JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.2053/2021

Mrs. Ramna Rafique

vs.

Learned Additional District Judge (West), Islamabad & 02 others

Petitioner by:	Syed Mujtaba Haider Sherazi, Advocate.
Respondents by:	Mr. Rizwan Faiz Muhammad and Barrister Afzal Khan Shinwari, Advocate for respondent No.2
	Ch. Shafiq Ahmed Ramay, Advocate for respondent No.3.
Date of Decision:	16.11.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has called in question judgment and decree of the learned Additional District Judge (West), Islamabad, dated 14.04.2021, whereby appeal filed by respondent No.2 against judgment and decree dated 19.04.2019, passed by learned Family Court, has been allowed.

2. Succinctly, Mrs. Ramna Rafique (***petitioner***) entered into marriage with son of Muhammad Nawaz (Respondent No.2) on 28.09.1989 (since died), whereby Plot No.386, Sector F-11/1, Islamabad (***suit plot***) was given as dower by groom's father i.e. Respondent No.2 as evidently mentioned in Column No.15 of the Nikahnama, as such, on 01.01.2018, the petitioner filed a suit for recovery of dower in shape of the aforesaid plot or alternatively its current market value, per se, after recording of pro and contra evidence, the learned Judge Family Court, vide impugned judgment and decree dated 19.04.2019, decreed the suit. Feeling aggrieved thereof, Respondent No.2 preferred an appeal, whereby the learned Additional District Judge has accepted the appeal vide the impugned judgment and decree, dated 14.04.2021. Hence, instant writ petition.

3. Learned counsel for petitioner contends that the learned Judge Family Court has rightly appreciated the evidence while decreeing the suit, but the learned Additional District Judge while adjudicating upon the appeal filed thereto has misread and misinterpreted the evidence available on record and non suited the petitioner; that the petitioner successfully made out her case in terms of discharging the onus to prove her case; that the learned first Appellate Court has non-suited the petitioner purely on technical grounds and in hasty manner.

4. Conversely, learned counsel for respondents No.2 & 3 opposed the filing of instant writ petition on the grounds that the learned Judge Family Court has failed to record findings on all the issues framed and committed gross procedural irregularity; that the learned Judge Family Court has failed to realize that the petitioner has not discharged the burden of proof in contending that respondent No.2 had given the suit plot to the petitioner as dower through an attorney, even otherwise, the petitioner never produced the so-called attorney nor was any evidence has been led on its veracity or existence.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner married with Khalid Nawaz (since died) on 28.09.1989 vide Nikahnama (Exh.P5) solemnized in Islamabad against Haq Mehar of Rs.1000/-, as referred in Column No.12, however at the time of Nikah, a specific entry was made in Column No.15 of Nikahnama, which is as under:

(۱۵) آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائداد دی گئی ہے اگر دی گئی ہے تو اس جائداد کی صراحت اور اس کی قیمت جو فریقین کے مابین طے پائی ہے۔	کل رقم کے عوض پلاٹ نمبر 386 سیکٹر F-11/1 اسلام آباد بذریعہ پاور آف آٹارنی منجانب محمد نواز والد دولہا خالد نواز دیدیا گیا ہے۔

7. On 29.03.1997, the husband of the petitioner was murdered, whereafter petitioner married the second brother of his deceased husband namely Tahir Nawaz Khan on 19.07.1998, which was arranged by the father-in-law /

respondent No.2 Muhammad Nawaz Khan. The petitioner claims to be owner in possession of the property i.e. Plot No.386, Sector F-11/1, Islamabad, referred in Column No.15 of Nikahnama and filed a suit for recovery of Haq Mehar on 01.01.2018 or alternatively the current market value of the property. The suit was decreed by learned Judge Family Court vide judgment and decree dated 19.04.2019, but the same were set aside by learned first Appellate Court vide impugned judgment and decree dated 14.04.2021 primarily on the ground that Muhammad Nawaz Khan / respondent No.2 being the father in law of petitioner never signed the Nikahnama, nor agreed to transfer the suit property as dower in the name of petitioner.

8. While dealing with the reverse findings recorded by both the courts below, I have gone through the evidence with able assistance of learned counsel for the parties and observed that the primary onus in this case is upon the petitioner to prove as to whether the suit plot was validly entered into Nikahnama in favour of petitioner as dower. However, in order to discharge such onus the petitioner produced three (03) witnesses namely PW-2 Muhammad Rafique i.e. real father of petitioner, PW-3 Faisal Rafique Malik i.e. real brother of petitioner and PW-4 Rabnawaz, as such, the petitioner herself appeared as PW-1 and reiterated her stance, which is supported by aforesaid three witnesses. On the other hand, the father-in-law of petitioner (respondent No.2) appeared as DW-1 and produced his testimony in shape of affidavit as Exh.D1.

