

2017 M L D 580

[Lahore]

Before Jawad Hassan, J

KHURRAM SHEHZAD---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE, GUJRANWALA and others---Respondents

W.P. No.4417 of 2012, decided on 11th January, 2017.

(a) Family Courts Rules, 1965---

---R. 6---Family Courts Act (XXXV of 1964), S. 5, Sched.---Suit for recovery of maintenance allowance, dower and dowry articles---Territorial jurisdiction---Determination of---Expression 'ordinarily resides'---Scope---Expression 'ordinarily resides' did not necessarily mean that residence should be long in point of time---Residence for a few days was enough---Court had to examine the place where the wife had chosen to stay regardless of whether she was a permanent resident of the place, whether she had property over there or the length of time she had resided there---Both the courts below had rightly decided the issue of territorial jurisdiction in favour of wife---No illegality or mis-reading and non-reading of evidence had been pointed out in the impugned judgments passed by the Courts below---Constitutional petition was dismissed in circumstances.

Major Muhammad Khalid Karim v. Mst. Saadia Yaqub and others PLD 2012 SC 66 and Anjum Firdous v. Additional District Judge and others 2007 CLC 1433 distinguished.

Bibi Anwar Khatoon v. Gulab Shah and 2 others PLD 1988 Kar. 602; Mahbub Ahmad v. First Additional District Judge and another PLD 1976 Kar. 978; Fazal Khitab v. Mst. Naheed Akhtar and another PLD 1979 SC 864; Rafiq Ahmad v. Judge Family Court, Khanewal and another 1996 CLC 1820; Mst. Shahnaz Kausar v. Muhammad Boota PLD 1982 Lah. 350; Mst. Irshad Mai v. Additional District Judge and another 1997 CLC 742; Dicey in his book "Conflict of Laws" at page 96 and "Conflict of Laws" by Graveson, 6th Edition at page 197 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of High Court---Scope---Question of fact could not be gone into by the High Court while exercising constitutional jurisdiction.

(c) Family Courts Rules, 1965---

---R. 6---'Ordinarily resides'---Meaning.

Dicey in his book "Conflict of Laws" p.96 rel.

Sh. Ishrat Mehmood for Petitioner.

Nemo for Respondents.

Respondents proceeded against ex parte vide order dated 30.10.2014.

ORDER

JAWAD HASSAN, J.---Through this constitutional petition, the Petitioner has called in question judgments and decrees dated 16.4.2011 and 28.10.2011 passed respectively by Judge Family Court, Gujranwala and Additional District Judge, Gujranwala, whereby the suit for recovery of maintenance allowance, dower, delivery expenses and dowry articles filed by Respondent No.2 was decreed in the terms mentioned in the said judgment and decree. The appeal preferred there-against by the Petitioner before the learned Additional District Judge, Gujranwala was dismissed vide judgment and decree dated 28.10.2011.

2. Brief facts for the disposal of this Constitutional Petition are that Respondent No.2 filed a suit for recovery of maintenance allowance, dower, delivery expenses and dowry articles against the present petitioner in the Family Court at Gujranwala on 18.09.2009, which was resisted by the Petitioner by filing written statement raising preliminary objections that suit at Gujranwala cannot be filed. To resolve the controversy, the learned trial Court framed as many as seven (7) issues including relief. The issue No.5 was settled with regard to territorial jurisdiction of the Judge Family Court, Gujranwala, which is reproduced hereunder:--

"5. Whether the plaintiffs have no cause of action to file the instant suit, the plaintiffs are residing in District Sheikhpura and have instituted this suit before this Court with mala fide intention with incorrect address in District Gujranwala and this Court has no jurisdiction to entertain the matters? OPD"

3. In order to prove their respective contentions, the parties led their evidence and upon consideration of the same, the learned Judge Family Court decreed the suit against the Petitioner and held entitled the Plaintiffs/Respondents Nos.2 and 3 to recover maintenance allowance from 16.7.2009 for Plaintiff No.1/Respondent No.2 @ Rs.3000/- per month till expiry of her Iddat period and for Plaintiff No.2/Respondent No.3 at the rate of Rs.2500/- per month with 25% annual increase until her marriage. The suit to the extent of recovery of dowry articles stood partially decreed as per list Ex.P-2, however, claim regarding delivery expenses, the suit was dismissed vide judgment and decree dated 16.4.2011. The Petitioner preferred an appeal before the learned Additional District Judge, Gujranwala, who vide his judgment and decree dated 28.10.2011, maintained the findings recorded by the learned Judge Family Court, however, the annual increase was reduced to 10%.

