

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Shahid Waheed

C.P.L.A.559-P/2024

(Against the judgment dated 15.04.2024 passed by the Peshawar High Court, Peshawar in WP No.1056-P/2023)

Mushtaq and others ...Petitioner(s)

Versus

Mst. Fatima and others ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Asif, ASC via
video link from Branch Registry
Peshawar

For the Respondent(s) : Mr. Obaidullah Anwar, ASC via
video link from Branch Registry
Peshawar for respondent No.1

Date of Hearing : 31.01.2025

ORDER

Shahid Waheed, J: This petition seeks leave to appeal against the judgment issued on the 15th of April, 2024, by the Peshawar High Court in its constitutional jurisdiction. In this judgment, the High Court set aside the decree dismissing the family suit concerning the recovery of the dower recorded in the dower deed, ultimately allowing the claim presented by the plaintiff, referred to as respondent No.1 in this petition. The arguments presented before us can be distilled into two straightforward yet significant questions. The first question pertains to whether, in light of the evidence presented, the plaintiff could rightfully claim the recovery of the dower based on a dower deed, commonly known as a kabinnama. This raises concerns about such a document's legal proof and enforceability.

The second question addresses the authority of the High Court in its constitutional jurisdiction, specifically, whether it possessed the power to overturn the findings made by the lower courts in a family suit. These inquiries not only centre on legal principles but also have profound implications for the parties involved and the interpretation of family law.

2. The background to the dispute is that the plaintiff was married to Akhter Alam, who passed away in 2019. The defendants (petitioners herein) are the siblings of the deceased. The plaintiff sought to recover her dower, which consisted of three items: four tolas of gold ornaments, a constructed house covering an area of five marlas complete with a courtyard, and a monetary amount of Rs.5,000/-. This claim was founded upon dower deed No.38, executed on the 29th of January, 2011. Upon the defendants' denial of the plaintiff's claims, the Family Court was prompted to frame issues and directed that both parties present evidence to support their respective positions. Following the court's process, each side furnished evidence. However, after careful consideration, the Family Court dismissed the plaintiff's claim. The court based its decision primarily on the fact that the plaintiff produced only one attesting witness to prove the execution of the dower deed. This conclusion was reached by applying the provisions of Article 79 of the Qanun-e-Shahadat, 1984. The First Appellate Court also

upheld this reasoning. Nonetheless, taking into account the provisions of Section 17 of the Family Courts Act of 1964, the High Court intervened and determined that the testimony of the single attesting witness, when taken together with the statements of other witnesses, was sufficient to prove the dower deed. So, the two questions stated above arise for consideration.

3. We begin our analysis by addressing a fundamental question concerning the sufficiency of evidence required to prove the execution of a dower deed. It is essential to understand that claims related to the recovery of dower are distinctly categorised within the types of disputes that the Family Courts Act of 1964 was explicitly designed to address. This legislation reflects society's increasing recognition of the necessity for prompt and effective resolutions to matters concerning marriage and family affairs. The Act aims to facilitate a more streamlined and accessible judicial process in these sensitive areas, thus addressing the often complex emotional and legal dynamics. Notably, the Family Courts operate outside the limitations typically imposed by the Code of Civil Procedure, 1908, and the more stringent standards set forth by the Qanun-e-Shahadat, 1984. This divergence from conventional judicial procedures holds particular significance when we examine Article 79 of the Qanun-e-Shahadat, 1984. This Article mandates that at least two attesting witnesses must be produced to

establish the execution of financial documents or those about future obligations. However, in matters of family law, such as dower, this requirement is exempted under Section 17 of the Family Courts Act of 1964. The Family Court's jurisdiction leans towards an inquisitorial approach designed to encourage amicable settlements while maintaining a focus on the familial context. Consequently, the evidentiary requirements to prove the existence and validity of a dower deed are significantly less stringent than those encountered in traditional civil litigation. A review of the records reveals that the Family Court and the First Appellate Court misinterpreted and misapplied the applicable legal principles. This misjudgement led to setting up an incorrect framework for assessing the evidence presented by the plaintiff regarding the execution of the dower deed. Such a legal error impaired the evaluation process and undermined the strength of the plaintiff's position.

4. In the present case, the original dower deed No.38, dated 29th of January, 2011 (Ex.P.W.1/1), was presented during the proceedings. Two witnesses had attested this document. The first was Gul Roz Khan, who was produced as PW-3. The other witness was Mushtaq Ahmad. He was the brother of the plaintiff's husband and was a party to the suit as defendant No.1. The plaintiff did not summon him because it is generally considered inappropriate to call a defendant to testify on behalf of the

