

Before The Peshawar High Court Peshawar

W.P. No 3016-P /2014

— Mst. Hilal Murad W/o Murad Ali R/o Mohallah Rustam Khel Tehsil
& Distt: Mardan.

VERSUS

1. Haji Amir zaman S/o Akbar Khan R/o Haji Karim Kani Mahal PEROZ Pur Tehsil Takht Bhai Distt: Mardan presently at Malakand Road near Taza Gram C.N.G filling Station Mam Mandi Mardan city Mardan
2. Bostan S/o Gulistan R/o Village Kodinaka katlang road P/o Shankar Tehsil & Distt: Mardan.
3. Abdul Ghafar
4. Masil Khan
5. Shakirullah
6. Arif sons of Bostan R/o village Kodinaka Katlang road P/o Shankar Tehsil & Distt: Mardan
7. Murad Ali S/o Muhamamd Ali Khan R/o Mohallah Rustam Khel Tehsil & Distt: Mardan.
8. ADJ-iii Mardan.

.....**Respondents**

Writ petition under Article 199 constitution of the Islamic Republic of Pakistan 1973 for setting aside judgment and decree dated 05/06/2014 of the Hon'able ADJ-iii Mardan and decree and judgment of the Hon'able family judge dated 31/05/2012, wherein the suit for recovery of dower has been dismissed.

Re-Filed today.

Respectfully Sheweth;

Brief facts of the writ petition are as under

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1. That a suit for recovery of dower was brought by the present petitioner based on dower deed No. 4790/30 dated 04/01/2006 against the respondents No.1 to 7 wherein the validity of registered deed No. 24 dated 27/03/2007 and No.766 dated 11/09/2006 in favour of respondents No.1 to 6 were also challenged. *(Copy of the suit is Annex: "A")*
2. That after submission of written statements and framing of issues & production of evidence, the suit was dismissed by the learned trial court on dated 31/05/2012. *(Copies of the written statements are Annex: "B" while issues are "C", Pws & Dws*

Incharge,
Peshawar High Court Sub-Registry,
Mardan.

23 SEP 2014

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Mardan.

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Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

WP No. 3016-P/2014.

Mst. Hilal Murad Vs Haji Amir Zaman, etc

JUDGMENT

Date of hearing. 03.03.2016
Petitioner (s) by: Mr. Muhammad Asif Khan
Advocate.
Respondent(s) by: M/s Khan Ghawas & Muhammad
Amin Khattak Lachi Advocates.

MUHAMMAD YOUNIS THAHEEM, J:- Through

instant Constitution petition, Mst. Hilal Murad, the petitioner has challenged the impugned judgment and decree dated 5.6.2014 passed by learned Additional District Judge-III, Mardan whereby appeal of petitioner against judgment and decree dated 31.5.2012, of learned Family Judge/ trial Court was dismissed.

2. In essence, petitioner brought a suit for recovery of dower against respondents No.1 to 7 on the basis of Dower Deed No.4790/30 dated 4.1.2006, challenging the validity of registered sale deed No.24

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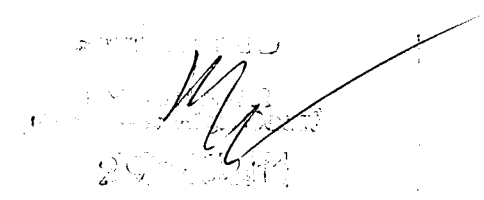
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attested on 27.3.2007 Mauza Feroz Pur and registered sale deed No.766 dated 11.9.2006 Mauza Kodinika Tehsil & District Mardan in favour of respondents No.3 to 6. The suit was contested by respondents through filing written statements. Learned Family Court framed issues in the light of divergent pleadings of the parties. After recording pro & contra evidence as well as hearing of learned counsel for the parties, the learned trial Court/Family Judge, dismissed the suit of petitioner vide judgment and decree dated 31.5.2012. Feeling aggrieved from the same, petitioner preferred Family appeal which was also dismissed by the appellate Court vide impugned judgment and decree dated 5.6.2014, hence the instant Constitution petition.

3. Arguments heard and record perused.

4. As per claim of petitioner the marriage between petitioner and respondent No.7 Murad Ali was solemnized some 19 years back and at the time of Nikah it was orally agreed between the parties that 22 tolas gold, Rs.2,00,000/- and landed property was fixed as

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dower and as the parents of respondent No.7 were alive at that time therefore, the property being in the name of father of husband/respondent No.7, it could not be transferred by the respondent No.7 in favour of his wife/plaintiff. After death of father of respondent No.7, he executed a Dower Deed No.4790/30 dated 4.1.2006, in favour of petitioner. However, the plaintiff/petitioner failed to produce any Nikah Nama or Nikah Khwan in support of her stance regarding oral fixation of dower between the spouses on 16.5.1990. Two persons namely Amir Said (PW.3) brother of petitioner and one Ameer Nawab were mentioned as corner witnesses to the alleged Dower Deed dated 4.1.2006. PW.3 Ameer Said during cross examination denied his presence at the time of Nikah recital ceremony nor he remembered the name of Nikah Khwan being not present on the day of reciting Nikah but PW.4 Ghayyur Ahmad stated that PW.3 and one Ameer Nawab were witnesses to the Nikah (reciting ceremony) and oral fixation of dower agreed at that time between the parties so negation of PW.3 of his presence

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at relevant time contradicts the statement of PW.4. If one witness being real brother of petitioner denies his presence at the time of Nikah and fixation of dower while the other witness PW.4 shows the said person (PW.3) to be present at relevant time creates doubts about the credibility of both witnesses. This PW.3 is also witness of Dower Deed dated 4.1.2006 and other witness is Ameer Nawab. So in order to prove the very document of dower deed and to ascertain the actual truth, examination of second witness namely Ameer Nawab was necessary and the petitioner was bound to produce the said witness as well as Nikah Khwan and other witness of Nikah reciting ceremony in support of her stance but by not examining the said witnesses, she withheld her best evidence which made the stance of petitioner dubious. If a best piece of evidence was available with a party and same was withheld by her/him, then, it would be presumed that the party had some evil motive behind the omission by not producing the said evidence. Even otherwise, a presumption under

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illustration (g) to Article 129 of Qanun-e-Shahadat Order, 1984 can fairly be drawn in the matter that had the said witnesses been examined in the Court his evidence would have been unfavourable to the petitioner. Wisdom is derived from the cases titled, *"Darwesh Vs The state" (2014 YLR 2223) & "Riaz Ahmad Vs The State" (2010 SCMR 846).*

5. It is pertinent to mention that before execution of Dower Deed Ex.PW.1/1 in favour of plaintiff, her husband (defendant No.1) had sold 59 Kanals 13 Marlas situated in Mauza Ferozpur in favour of defendant No.8 through Iqrar Nama (agreement to sell) dated 1.3.2005 (Ex.DW-8/2) which is 10 months prior to execution of Dower Deed Ex.PW.1/1. The other property i.e, 23 Kanals 10 Marlas situated in Mauza Feros Pur was sold by defendant No.1 in favour of defendant No.7 vide registered sale deed No.24 attested on 27.3.2007 by the Sub-Registrar Takht Bhai, Mardan as Ex.DW.3/2. If the petitioner had any grievance at the most that could be against her husband (respondent

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No.7/defendant No.1) and she had not done so but is residing with her husband till now peacefully with their five children which proves the instant case as Benami one at the instance of her husband.

6. The evidence produced by petitioner in her support regarding proving of Dower Deed (Ex.PW.1/1) i.e, PW.1 Ghaniur Rehman Stamp Vendor, PW.2 Allaud Din Petition Writer, could not produce their relevant registers regarding verification of issuance of Stamp papers as stamp vendor and Register of scribe about alleged Dower deed to prove its date as well as entry of contents of Dower deed, when there is no record of entry of such a deed then how could its authenticity be believed. So with regard to Stamp Paper its date of issuance, record about entry of name of purchaser, chronological record of treasury department of the District are necessary to prove its authenticity as to ascertain that it were lawfully issued to the Stamp Vendor and was not back dated for the proof of entry and its genuineness are deficient which makes whole

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exercise of petitioner and respondent No.7 as doubtful.

