

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Shahid Waheed

C.P.L.A.4582/2023

(Against the judgment dated 31.10.2023 passed by the Lahore High Court, Lahore in WP No.68599/2022)

Muhammad Shakeel and others ...Petitioner(s)

Versus

Additional District Judge, Faisalabad and ...Respondent(s)
others

For the Petitioner(s) : Mrs. Shireen Imran, ASC

For the Respondent(s) : Mr. Tauseef Ejaz Malik, ASC via
video link from Branch Registry
Lahore

Date of Hearing : 28.01.2025

JUDGMENT

Shahid Waheed, J: This petition stems from a family suit instituted under the Family Courts Act of 1964, in which a decree was sought against the petitioners for the recovery of dowry articles listed in Exhibit P.2. The total value of these dowry articles was assessed at Rs.4,838,016/-. The Family Court granted the claims presented in the plaint and ordered the petitioners to return the dowry articles, except for those items listed from serial Nos.122 to 148, or to provide an alternative equivalent in value after a 40% depreciation deduction. Both the First Appellate Court and the High Court maintained the Family Court's decree.

2. The petitioners before us were the defendants. It is noteworthy that no person other than the petitioners was joined as a defendant in the suit. The petitioners No.1 & 2 are the brothers of the plaintiff's husband, Zahid Iqbal.

Petitioner No.3 is the wife of Petitioner No.1. The plaintiff is identified as respondent No.3 in this petition. Feeling aggrieved by the decree issued, they have submitted this petition seeking leave to appeal against it. Their argument is structured around two primary assertions. Firstly, they contend that the suit brought by respondent No.3 was fundamentally flawed and lacked legal standing due to the non-joinder of a necessary party. Specifically, they argued that respondent No.3 failed to include her husband as a defendant in her suit, which, according to them, renders any decree made ineffective and unenforceable. Secondly, the petitioners asserted that the decree results from an improper appreciation of the evidence presented during the trial, suggesting that the court's conclusions do not accurately reflect the facts or merits of the case. This misjudgement, they claimed, further undermines the validity of the decree in question.

3. The first argument mentioned above regarding the non-joinder of the necessary party warrants swift disregard. The legal principle at play here dictates that a plea of non-joinder must be articulated at the earliest possible moment in the proceedings, and the party raising such a plea is required to specifically identify the person or party purportedly omitted from the proceedings. If an objection regarding non-joinder is not presented promptly, it is considered to have been waived, thereby losing its merit¹.

¹ Order I, Rule 13 CPC, *East and West Steamship Co. v. Queensland Insurance Co.* (PLD 1963 SC 663), and *Muhammad Arif v. District and Sessions Judge, Sialkot* (2011 SCMR 1591)

Upon examining the records, it becomes evident that the petitioners had not included this objection in their joint written statement, nor did they bring it up as a ground for their first appeal before the Additional District Judge. Given these circumstances, the petitioners were precluded from introducing this plea for the first time in their application under Article 199 of the Constitution. As such, they also cannot be permitted to raise it now to seek leave to appeal.

4. It is important to note that even if this objection had been raised at the initial stage, it would bear no significance. To grasp this fully, it may be well to note the general rule relating to the non-joinder of parties. In legal proceedings, a fundamental principle states that if a person deemed necessary to a suit is not joined as a party, this situation is referred to as non-joinder. The essence of this principle is that all persons must be joined as defendants against whom any right to relief is alleged to exist. It contemplates the necessary and the proper party; the former is the person in whose absence no effective order can at all be passed, and the latter is the person in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. There may be yet another class of person who is neither necessary nor proper party and against whom no relief is asked for. Such a person is popularly called a *pro forma* defendant. Thus and so the word "party" has been defined in section 2(d) of the Family Courts Act of 1964, to include any person whose presence as such is considered