plaintiff¹. However, he could have appeared as a witness for the defence but chose not to show up in court without providing a valid explanation. This raised a presumption that if he had appeared, his testimony would likely have been unfavourable to the defendants and would have supported the plaintiff's claim. Notwithstanding this situation, the plaintiff, supporting her claim, appeared as her own witness, PW-1. She testified that her Nikah was solemnised with the deceased, Akhtar Alam, on 29th of January, 2011, in consideration of a dower that included four tola of gold ornaments, a five marla constructed house with a courtyard, and a cash amount of Rs.5,000/-. A proper dower deed No.38 (Ex.PW-1/1) was prepared. Strengthening her claim, the plaintiff produced Riaz Ali, the Scribe and Stamp Vendor, as PW-2. He testified that he had issued and scribed stamp paper No.38 at the request of the deceased Akhtar Alam at the time of the Nikah. He confirmed that the details of the dower were accurately represented—namely, four tola of gold ornaments, a five-marla constructed house, and a cash amount of Rs.5,000/-. He also affirmed that the dower deed was correct, signed by the witnesses, and executed in the presence of Akhtar Alam, admitting his signature and stamp on Ex.PW-1/1. Further corroboration was provided by Gul Roz Khan, the Wali of the Nikah and a marginal witness to the dower deed, who appeared as PW-3. He

¹ Kishori Lal v. Chunni Lal (31 All 116) and Mahunt Shatrugan Das v. Bawa Sham Das and others (AIR 1938 PC 59)

stated that the dower deed (Ex.PW-1/1) was prepared in his presence and accurately displayed his thumbprint as a marginal witness. The plaintiff's brother, Hussain-ur-Rehman, appeared as PW-4. He confirmed his presence at the Nikah ceremony of his sister with the deceased Akhtar Alam. He stated that the dower was correctly noted in the dower deed as a five-marla constructed house, four tolas of gold ornaments, and Rs.5,000/- in cash. He further indicated that he was also present during the scribing of Ex.PW-1/1, alongside Mushtaq Ahmad (defendant No.1), the deceased Akhtar Alam, his uncle Gul Roz Khan, and Maulvi Nazeer Muhammad, who were all signatories. Riaz Sarwar, the Record Keeper at the DC Office in Swabi, also appeared as PW-5. He produced the relevant register showing the issuance of stamp paper No.38, dated 29th of January, 2011, in favour of Akhtar Alam, which documented the plaintiff's dower as a five marla-constructed house, four tolas of gold ornaments, and Rs.5,000/- in cash. Copy of Page #6 from the register and the certificate were produced as Ex.PW-5/1 and Ex.PW-5/2, respectively. All the witnesses underwent extensive cross-examination by the defendants, during which they were questioned about the execution and validity of the kabinnama/dower deed (Ex.PW-1/1). However, the defendants could not extract any beneficial or contradicting information from them.

5. Based on the evidence presented under the given facts and the position of law stated above, to meet the burden of proof regarding the execution of the dower deed (Ex.PW-1/1) duly attested by two witnesses, it was sufficient for the plaintiff to present the original document (dower deed) during court proceedings and one of its two attesting witnesses along with the testimony from persons who were present at the time of its execution. The statement of these witnesses not only confirmed the execution of the dower deed but also provided relevant context or information surrounding its execution. So, it can be concluded that the plaintiff had successfully proved the execution of the dower deed.

6. It is essential to understand that once the execution of the dower deed is proved, a non-rebuttable presumption arises regarding the amount of dower specified in that document. This presumption holds significant legal weight, as it confirms the agreed-upon financial settlement between both parties. In practical terms, the dower deed serves as conclusive evidence of the dower amount. Unless there is convincing and concrete evidence to the contrary, it is assumed that the wife has not received the dower as outlined in the deed. This presumption protects the wife's rights, especially in cases of disagreement over dower payments. Moreover, it helps to ensure that women's financial rights are recognised and

safeguarded in marital contracts. In the event of a dispute over the payment of the dower, the presumption strongly supports the wife's position, reinforcing her entitlement to the financial settlement that was agreed upon. Thus, the dower deed functions as a formal agreement and a protective legal tool for the wife's rights and economic security within the marriage. In light of the principles highlighted above, the case record shows that the defendants had not produced any evidence regarding the payment of the dower stated in the dower deed, leading to the inference that the plaintiff was entitled to the decree as requested.

7. About the authority of the High Court to overturn decisions made by the courts subordinate to it in family cases, it is essential to emphasise that when it becomes evident that a Family Court or First Appellate Court has reached a legal conclusion that stems from a clear misinterpretation of statutory provisions or has acted in ignorance or disregard of the law, or based its judgment on legally unsound reasoning, such erroneous conclusions are subject to correction through an order of certiorari as outlined in Article 199(1)(a)(ii) of the Constitution. In the present case, it has been thoroughly demonstrated in the preceding paragraphs that the courts subordinate to the High Court fundamentally misapplied the legal principles when examining the dower deed (kabinnama). This misapplication constituted a significant

error in law, apparent on the face of the records. Such a misjudgement could not be overlooked or left unaddressed, as it seriously threatened justice being served. Consequently, the High Court's intervention was justified and necessary to rectify this legal oversight and prevent any potential miscarriage of justice. The High Court, therefore, acted appropriately in revisiting the matter and ensuring that the principles of law were correctly applied.

8. In the result, the present petition is dismissed, and leave to appeal is refused.

Chief Justice

Judge

Islamabad
31.01.2025
APPROVED FOR REPORTING
Rashid+Libah Nadeem/*