

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2573 OF 2021

Muhammad Ramzan

Vs

Shakeela Bibi & others.

PETITIONER BY: Raja Yasir Shakeel, Advocate.

RESPONDENT BY: Proceeded Ex-parte

DATE OF DECISION: 07.03.2022.

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BABAR SATTAR, J.- Through this petition, the petitioner has impugned (i) the judgment and decree of the learned Family Court (West), Islamabad dated 28.10.2020 pursuant to which the suit for recovery of dower/gift in shape of a house measuring 5 Marlas bearing Khasra No. 1062 situated in village Sari Seral was decreed to the extent of the petitioner's share or in the alternative market price in lieu thereof, and (ii) the judgment passed by the learned Additional District Judge (West), Islamabad dated 17.05.2021 pursuant to which the judgment and decree of the learned Family Court was upheld.

2. Learned counsel for the petitioner's main contention was that both judgments have been passed on the basis of Ex-C1, which is a map of the property ("**Makan**") being claimed by the respondent, which was marked as Mark-A and never exhibited in accordance with law and the petitioner was never afforded an opportunity to cross-examine respondent No.1 in

such regard. He contended that there was no specification of the Makan or description of its boundaries in the Nikah Nama. That Mark-A on the basis of which the suit was decreed was not properly exhibited, both judgments suffered from infirmities. While acknowledging that it was mentioned in clause 17 of the Nikah Nama dated 12.08.1996 (Ex-P5) that a Makan had been granted to respondent No.1, he submitted that the reference to such Makan was for purposes of both spouses living together and the Makan was not a marital gift given by the petitioner to respondent No.1.

3. Notices were duly issued to respondent No.1 but no one tendered appearance on behalf of the said respondent. She was proceeded against ex-parte.

4. The learned Family Court after appreciating the evidence produced by the parties held that the Nikah Nama was not denied by the petitioner and neither was the fact that the property being claimed by respondent No.1 as a gift from the petitioner, as noted in the Nikah Nama, was inherited property owned by the petitioner. That the said property was mentioned in clause 17 of the Nikah Nama and was a gift made by the petitioner to respondent No. 1 at the time of execution of the Nikah Nama. That the learned Family Court had jurisdiction under the Family Court Act, 1964, to deal with any disputes related to marital gifts. That in the event that the petitioner was unable to hand over possession of the Makan as described in the map appended by respondent No.1 with her suit (mark-A) the petitioner would compensate respondent No.1 in lieu of such gift

by paying her the market price for such gift, which price would be determined during the course of execution proceeding.

5. The arguments raised by the petitioner before this Court was also raised before the learned Additional District Court, which after hearing, the parties also passed a reasoned judgment holding that the learned Family Court had correctly relied on the law laid down by the august Supreme Court in **Yasmeen Bibi Vs. Muhammad Ghazanfar Khan and others (PLD 2016 SC 613)** and assumed jurisdiction over adjudication of the dispute involving marital gifts. After reviewing the evidence presented before the learned Family Court, the learned Appellate Court noted that any doubts regarding the specification of the boundaries of the property being claimed by respondent No.1 was of no avail to the petitioner as he had admitted joint ownership of inherited house and even if the specification of his portion of the Makan in question could not be settled during execution proceedings the learned Family Court had held that in the alternative the petitioner would be liable to pay respondent No.1 the price of the Makan in lieu of delivery of his possession.

6. Learned counsel for the petitioner has failed to point out any infirmities in the impugned judgments and decrees passed by the learned Family Court as well as the judgment rendered by the learned appellate Court. Learned counsel for the petitioner has failed to point out any piece of evidence that was either not read or misread by the learned Family Court and the learned Additional District Court. His contention that reference to bestowing a "Makan" on respondent No.1 through the Nikah

Nama what the petitioner meant was that he would merely invite respondent No.1 to live in such Makan makes no sense. Clause 17 of the Nikah Nama very clearly states that a Makan has been granted by the petitioner to respondent No.1, which clause has been rightly interpreted by the learned Family Court and the learned appellate Court to mean that it was a bridal gift which formed part of the marriage deed between the petitioner and respondent No.1. The reasoning of the learned Additional District Judge does not suffer from any infirmity when it notes that even if the specifications of the property are in question or that the map introduced by respondent No.1 as Mark-A cannot be read into the evidence, it does not help the petitioner as the learned Family Court has held that the price of such Makan is to be paid to respondent No.1 in lieu of the Makan.

7. For the aforementioned reasons, the instant petition is without merit and is **dismissed.**

(BABAR SATTAR)
JUDGE

Shakeel Afzal/-