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In this respect petitioner/plaintiff failed to discharge burden of proof upon her under the law.

7. It is also very surprising to note that the father of defendant No.1/respondent No.7 had died in the year 1992 but dower deed was scribed in the year, 2006 and the sole explanation put forthwith for delayed execution of Dower Deed has been attributed to late attestation of inheritance mutation in favour of respondent No.7 which does not appeal to a prudent mind. Petitioner had failed to produce strong, cogent and confidence inspiring evidence in support of the fact that due to late attestation of inheritance mutation her husband did it late is unbelievable in view of various litigation against her husband respondent No.7 under Section 12(2) of CPC and auction of some of his property in connection with Bank loan and selling of some suit property on 4.6.2005 proves stance without evidence.

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8. From the analysis of entire documentary as well as oral evidence produced by petitioner, it is rather proved that husband intentionally put forward his wife to deprive the defendants/respondents from their lawfully purchased property. This fact also lends support from the suit No.284/1 of 14.6.2005, filed by defendant No.1/husband of petitioner, in respect of same land which was dismissed by the learned trial Court vide judgment dated 22.12.2010, so after remaining unsuccessful in his that attempt the defendant No.1 put forward his wife (petitioner) basing litigation on engineered dower deed which has no entry in the concerned register regarding its issuance date etc as discussed earlier. If the defendant No.1/respondent No.7 was sincere in fixation of dower in favour of his wife then he should have done the same just after the death of his father in the year 1992 but he did so after about 17 years of his marriage, having no proof in the shape of Nikah Khwan & witnesses of Nikah solemnized between the spouses and one of the alleged witnesses

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namely Ameer Said (PW.3) brother of petitioner denied his presence at the time of Nikah reciting ceremony between the spouses. He was also not aware of the name of concerned Nikah Khwan nor the actual date of Nikah of his sister/petitioner with the defendant No.1/respondent No.7.

9. On the other hand the evidence produced by defendants fully supported the stance taken by the defendants regarding purchase of suit property bonafidely from defendant No.1 being recorded owner of the property in the revenue record and transfer and delivery of its possession has been admitted by respondent No.7 and acquisition of ownership rights has been established through confidence inspiring evidence.

10. It is also pertinent to mention that as per evidence on record, petitioner had come to the District Courts/ Kachehri twice one for execution of alleged Dower Deed and secondly for scribing of Special Power of Attorney stated by PW.3 but she did not bother to appear in the trial Court as her own witness and the

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explanation put forth that being Parda Nasheen lady, she did not come is not convincing rather proves suit as benami upon instance of husband. If it is presumed that she being Parda observing lady cannot come to Court for recording her statement then why she came to District Courts (Kachehri) twice for execution of alleged Dower Deed (Ex.PW.1/1) and Special Power of Attorney in favour of PW.3 her brother who did not participate in her Nikah due to reasons known to the petitioner, defendant No.1 and PW.3.

11. Perusal of record further reveals that various petitions u/s 12(2) of CPC have been filed against the husband of petitioner (defendant No.1/respondent No.7) by his close relatives i.e, real brother, sisters etc and criminal cases are pending against him u/s 419/420 PPC which proves his role as a Writer of the whole drama staged to deprive the purchasers/respondents from the property sold to them by respondent No.1, therefore, both the Courts below have properly appreciated the entire evidence available

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on the record as well as the revenue record and have
reached to a right conclusion by dismissing the suit as
well as appeal of petitioner.

12. There also does not appear any illegality or
irregularity or misreading of evidence, miscarriage of
justice in the impugned judgments caused to the
petitioner, which may warrant interference of this court
in its Constitutional jurisdiction. Consequently, this
petition being without merits is dismissed.

del Kalya Shrivastava
Announced:
03.03.2016. *del Mulkar* *Yous*
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"A. Qayum"

[Signature]
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Peshawar High Court, Peshawar
Authorised Under The Qanun-e-Shahadat Ordinance, 1984

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