9. While considering the contentious claim of rival parties, this Court is convinced that the entry made in Nikahnama in terms of *Muslim Family Laws Ordinance, 1961* could not be disputed in any manner as the Nikahnama is compulsory registered document registered in terms of Section 5 of the said

Ordinance. There is no cavil to proposition that Respondent No.2 participated in marriage ceremony of petitioner with his late son and as per his own version, he participated in marriage along with other 15/20 people of the family, even he acknowledged the marriage in unequivocal terms in the cross examination that:

"میں نکاح نامہ 28-09-1989 کو مانتا ہوں۔ از خود کہا کہ میں مانتا ہوں کہ میں موجود تھا۔"

10. The above referred aspect left nothing to dispute the Nikahnama. Now the only question confined is whether the entry made in Column No.15 is with the consent of DW-1 Muhammad Nawaz, who is the owner of the property in question. In order to prove this aspect, the Nikah Registrar has neither been produced before the Court nor the witnesses of Nikah namely Dr. Muhammad Jahangir Alam and Abdul Rehman have ever been produced before the Court, who are the key witnesses to prove the contents or terms and conditions of Nikah, whereas the petitioner was obliged to discharge this onus in unequivocal term where a particular entry is disputed in Nikahnama and rest of the event was acknowledged by the defendant / respondent No.2, as such, when confronted, no justiciable reason has been brought on record as to why the most suitable witnesses were not produced, even the record is silent to that effect. Such aspect creates mysterious circumstance lurking in the entire case and adverse to the cause of petitioner.

11. Now comes to specific entry in Column No.15, where the following specific phrase has been written:

(۱۵) آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائداد دی گئی ہے اگر دی گئی ہے تو اس جائداد کی صراحت اور اس کی قیمت جو فریقین کے مابین طے پائی ہے۔	کل رقم کے عوض پلاٹ نمبر 386 سیکٹر F-11/1 اسلام آباد بذریعہ پاور آف آٹارنی منجانب محمد نواز والد دولہا خالد نواز دیدیا گیا ہے۔

The above referred entry in Column No.15 reveals that power of attorney was presumed to be executed by defendant / respondent No.2 Muhammad Nawaz

qua the suit plot, but surprisingly no effort was put forward on record to bring that power of attorney on record nor any attorney holder has been produced to record his evidence to prove that the father-in-law has ever executed such power of attorney, otherwise the very entry in above terms in Column No.15 has no meaning.

12. The last important aspect of this case is regarding the custody of title document of the suit plot, though the petitioner claims herself being owner in possession of the property, but title document has never been produced by the petitioner in evidence, which is against the presumption that owner must be in position to bring on record the title document to justify his or her claim, which is a missing part, especially when the petitioner claims that she was given property by her father-in-law through late Khalid Nawaz at the time of Nikah i.e. on 28.09.1989, but till filing of suit in the year 2018 the title document has never been in possession of petitioner nor she was in possession of the property, though the possession might be a symbolic issue.

13. The above referred discussion leads this Court to opine that the property in question was never agreed to be given as a dower to the petitioner in the Nikahnama Exh.P5 as no probability has been surfaced on record to believe such aspect. In this background, the learned Judge Family Court has made certain reliance on cases reported as ***2003 YLR 250 Peshawar (Hassana v. Ghufrana)*** and ***PLD 2016 SC 613 (Mst. Yasmeen Bibi v. Muhammad Ghazanfar Khan)*** while passing the decree in favour of petitioner, though the said judgments are not related to factual aspect of this case, but the principle settled in those cases are admittedly applicable, especially where it has been referred that any property given as part of dower to wife in consideration of marriage is to be treated as property of the wife, even it is admitted position of law that formal registration or transfer is not required in the land registry office, but the case in hand is entirely different where the property in question belongs to the father of late

husband of petitioner, who has never signed the Nikahnama, though he was present at the time of Nikah and denied such entry, hence the basic principle of onus to prove is upon the petitioner, who is beneficiary of such document, but she failed to prove the consent of her father-in-law qua the handing over of the suit property as dower. It is also pertinent to mention here that how the property of another person, except of groom, can be mentioned as consideration of dower and if by any stretch of imagination the property of the father was mentioned in the Nikahnama as dower consideration, the said property was required to be transferred in the name of bride, which is the missing link in this case.

14. I have gone through the judgment rendered by the learned first Appellate Court, whereby the petitioner was also non suited on the question of limitation as the suit was filed after 17 years and nine months of the period of limitation i.e. three years in terms of Article 103 of the Limitation Act, 1908, which is admitted position on record as the petitioner never claimed her Haq Mehar during lifetime of her husband or at the time of death of her husband nor even at the time of contracting second marriage with another son of respondent No.2 i.e. father-in-law of petitioner. Reliance is placed upon ***2015 YLR 2375 Peshawar (Mst. Kulsoom Bibi v. Muhammad Waseem)*** and ***2019 CLC 1008 Lahore (Muhammad Saeed v. Additional District Judge)***. Hence, the suit is barred by limitation.

15. In view of above detailed reasons, the findings recorded by the learned first Appellate Court in the impugned judgment and decree, dated 14.04.2021, are legally justified and found to be within four corners of law, therefore, instant writ petition is misconceived and same is hereby ***DISMISSED***.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.