necessary for a proper decision of the dispute. To ensure the presence of the real defendant, power is also given to the Family Court to add such a person as a party to the dispute². This definition is liberal and extensive and is not confined only to spouses³; rather, it gives a right and the prerogative to choose and implead in a suit as the defendant, the person against whom relief is sought. Based on this understanding, we will analyse the pleadings submitted by both parties in the case to determine whether the husband of respondent No.3 ought to have been impleaded as a defendant in the suit. First, we outline a few undisputed facts. Petitioner No.1 (Mohammad Shakil), petitioner No.2 (Mohammad Tariq), and Zahid Iqbal are brothers. They also have a sister, Shahadat Bibi. Respondent No.3 has a brother named Nasir Ali. The brother of petitioners No.1 and No.2, Zahid Iqbal, married respondent No.3 (the plaintiff), while her brother, Nasir Ali, married Shahadat Bibi. This constituted an exchange marriage. Subsequently, Shahadat Bibi obtained a decree for the dissolution of her marriage and recovery of her dowry through a family suit. The breakdown of this marriage strained the relationship between respondent No.3 and her husband, leading her to file a suit to recover her dowry articles. From now on, the facts were in dispute between the parties and will reflect against whom the cause of action existed. Respondent No.3 asserted that her differences were amicably settled with the help of local dignitaries, prompting her to withdraw her suit

² Muhammad Azam v. Muhammad Iqbal (PLD 1984 SC 95)

³ Muhammad Arif v. District and Sessions Judge, Sialkot (2011 SCMR 1591)

and resume cohabitation with her husband, Zahid Iqbal. However, petitioners No.1 and No.2 were dissatisfied with this resolution. They pressured their brother to divorce her, but he refused, resulting in them assaulting the couple, evicting them from their jointly owned house, and preventing her from retrieving her dowry articles. Stating these facts to be the cause, respondent No.3 brought the suit seeking a decree to recover her dowry from the petitioners' possession. In contrast, the petitioners' stance was that following the compromise in her previous suit, respondent No.3 started living in a separate house with her husband after receiving her dowry articles, portraying her claim as an attempt to harass them. An examination of the divergent pleadings makes it abundantly clear that the core issue, in this case, revolved around the question of whether the petitioners were liable to return the dowry articles belonging to respondent No.3, which were alleged to be in their illegal possession. In light of this pivotal issue, the presence of the petitioners alone sufficed for a proper decision as the cause of action was alleged to exist against them. It is evident that including respondent No.3's husband as a defendant was unnecessary since his liability for returning the dowry articles was not in question. Given that the jurisdiction of the Family Court is inquisitional in nature⁴, his inclusion, at most, could have provided context to the disputed facts, which was effectively addressed by producing him as a witness (PW-2) before the Family Court. The petitioners did whatever they could to

⁴ Muhammad Azam v. Muhammad Iqbal (PLD 1984 SC 95)

glean from him by cross-examining him, yet they failed to extract any information or fact that would bolster their stance. Therefore, the petitioners' objection regarding the non-joinder of the party is entirely unfounded.

5. Before proceeding further, we need to make an observation that reinforces our conclusions regarding the parties involved in the family suit and the jurisdiction of the Family Court. A comprehensive examination of the preamble, section 2(d), section 5, and the schedule of the Family Courts Act of 1964 provides substantial clarity on two foundational principles that underlie the legal framework governing the Family Court. Firstly, it becomes clear that the jurisdiction of the Family Court is not contingent upon the identities of the individuals or persons involved; instead, it is fundamentally defined by the nature of the subject matter presented in the suit. This means that any dispute that pertains to the categories outlined in the schedule of the Family Courts Act of 1964 can be brought to the Family Court, regardless of who the parties are. This broad approach is designed to ensure that a diverse array of family-related disputes—ranging from matrimonial issues to child custody arrangements—can be addressed in a specialised forum tailored to handle sensitive familial matters. Secondly, the legislation does not specify particular individuals or persons who possess the exclusive right to initiate or defend actions in the Family Court. As such, it follows that any person demonstrating a legitimate interest in seeking legal remedies pertinent to the matters

enumerated in the schedule of the Family Courts Act of 1964 is entitled to invoke the jurisdiction of the Family Court. This inclusivity also encompasses any person against whom a cause of action regarding such disputes is alleged to exist and who is called upon to defend it.

6. It is not out of place to look at the case of Fawad Ishaq⁵ here, on which the petitioners rely heavily, to clarify the discussion and eliminate any doubt. Prior to beginning this exercise, we would like to highlight two important observations of a general nature that warrant consideration. First, it is essential to recognise that every judgment should be carefully examined in the context of the specific facts that were either proved or assumed to be proved in that case. This is essential because the broader principles and interpretations found within judicial rulings are not intended to serve as comprehensive expositions of the law in its entirety; rather, they are intricately shaped and constrained by the unique circumstances of each particular case. Second, it is imperative to understand that a legal case holds authority solely concerning the specific issues it addresses and the conclusions it reaches. A judgment cannot be generalised beyond its context, as it is only applicable to the situation at hand and does not serve as a precedent for matters that lie outside its explicit scope. This principle underscores the limited applicability of judgments and reinforces the need for careful analysis when considering

