

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P. NO: 2647/2014**  
**MUHAMMAD ZAHID KHAN KHATTAK**  
**VERSUS**  
**LEARNED JUDGE FAMILY COURT ETC**

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

29.5.2014

Mr. Khurram M. Qureshi, Advocate.

This petition assails Order dated 27.03.2014 passed by Mr. Mubashar Hassan, learned Judge Family Court-West, Islamabad, whereby petitioner’s objection upon the maintainability of family suit was set aside.

2. Brief facts of the case are that while claiming herself to be the wife of petitioner, respondent No.2 instituted suit for dissolution of marriage wherein, he filed written-statement denying existence of marriage contract between the parties and raised objection that the suit does not fall within the jurisdiction of Family Court. However, learned trial Court by rejecting the objection vide Order dated 27.03.2014 proceeded to frame the issues and called evidence of parties.

3. Learned Counsel submits that neither relationship of husband and wife exists between the parties nor any NIKAHNAMA has been produced by the respondent No1, due to which Family Court had no Jurisdiction to decide the case.

4. It is next submitted that respondent No.2 is already married to one Rehan Ahmad Shamsi who is residing in United Kingdom, that marriage is still intact and it is impossible for a muslim woman to marry another person during subsistence of a valid marriage.

5. Learned Counsel further averred that in a case where matrimonial status is under dispute, proper course for the Family Court is to pass a direction to file suit for declaration before the Civil Court. He placed reliance on case titled as ‘MST JAMEELA AKHTAR VS PUBLIC AT LARGE’ [2002 SCMR 1544] wherein it was held;

*“..the trial Court while granting succession certificate to the respondent No.2, should*

have directed that no share of the said amount should be paid to Mst. Umat Ul Hameed unless she gets a decree from the Civil Court about her status as widow of Muhammad Zafarullah Khan, deceased, for such, a question could not be decided in summary proceedings.”

6. Learned Counsel further relied upon unreported judgment dated 10.05.2013 passed by the Hon’ble Supreme Court in Case of Mst Mehnaz Bibi & Mst. Saba Noor Vs Mst. Farhat Nigar etc [**Civil Petition 1057 of 2011**] & unreported judgment dated 02.05.2011 passed by the Hon’ble Peshawar High Court in Case of Mst. Farhat Nigar Vs Mst. Mehnaz Bibi [**CR 524 of 2009**] wherein the dispute qua succession was held to be triable by learned Civil Court.

7. Heard & record perused.

8. The question of law emanating from the facts and circumstances of the instant case is ‘whether a Family Court can decide a dispute where existence of matrimonial relationship is denied in written statement?’

9. The jurisdiction of a Family Court is provided under Section 5 of the Family Court Act, 1964 which is as following;

(1) “ Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon the matters specified in Part I of the Schedule.”

10. In part I of the Schedule at item No 7 Jactitation of Marriage is mentioned which makes it clear that where one of the spouses denies existence of marriage it amounts to jactitation of marriage and is within the exclusive domain of the Family Court to decide the dispute.

11. The Hon’ble Supreme Court in case of ‘Abdul Waheed Vs Asma Jehangir’ [**PLD 2004 Supreme Court 219**] held as following;

“Question of validity of a marriage falling within the exclusive domain of the Family Court established under the West Pakistan Family

Court Act, 1964, High Court could and ought to have avoided the needless controversy on the subject.”

12. Further in case of Abdul Hamid Vs Munaza Fakhar [2006 YLR 2622 Lahore] wherein it is held as following;

“Ordinary dictionary meaning of the word jactitation clearly indicate that it arises in the situation when one person intends to keep the other silent in respect of boasting of existence of marital relations between the two. According to my analysis, the laws promulgated for settlement of dispute between the husband/wife is that in case any part of the married couple disputes, such suits certainly would come before the Courts of exclusive jurisdiction established in this behalf and he/she cannot maintain civil suit but where such relief is claimed by a person other than husband/wife, suit in this behalf shall be entertained, adjudicated tried and decided by the Civil Court of ultimate jurisdiction.”

13. The case laws referred by the petitioner make it evident that dispute involved therein pertained to inheritance and the existence of marriage of the predecessor was brought under dispute by the third person and is not under dispute between the spouses, hence the referred case laws are distinguished.

14. In view of above, there is no justification for interference in the impugned Order hence the petition is dismissed in limine.

**(CHIEF JUSTICE)**

Approved for reporting.

**(CHIEF JUSTICE)**

Umar  
29.5.2014