

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2888 of 2010

Mst. Mirrat Manzoor Bajwa

VERSUS

Additional District Judge, and another.

Date of Decision: 30.05.2012.

Petitioner by: Hifza Bukhari, Advocate.

Respondents by: Sh. Khizar-ur-Rasheed, Advocate.

MUHAMMAD AZIM KHAN AFRIDI, J:- Mst. Mirrat

Manzoor Bajwa D/o Manzoor Bajwa hereinafter referred to as the petitioner has preferred the instant constitutional petition with a prayer to set aside judgment and decree dated 28.1.2010 passed in appeal and that her claim in respect of dowry articles may be decreed according to the list annexed with the plaint.

2. Brief facts giving rise to the instant constitutional petition are that the petitioner instituted a suit against Mudassar Saleem hereinafter referred to as respondent claiming therein maintenance, dower and articles of dowry. The learned Judge Family Court, Islamabad, vide judgment and decree dated 26.10.2004, granted the decree in respect of maintenance, dower and

articles of dowry as per list Exh.D.2.

3. The said judgment and decree was impugned in appeal before the Court of learned Additional District Judge, Islamabad. After hearing of arguments of learned counsel for the parties and considering the material placed on record, learned Additional District Judge, Islamabad, dismissed the appeal to the extent of dower and maintenance allowance, while the same was partially allowed to the extent of dowry articles mentioned in the list of respondent (Mudassar Saleem), while the claim of the petitioner in respect of remaining articles of dowry as per list annexed with the plaint was dismissed vide judgment and decree in appeal dated 28.1.2010.

4. Dissatisfied with the findings of the learned Additional District Judge, Islamabad, the petitioner has impugned the said judgment and decree passed in appeal through instant constitutional petition.

5. Learned counsel for the petitioner has argued that the petitioner was given articles of dowry by her parents as per prevailing customs and traditions of the society. That rule of thumb is applicable in proceedings before the Family Court and that provisions of Qanoon-

e-Shahadat Order, 1984 or its stringent principles would not apply to proceedings before Family Court. That the petitioner has produced even receipts of articles of dowry and as such the learned Judge Family Court as well as Additional District Judge, Islamabad, had failed to correctly appreciate the legal position and erred in refusing the claim of the petitioner in respect of the articles of dowry.

6. Reliance was placed on case of Muhammad Yaqoob reported as 2008 CLJ 580.

7. Learned counsel for the respondent has argued that the petitioner had instituted her suit on 28.2.2003, while the nikah was performed on 06.1.2002. That the articles of dowry given to the petitioner were admitted by the respondent and the same were handed over to her under the orders of the Court in execution of decree. That the articles of dowry claimed in the list were neither given to the petitioner by her parents nor the said list was proved as genuine.

8. Reliance was placed on case of Mst. Allah Rakhi reported as 2004 SCMR 1739.

9. I have heard arguments of learned counsel for the parties and perused the record.

10. Record of the case suggests that the said list of dowry articles was not produced in evidence and, according to the version of petitioner (PW.1), the said list was prepared at the time of institution of the suit. She has also admitted that no list of dowry articles was prepared at the time of marriage. Contrary to the above stance, father of petitioner Manzoor Ahmad (PW.2) had deposed in the cross examination that the said list was prepared by him at the time of marriage.

11. It may not be disputable that stringent principles of Qanoon-e-Shahadat Order, 1984 may not be applicable to proceedings before Family Court, however, the rule of thumb would neither absolve a party from establishing a claim nor, on the basis of the said tenet, a party denying such liability can be burdened to shoulder such claim without proof of the same. Since no evidence to corroborate the alleged authenticity of the list was forthcoming from the side of petitioner as such the learned Judge Family Court as well as learned Additional District Judge, Islamabad, while appreciating the stance of the parties, correctly disallowed the claim of the petitioner to the articles of dowry on the basis of the said list.

12. It is added that "dowry" has been defined in Section 2(b) of the Dowry and Bridal Gifts (Restriction) Act, 1976 hereinafter referred to as the said Act as any property given before, at or after the marriage, either directly or indirectly, to the bride by her parents in connection with the marriage. The Federal Government in respect of the Islamabad Capital Territory, in exercise of power conferred by Section 10 of the said Act, has framed the dowry and Bridal Gifts (Restriction) Rules, 1976 hereinafter referred to as the said Rules. Apart from other related matters, Rule 4(1) of the said Rules prescribes and provides for list of dowry in the shape of Form D-1 which, according to Sub Rule 4 is to be furnished by the parents to the Registrar of the area of which the bride is ordinarily resident and such Form is to be indexed and preserved by the Deputy Commissioner for two years as laid down in Sub Rules 7 and 8 of Rule 4. The list of articles of dowry furnished and relied upon by the petitioner is also not a list prepared in the prescribed form and as such the said list cannot be given any weight for the purpose of claim and recovery of the articles mentioned therein.

13. Petitioner has produced receipts Exh.P.2 to

Exh.P.95 in respect of purchase of house hold articles etc. Items mentioned in the said receipts include such articles which may be given to a bride by her parents in dowry but the said receipts, even on the rule of thumb, do not qualify and meet the essential requirement of proof of purchase of the said articles by the parents of the bride and given to the petitioner before, at or after marriage.

14. In view of the above, I find no force in the constitutional petition preferred by the petitioner against the impugned judgment and decree dated 28.1.2010, passed by learned Additional District Judge, and as such, while maintaining the impugned judgment and decree, I would dismiss the same with no orders as to costs.

(MUHAMMAD AZIM KHAN AFRIDI)
JUDGE

Qamar Khan

Approved for reporting.