⁵ Fawad Ishaq v. Mst. Mehreen Mansoor (PLD 2020 SC 269)

their implications in future cases⁶. Now, mindful of this principle, we proceed to Fawad Ishaq's case. In that case, the husband was not included as a party, and his non-joinder was considered a significant flaw. To understand the reasoning behind this, reviewing the facts is helpful. The situation involved a house that was referenced in the *Nikahnama* as part of the wife's dower rights. The husband's mother owned this house. After sixteen years of marriage, the wife sued to claim her dower, seeking either the house itself or its market value as an alternative. In her suit, the wife did not include her husband as a party; instead, she impleaded her mother-in-law and father-in-law. In her written statement, the mother-in-law asserted that she was the sole owner of the house and had never agreed to give it as a dower to her son's wife. The court found the mother-in-law's claim to be valid and held that she could not be deprived of her property under these circumstances. Moreover, the court concluded that since the husband was primarily responsible for paying the dower, not including him in the case was a fatal defect. As a result, the case was dismissed, but the court allowed the wife to file a separate suit against her husband to recover her dower. This run-through brings two key points to the fore. First, the house that was claimed to be given to the wife as part of her dower was not legally transferable to her, meaning it could not be considered part of the dower. As a result, the husband's mother was not found to be responsible for the payment of

⁶ *Quinn v. Leathem* (1901 AC 495)

the dower and was neither a necessary nor a proper party to the suit. Second, the husband was deemed a necessary party since he was the only one obligated to pay the dower to his wife. In contrast to that case, the facts of the present case show that the petitioners had the dowry articles. They unlawfully prevented respondent No.3 and her husband from taking those articles when they forced them out of the house. Considering the evidence, the petitioners were found liable for returning the dowry articles to respondent No.3. Upon reviewing this comparative study, it is clear that the facts of Fawad Ishaq's case are distinguishable, and therefore, any analogy drawn from them would be imperfect, making its application to the facts of the present case erroneous.

7. We now turn our attention to the second argument presented by the petitioners. They have attempted to persuade us to grant leave to appeal on the grounds that the decree issued in favour of respondent No.3 resulted from a flawed appraisal of the evidence submitted during the proceedings before the Family Court. This argument suggests a need for a thorough re-examination of the evidence put forth by all parties involved in the dispute and reassessing the findings rendered by the two courts subordinate to the High Court. Could the petitioners request that the High Court or this Court conduct such an assessment? This situation prompts us to mull over two significant questions. First, what specific principles should the High Court uphold when exercising its jurisdiction under Article 199 of the Constitution to scrutinise the orders

issued in family suits? The second question revolves around the framework that the Supreme Court should adopt when addressing such family law matters. This necessitates a clear understanding of how legal provisions and constitutional mandates intersect, particularly in cases involving familial relationships, as they may carry unique implications that differ from other legal disputes. Addressing both these questions is imperative to ensuring that justice is administered fairly and consistently, reflecting both the letter of the law and its underlying intent.

8. An empirical study suggests that peaceful family life is a fundamental prerequisite for individuals to thrive in their endeavours. This harmonious environment is also essential for a society to flourish, contributing significantly to its overall happiness and welfare. Consequently, any discord within a family not only disrupts the harmony within that household but also has a ripple effect, negatively impacting the social fabric of the nation at large. Recognising this critical relationship between familial stability and societal well-being, the State has made a guiding principle in its policies: the protection of marriage, the family, the mother, and the child⁷. In alignment with this principle, the Family Courts Act of 1964 was enacted to create specialised Family Courts. These courts are designed to facilitate the swift resolution of disputes related to marriage and family matters, thus promoting an environment where individuals can resolve their issues amicably and efficiently. The

⁷ Article 35 of the Constitution (Principles of Policy)

procedural framework established for the Family Court is notably inquisitional rather than adversarial⁸. This approach is intentional and aims to foster a supportive environment focused on reconciliation and understanding rather than conflict. This departure from traditional legal procedures, such as those outlined in the Code of Civil Procedure, 1908, and the Qanun-e-Shahadat, 1984, reflects the legislature's intent to simplify the process and remove unnecessary obstacles⁹. To shorten litigation, the Family Courts Act of 1964 limits the appeals process to a single remedy, ensuring that disputes do not spiral into lengthy court battles. However, it is important to note that even after the litigation concerning family disputes concludes at the appeal stage, the High Court retains the authority, under Article 199 of the Constitution, to scrutinise the decrees issued by lower courts. This superintendence is crucial for upholding the principles of justice and ensuring that the decrees issued by Family Courts align with constitutional mandates and the spirit of the Family Courts Act of 1964.

