

**2022 Y L R 66**

**[Lahore (Rawalpindi Bench)]**

**Before Jawad Hassan, J**

**DANIAL ISLAM---Petitioner**

**Versus**

**JUDGE FAMILY COURT, RAWALPINDI and others---Respondents**

Writ Petition No. 1657 of 2021, decided on 3rd June, 2021.

**Family Courts Act (XXXV of 1964)---**

---S. 5--- Constitution of Pakistan, Art. 199--- Constitutional petition---Concurrent findings of facts by Courts below---Respondent-wife filed suit for recovery of maintenance allowance, gold jewelry and dowry articles, which suit was decreed in her favour by Family Court as well as by Lower Appellate Court---Validity---High Court in its extra ordinary jurisdiction, could neither substitute findings of facts recorded by Courts below nor could give its opinion regarding quality or adequacy of evidence---Assessment and appraisal of evidence was function of Family Court, which was vested with exclusive jurisdiction in such regard---When factual controversy was settled by two Court below unless and until there were compelling reason shown for misreading and non-reading of evidence in the order passed by Courts below, or there was a visible irregularity while deicing the same, High Court could not interfere with such findings---High Court declined to interfere in concurrent judgments and decrees passed by two Courts below, as no illegality or irregularity was pointed out---Constitutional petition was dismissed, in circumstances.

Abdul Rehman Bajwa v. Sultan and 9 others PLD 1981 SC 522; Perveen Umar and others v. Sardar Hussain and others 2003 YLR 3097; Muhammad Ashiq v. Additional District Judge Okara 2003 CLC 400 and Aqil Zaman v. Mst. Azad Bibi and others 2003 CLC 702 rel.

Syed Ghulam Nabbi Shah for Petitioner.

## **ORDER**

**JAWAD HASSAN, J.**---The Petitioner through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") has impugned the judgments and decrees dated 01.03.2021 and 16.12.2020 passed by learned Courts below, whereby suit for recovery of maintenance allowance, gold ornaments and dowry articles, filed by the Respondent No.3/Mst. Samina Kalsoom was decreed and appeal filed by her against the judgment and decree dated 16.12.2020, was partially accepted whereas the appeal of the Petitioner was dismissed.

2. Learned counsel for the Petitioner contended that both the courts below have not properly appreciated the evidence brought on record and the judgments and decrees are outcome of misreading and non-reading of the evidence. He contended that the judgment of the Appellate Court is based on extraneous considerations because the learned Family Court disbelieved the evidence produced by the Respondent No.3 on the issue No.3 (recovery of dowry articles) but the Appellate Court fixed/modified the amount of dowry articles as Rs.160,000/- instead of Rs.60,000/-. Therefore, the impugned judgments and decrees are liable to be set aside.

3. Heard.

4. From the perusal of record it reveals that learned Judge Family Court, Attock considered the evidence of the Respondent No.3 and her witnesses, who corroborated her stance. Consequently, the learned Judge Family Court, after considering of evidence decreed the suit vide judgment and decree dated 16.12.2020 in the following manner:

"15. In view of my findings on the above said issues, instant suit of plaintiff is hereby partially decreed in her favour in the terms that:

1. Plaintiff held entitled to recover her maintenance allowance from September 2019 till November 2019 total Rs. 15,000/-.

2. Plaintiff is held entitled to recover articles mentioned in Exh.D2 and in addition to that get Rs.60,000/- as value of her other articles."

Both the parties being dissatisfied from aforesaid judgment filed separate appeals before the learned Additional District Judge, Attock, which was decided vide judgment dated 01.03.2021 in the following terms:

"20. As sequel to the aforesaid discussion, appeal filed by the appellant/plaintiff is partially accepted and impugned judgment and decree is modified in the terms that appellant/plaintiff is found entitled for recovery of maintenance allowance from 19.08.2019 till expiry of period of Iddat @ Rs.5000/- per month. The value of dowry articles of appellant/plaintiff is fixed Rs.160,000/- instead of Rs.60,000/- whereas appeal filed by the respondent/defendant is hereby dismissed."

It reveals that both the courts below have passed the impugned judgments and decrees after carefully appreciating the evidence on record. Further the learned Additional District Judge, Attock modified the judgment and decree dated 16.12.2020, vide consolidated judgment. No convincing arguments were advanced by the learned counsel for the Petitioner to show that both the Courts below have committed any illegality while awarding maintenance allowance and dowry articles.

5. This Court in its extraordinary jurisdiction can neither substitute findings of facts recorded by Courts below, nor can give its opinion regarding quality or adequacy of the evidence. The assessment and appraisal of evidence is the function of the Family Court, which is vested with exclusive jurisdiction in this regard. Reliance in this regard is placed upon the case of "Abdul

Rehman Bajwa v. Sultan and 9 others" (PLD 1981 SC 522), "Perveen Umar and others v. Sardar Hussain and others" (2003 YLR 3097), "Muhammad Ashiq v. Additional District Judge Okara" (2003 CLC 400) and "Aqil Zaman v. Mst. Azad Bibi and others" (2003 CLC 702). Furthermore when a factual controversy had been settled by the two courts below unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the said order passed by courts below or there was a visible irregularity while deciding the same, this Court cannot interfere with that findings.

6. No illegality or irregularity has been pointed out in the concurrent findings recorded by two courts below and impugned judgments and decrees do not suffer from any legal discrepancy or infirmity.

7. In view of above, this writ petition being devoid of force is dismissed in limine.

MH/D-3/L Petition dismissed.