

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 3394/2019

Muhammad Israr

versus

Learned Additional District Judge, Islamabad-East, etc.

Petitioner by: Raja Iftikhar Ahmed, Advocate.

Respondent No.3 by: Syed Asad Abbas Naqvi, Advocate.

Date of Decision: 21.09.2020.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has assailed the concurrent findings of the Family Court, whereby suit filed by respondents No.3 to 6 for recovery of maintenance allowance, recovery of dowry articles and dower, was partially decreed vide judgment & decree dated 15.04.2019, passed by Judge Family Court (East), Islamabad and the said judgment was maintained by learned Additional District Judge (East), Islamabad vide judgment dated 06.07.2019.

2. Learned counsel for the petitioner contends that both the courts below have not considered the evidence in its true perspective and even right to produce the evidence was closed by the Judge Family Court without adhering to the principle of affording fair opportunity to prove the contention of the petitioner and as such it is necessary to give one fair chance for production of evidence; that respondent No.3 remained living with the petitioner and as such she is not entitled to claim maintenance allowance for the said period from 2013 to 2016 and even plot was transferred in her name by the petitioner through mutation, therefore, claim of dower was satisfied but all these aspects have not been considered which resulted into passing of the impugned judgment which amounts to miscarriage of justice.

3. Conversely, learned counsel for respondent No.3 contends that learned Judge Family Court has given number of opportunities to the petitioner but despite availing opportunities he has failed to produce his evidence, therefore, his right to produce evidence was closed; that maintenance has already been fixed at lower side and even the date of desertion was admitted; that plot agreed to be transferred as dower has not been transferred in the name of respondent No.3, even mutation which has been referred by the petitioner is not from his name rather one Ilaji Abid Hussain transferred the plot in the name of respondent No.3 which has nothing to do with the claim of petitioner.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner has assailed the concurrent findings of the courts below whereby judgment passed by the trial Court was maintained. The relief granted by the trial Court is as under:-

Consequent upon my discussion on all issues, instant suit is decreed. Plaintiffs shall be entitled to receive maintenance @ rate of Rs.4000/- per month from February 2013 with 10 percent annual increase. Plaintiffs No.2 to 4 shall be entitled to receive such amount till their legal entitlement. Plaintiff No.1 shall be entitled to recover dowry articles as per list. If defendant did not procure the articles mentioned in list Ex.P4 then he would either pay half price of each article otherwise would procure second hand and used articles suitable for use. Defendant shall be bound to transfer 10 Marlas plot in said vicinity as agreed by him at time of marriage and stipulated in Nikahnama to Plaintiff No.1. Her claim with regard to ornaments is dismissed, however, no order as to cost. Decree sheet be prepared. File be consigned to record room after its completion and compilations.

6. The entire record reflects that respondent No.3 is the wife of present petitioner who filed suit for recovery of maintenance, dowry articles and dower, whereby petitioner has not denied the relationship, nor even proved anything on record for consumption of this Court to believe that he had paid the dower amount, dowry articles as well as maintenance. The evidence of respondent No.3

has been referred through Ex.P-1 on record, whereby she has taken categorical stance that:-

اسی مارپیٹ میں اس نے فروری 2013 میں من معلقہ کو بچوں سمیت اپنے گھر سے نکال دیا۔

and this aspect was further confirmed during the course of cross-examination and it was reiterated by respondent No.3 that:-

مجھے 10.04.2013 کو مارپیٹ کر گھر سے نکال دیا تھا۔

Therefore, the question relating to joint living till 2016 was never asked by the petitioner nor reflected from record; hence, the period for which maintenance has been claimed by respondent No.3 is justified from evidence as well as from record. The second important question is relating to 10 Marlas plot situated in Tarlai as reflected from column No.16 of the *Nikahnama* referred as Ex.P-3 and same was acknowledged by the petitioner, whereas it is trite law that dower is the responsibility of husband who is under obligation to pay the same immediately after marriage but despite this acknowledged state of affairs petitioner has not yet provided any proof through which it could be considered that he has transferred the agreed plot referred in column No.16 of the *Nikahnama*.

7. Similarly, petitioner has taken specific stance during arguments before this Court that he has purchased plot which was transferred in the name of respondent No.3 through mutation No.14461, measuring 5 Marlas. On minute scanning of the document referred by the petitioner, it reveals that 05 Marlas plot was in the name of Haji Abid Hussain which was transferred in the name of respondent No.3, who has nothing to do with the plot agreed as dower; therefore, contention of the petitioner is not justiciable from record.

8. At last it has also been observed from evidence that respondent No.3 has categorically answered that:-

اگر مدعا علیہ میری چیزیں ادا کرے تو میں مدعا علیہ کے ساتھ آباد ہونے کو تیار ہوں۔

This aspect clearly establishes that petitioner has not handed over the dowry articles to respondent No.3.

9. Keeping in view the above background, the petitioner was confronted as to why he has not produced his evidence, whereby he contends that his right to produce evidence was closed and he has assailed the said order through writ petition No.1381/2019 but the same became infructuous as final decree was passed. The record reflects that 14 opportunities were granted to the petitioner for production of his evidence but he has failed to produce the evidence, resultantly, Family Court was left with no other option but to proceed against the petitioner by all means.

10. Keeping in view the above position, petitioner is not entitled for any relief as he has not performed his lawful duty and obligation towards his family and children and no jurisdictional error has been pointed out by the petitioner in the impugned judgment, the same has been passed within four corners of law. Hence, instant writ petition is devoid of merits and the same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid