

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 138/2021

Mohabbat Ali

Vs.

Additional District Judge, Islamabad-West and others

Petitioner by : Mr. Muhammad Aslam Choudhary, Advocate.

Respondents by : Mr. Tariq Mehmood Mughal, Advocate.

Date of hearing : 17.01.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner (Mohabbat Ali) has assailed the Judgments dated 11.09.2020 & 23.07.2019 ("Impugned Judgments") passed by the learned Additional District Judge West-Islamabad and learned Senior Civil Judge-Civil Judge-III/Guardian Judge, West-Islamabad, respectively.

2. Brief facts of the case are that the marriage of the Petitioner and the Respondent No. 3 was solemnized on 06.06.2013 and from this wedlock Respondent No. 4 was born on 28.05.2014. On 15-09-2017, Respondent No. 3 and 4 filed suit for recovery of maintenance for Respondent No. 3 for past three years till marriage bond remained intact and for Respondent No. 4 from the date of her birth till her marriage with annual increase at the rate of 25 % along with recovery of delivery expenses of Respondent No. 4 and gold ornaments.

3. The Petitioner filed suit for restitution of conjugal rights on 01.11.2017. During pendency of the proceedings, the Petitioner appeared before the learned Family Court on 29.07.2018 and stated that he has given divorce to Respondent No.3. Resultantly, the suit was dismissed as having become infructuous on the same date. Thereafter, the Petitioner filed application for custody of minor under Section 25 of the Guardian and Wads Act, 1890 on 26.07.2018.

4. The above said suit filed by the Respondents No. 3 & 4 for recovery of maintenance was decreed in their favor through an ex-parte judgment and decree dated 06.01.2018. The Petitioner filed application under Section 12(2) CPC for setting aside ex-parte judgment and decree on 20.03.2018, which was allowed vide order dated 22.10.2018. Later, the learned Family Court/Guardian Judge through

consolidated Judgment and Decree dated 23.07.2019 decreed the suit in favour of Respondent No. 3 and 4 while Petitioner's application under Section 25 of the Guardian and Wards Act, 1890 seeking custody of minor/Respondent No. 4 was dismissed. Being aggrieved of such judgment and decree, Petitioner filed an appeal which also met the same fate, vide the Impugned Judgment dated 11.09.2020, hence, the instant petition praying for setting aside of the Impugned Judgments and Decree and fixing the maintenance of minor according to the economic condition of a poor laborer.

5. Learned counsel for the Petitioner, *inter alia*, submitted that the Impugned Judgments & Decree have been passed in a slipshod manner without adopting legal process; that learned Trial Court ignored his own findings regarding failure of Plaintiff No.1/Respondent No.3 to produce any evidence regarding exact date of her desertion from the house of Petitioner/Defendant; that learned appellate Court has also ignored the contradictions in the judgment of the learned Trial Court; that the learned Trial Court fixed the maintenance of the Respondent No. 4 from the date of her birth despite its own finding that no evidence regarding the exact date of the ousting of the Respondent No. 3 and 4 by the Petitioner could be brought on record; that Respondent No. 4 was born in the house of the Petitioner; that the said Respondents were living with the Petitioner till institution of suit dated 16-09-2017, therefore, maintenance should be from such date, and that the rate of maintenance is too high as the Petitioner is a labourer, hence the instant petition is liable to be allowed.

6. Learned counsel for the Respondents opposed the arguments of the learned counsel for the Petitioner and submitted that the Impugned Judgment does not suffer from any illegality as the Petitioner himself admitted about the sale of his land and receiving sale consideration thereof for Rs. 7.4 million; that it is admitted in the proceedings before the learned Trial Court that Respondent No. 3 lived with the Petitioner only for three months, after the solemnization of marriage; that the Petitioner did not even take the Respondent No. 3 to the hospital for the delivery of the Respondent No. 4 and admitted in cross-examination that he visited her after two days which would not have been the case if the said Respondents had been residing with the Petitioner as claimed.

7. Arguments advanced on behalf of learned counsel for the parties have been heard and record perused with their assistance.

8. The record reflects that the Petitioner categorically admitted in his cross examination that it is correct that the Respondent No. 3 went back to her parents' house after three months of their marriage till date, which is why he does not have any more children. This statement shows that the Respondent No. 4 has admittedly not lived with the Petitioner since her birth. Present stance of the Petitioner before this Court that the Respondents No. 3 and 4 lived with him till the institution of the suit by the said Respondents is the antithesis of his aforementioned statement before the learned Trial Court in cross-examination. No evidence was brought forth by the Petitioner to establish that he has been providing for the maintenance of the Respondent No. 4 since her birth. As such, this Court does not find that the Impugned Judgments and Decree suffer from any infirmity.

9. Insofar as the quantum of maintenance is concerned with reference to the Petitioner's income, it is settled law that the Court cannot decide factual controversies in the exercise of its Constitutional jurisdiction. The assessment and appraisal of evidence is the function of the trial court. There are concurrent judgments against the Petitioner. No non-reading or misreading of evidence has been pointed out by the Petitioner in the concurrent findings recorded by two courts below. In the absence of any illegality or irregularity warranting interference, this Court cannot substitute findings of fact recorded by the courts below.

10. In view of the above, this writ petition, being devoid of merit, is hereby dismissed.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on _____.

JUDGE