments suffer from material misreading and non-reading

of evidence inasmuch as the Courts below have failed to take into consideration that the *Nikahnama* of the respondent with predecessor-in-interest of the petitioners was not registered in accordance with law, and remained in possession of the respondent and got registered on 15.06.2014, after death of late Syed Sajjad Hussain Shah, who died on 18.02.2014, by interpolating the entry regarding the dower amount. Adds that instead of appreciating the evidentiary resume of the case, the learned Trial Court has relied upon weaknesses of case of the petitioners/defendants, which offends settled principle of law that a plaintiff has to stand on its own legs.

4. Conversely, learned counsel for the respondent has placed reliance upon case reported as "*Haseen Ullah v Mst. Naheed Begum and others* **(PLD 2022 Supreme Court 686)**, to contend that a registered *Nikahnama* carries presumption as to its truthness and the entries recorded therein are to be conjunctively read for the benefit of the wife and any dower agreed is a lien on the property left by the deceased husband.

5. Arguments heard. Record perused.

6. Generally, factual determination in a case instituted under the Family Courts Act, 1964 is immune from interference by this Court in exercise of its constitutional jurisdiction, however, the present case falls under an exception where the evidence on record has been misread and the applicable law has been misapplied, for the reasons set forth in the succeeding paragraphs of this judgment.

7. It is admitted by the respondent that her *Nikah*/marriage with father of the petitioners was solemnized on 24.10.2013, whereafter the husband died on 18.02.2014. In ordinary circumstances if the respondent had produced her *Nikahnama* duly registered in accordance with law, the same could have carried presumption of truth attached to it and it was for the petitioners to prove that the

document was interpolated because in order to carry presumption of truth by a public document, it is imperative that such document is registered and/or kept/maintained, in accordance with law, by the authority envisaged thereunder. However, in the present case, admittedly, the respondent produced her copy (پرت) of the *Nikahnama*, which reflects that it was registered on 15.06.2014 i.e., approximately four months after the death of predecessor-in-interest of the petitioners/husband of the respondent. The Courts below have not holistically examined the evidentiary resume of the case and gravely erred by not appreciating this crucial aspect of the case. The respondent, appeared as PW-1, and categorically stated as under:

> "یہ درست ہے کہ میری شادی 24.10.13 کو ہوئی تھی۔ مجھے یاد نہ ہے کہ شادی کے بعد نکاح نامہ مجھے کب ملا۔ البتہ تقریباً 1 ماہ کے بعد نکاح نامہ مجھے ملا۔ یہ درست ہے کہ جب 1 ماہ کے بعد نکاح نامہ مجھے ملا تو اسی حالت میں تھا۔ یہ درست ہے کہ میں نے اس نکاح نامہ میں کوئی تبدیلی نہ کی ہے۔۔۔۔۔
> یہ درست ہے کہ نکاح نامہ Ex.P2 پر کوئی رجسٹرڈ نمبر درج نہ ہے۔ یہ درست ہے کہ جب نکاح نامہ مجھے ملا اس پر نکاح رجسٹرار کی مہر لگی ہوئی تھی۔۔۔۔۔
> یہ نکاح نامہ میرے متوفی خاوند نے مجھے دیا تھا۔ یہ درست ہے کہ نکاح نامہ ملنے کے بعد میں نے اس میں کوئی تبدیلی نہ کی ہے۔۔۔۔۔ یہ درست ہے کہ نکاح نامہ کے کالم نمبر 25 پر شادی رجسٹرڈ کرانے کی تاریخ مورخہ 15.06.14 درج ہے۔۔۔۔۔"

(Emphasis supplied)