9. Now, it remains to be seen what the jurisdiction of the High Court is in family cases. The issue regarding the extent of the High Court's jurisdiction in issuing orders related to family law cases under Article 199(1)(a)(ii) of the Constitution— orders of certiorari—has been extensively examined and clarified by this Court over time. It is now well-established that the High Court can issue an order of certiorari to rectify jurisdictional errors committed by

⁸ Muhammad Azam vs. Muhammad Iqbal (PLD 1984 SC 95)

⁹ Farzana Rasool v. Dr. Muhammad Bashir (2011 SCMR 1361)

subordinate courts in family law matters. Such errors can arise when Family Courts or First Appellate Courts issue decisions without jurisdiction, in excess of jurisdiction, or fail to exercise their jurisdiction altogether. Moreover, a certiorari order is applicable when a Family Court or First Appellate Court acts in an illegal or improper manner while exercising its jurisdiction. This includes situations where the court makes determinations without providing an affected party the opportunity to be heard or where the procedural methods employed contravene the fundamental principles of natural justice. It is crucial to recognise that the High Court's jurisdiction to issue certiorari is fundamentally supervisory, meaning it does not possess the authority to function as an appellate body. This supervisory role imposes clear limitations: specifically, it prohibits the High Court from reevaluating or questioning factual findings made by subordinate courts based on their assessment of evidence. The High Court does not engage in reviewing or reweighing evidence that underlies the decisions made by the Family Court or its First Appellate Court. Instead, it may only nullify a decision it finds to be beyond the jurisdiction or grossly erroneous without imposing its own conclusions in place of those reached by the lower courts. Furthermore, certiorari orders can be granted solely when a clear error of law is evident on the face of the record; however, this does not extend to addressing errors of fact, regardless of their severity. Issues pertaining to the sufficiency or adequacy of evidence presented on specific points and the factual

inferences drawn from such findings are relegated exclusively to the purview of the Family Court or its First Appellate Court. These particular matters cannot be contested before the High Court. In summary, within the specified constraints, the High Court's authority under Article 199 to issue certiorari orders in family cases can be exercised legitimately and effectively, maintaining a balanced judicial supervision while respecting the intention of the Family Courts Act of 1964.

10. Similarly, in cases arising from an order of certiorari, the Supreme Court ordinarily exercises restraint, opting not to intervene in the determinations made by lower courts, including the High Court. This principle of restraint is followed unless the Supreme Court discovers substantial grounds that warrant further examination—grounds that the High Court could have appropriately addressed in its deliberations. By maintaining this approach, the Supreme Court upholds the underlying principles of the Family Courts Act of 1964, which underscores the importance of resolving family disputes promptly and efficiently. At the same time, it ensures that any critical legal oversights or injustices are thoroughly rectified, thereby balancing the need for expediency with the imperative of justice within the family law context.

11. We now revert to the petitioners' second argument. Both the Family Court and the First Appellate Court reached a unanimous decision based on a thorough

examination of the evidence presented. They noted that, despite the petitioners' claim that respondent No.3 had received all her dowry articles through respectable persons, there was a conspicuous absence of the names of such persons. Furthermore, the petitioners failed to bring forth any witnesses who could confirm the return of the dowry articles in their presence. Given these findings, the courts determined that the petitioners were obligated to return the dowry articles in question. As a result, a decree was issued in favour of respondent No.3. Because of these established facts, we asked the petitioners' counsel to point out any irregularities in the Family Court's proceedings or any discernible errors in law that the High Court could have the authority to address in its constitutional jurisdiction. The counsel was unable to indicate any such error. Consequently, in light of the principles mentioned above, we must conclude that the second argument is untenable.

12. So viewed, this petition fails and is accordingly dismissed. Leave to appeal is declined.

Chief Justice

Judge

Islamabad
28.01.2025
APPROVED FOR REPORTING
Rashid*/

Announced in Court on 14/02/2025 at Islamabad.

Judge