The respondent claims that it was her deceased husband/predecessor-in-interest of the petitioners, who gave the copy of the *Nikahnama* to her, which has not been tampered, leading to an inference that it was registered when handed over to the respondent, however, star witness, who is statedly, *Nikah Khawan*, appeared as PW-2 and stated that the *Nikah* was registered in accordance with law on 15.06.2014, i.e., after death of the husband of the respondent/predecessor-in-interest of the petitioners. This creates a paradoxical position. Presumption of truth attached to the *Nikahnama*, being a public document, is rebuttable and the above-mentioned factual matrix of the case as also the evidentiary

resume, clearly indicates that the respondent failed to prove that the *Nikahnama* of the respondent with predecessor-in-interest of the petitioners was a genuine document. This Court in case reported as "*Ejaz Iqbal v Additional District Judge, etc.*" **(available at website of this court at 2021 LHC 9385)** while examining the procedure for solemnization of *Nikah* and its registration, held that since second and third copy (پرت) of the *Nikahnama* are with the parties, hence, possibility that the same may be tampered by addition or deletion of an entry cannot be ruled out, and it is fourth copy (پرت) duly forwarded to the Union Council concerned or the (first *pert*) one that is kept in the original register is the document that carries the presumption of truth. In the instant case, the first and fourth copy (پرت) were never produced and admittedly the copy of *Nikahnama* with the respondent, containing the date of registration after the death of husband of the respondent was brought on record. These facts imply that the *Nikahnama* brought on record by the respondent was never registered in accordance with law and hence, the presumption of truth was not attached to the same, therefore, the petitioners were not obligated to dislodge the presumption of truth attached to the *Nikahnama* as held by the Courts below.

8. Insofar as the averment of learned counsel for the respondent that the grand-mother of the petitioners/mother-in-law of the respondent appeared before the Trial Court as she was arrayed as defendant No.1 (died during the pendency of the suit and was represented through the petitioners) and acknowledged that the *Nikah* of the respondent with her son/deceased predecessor-in-interest of the petitioners was solemnized and Rs.300,000/- was fixed as dower, which is unpaid is concerned, the said statement is neither reliable nor can be made basis for decreeing the suit of the respondent for recovery of dower as admittedly, the grand-mother of the petitioners/mother-in-law of the respondent neither attended the *Nikah*

ceremony nor she was witness of the *Nikah*, which fact is admitted by the respondent in the following terms:

> "یہ درست ہے کہ نذیر فاطمہ بھی بوقت نکاح مردوں کی مجلس میں موجود نہ تھی کیونکہ Hepatitis C کی وجہ سے وہ چلنے سے معذور تھی۔ یہ درست ہے کہ میرا نکاح میرے والدین کے گھر ہوا تھا۔ میرے والدین کے گھر اور متوفی کے گھر 1 گھنٹہ گاڑی کے سفر کا فاصلہ ہے۔ یہ درست ہے کہ نذیر فاطمہ نکاح کے لیے میرے گھر نہ آئی تھی۔ یہ غلط ہے کہ نذیر فاطمہ کی یاداشت درست نہ تھی۔ یہ درست ہے کہ نذیر فاطمہ اپنے بیان کے لیے عدالت میں نہ آئی تھی کیونکہ وہ چل نہ سکتی تھی۔"

(***Emphasis supplied***)

The above quoted portion of the statement of the respondent destroys the case of the respondent that has been completely ignored by the Courts below. Copy of statement (Mark-B recorded before the learned Trial Court) of Mst. Nazeer Fatima, grand-mother of the petitioners/mother-in-law of the respondent cannot be relied upon as she admittedly was not present when the *Nikah* was solemnized, on account of her ill-health, and admittedly, did not attend the Court, as per the stance of the respondent reproduced hereinabove, when the statement was recorded.

9. Adverting to the reliance placed on the ratio laid down in case of *Haseen Ullah supra*, suffice to observe that the same is settled law *qua* obligation of a husband to pay the dower and is applicable in cases where the registered *Nikahnama* carrying presumption of truth is brought on record, however, is not helpful to the respondent, on account of distinguishable facts.

10. Both the Courts below have erred in appreciating the evidentiary resume of the case and the same merits interference by this Court in exercise of its constitutional jurisdiction. The impugned judgments and decrees of the Courts below are not sustainable and

hence, set aside. The present petition is **allowed**. Resultantly, the suit of the respondent is dismissed

(**ANWAAR HUSSAIN**)
JUDGE

Approved for reporting

Judge

Tahir Noor