4. The main emphasis of learned counsel for the Petitioner is with regard to territorial jurisdiction of the learned Judge Family Court, Gujranwala qua which issue No.5, reproduced above, was settled, which was answered in negative. It is contended by learned counsel for the

Petitioner that since the parties were not residing at the address given by the Plaintiffs and it has been proved on record that the residence of the plaintiffs/respondents situates at Sheikhpura, therefore, the suit at Sheikhpura was competent and not at Gujranwala. In support of his contention, he has placed reliance Proviso of Rule-6 of the West Pakistan Family Court Rules, 1965 on case law titled Major Muhammad Khalid Karim v. Mst. Saadia Yaqub and others (PLD 2012 SC 66) and Anjum Firdous v. Additional District Judge, and others (2007 CLC 1433). The Respondents No.2 and 3 despite notice did not turn up, hence were proceeded against ex-parte vide order dated 30.10.2014.

5. Arguments heard and record perused.

6. It is reflected from perusal of record that suit filed by Respondents Nos.2 and 3 was decreed in the manner that dower of two tola gold i.e. Rs.60,000/-, alternate price of dowry articles i.e. Rs.80,000/- and maintenance allowance for Respondent No.2 at the rate of Rs.3000/- per month w.e.f. 16.7.2009 till expiry of her Iddat period, maintenance allowance for Respondent No.3 at the rate of Rs.2500/- per month till her marriage with 25% annual increase. However, the claim for delivery expenses was dismissed vide impugned judgment and decree dated 16.4.2011. The appeal preferred by Respondent No.2 was dismissed on 28.10.2011 while appeal filed by the petitioner was partially accepted by learned Additional District Judge, Gujranwala and impugned judgment and decree dated 16.4.2011 was modified, whereby respondent No.2 was held entitled to recover the dower, the dowry articles valuing Rs.80,000/- and annual increase was reduced from 25 to 10%.

7. The pivotal question to be determined by this Court is whether the Family Court at Gujranwala was competent to try the suit when the Respondents Nos.2 and 3/Plaintiffs were residents of District Sheikhpura. Regarding jurisdiction, issue No.5 is very relevant which has been reproduced above. The said question has been determined by the learned Judge Family Court in his judgment and decree dated 16.4.2011, which was upheld by the Additional District Judge on 28.10.2011 the relevant extract from the said judgment is reproduced hereunder:--

"From perusal of record it is clear that admittedly the marriage took place in district Sheikhpura and the parties also lived in the same district. During cross-examination plaintiff has admitted that maternal relatives of the plaintiff resides in Sheikhpura and paternal relatives resides in Gujranwala. DW-1 further admitted that father of plaintiff lived in Gujranwala. On the other hand, plaintiff has placed on record the original Nikahnama of his father as Ex.P-16 to prove her version, from which it is proved that plaintiff is residing in Gujranwala. Moreover, according to Rule 6 of the West Pakistan Family Court Rules, 1965, word "Reside" includes the place where wife comes to stay of her own choice and that residence should not be long in time and residence of few days is also enough."

In order to further determine the question of jurisdiction Rule 6 of West Pakistan Family Court Rules, 1965 (the "The Rules") is relevant which is quoted hereunder:--

"6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which

- (a) The cause of action wholly or in part has arisen, or
- (b) Where the parties reside or last resided together.

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which wife ordinarily resides shall also have jurisdiction.

8. Moreover, the expression "ordinarily resides" as has been interpreted by the courts, does not necessarily mean that the residence should be long in point of time, residence for a few days is enough. The Court has to see the place where the female has chosen to stay regardless of whether she is a permanent resident of the place, whether she has property over there or the length of time she has resided there. Another principle which should not be lost sight of is that ordinarily a question of fact would not be gone into by High Court in exercise of its Constitutional jurisdiction. However, where finding of the Court on the fact of the record appears to be perverse or based on no evidence, High Court even in the Constitutional jurisdiction could take different view. Reliance is placed upon *Bibi Anwar Khatoon v. Gulab Shah and 2 others* (PLD 1988 Karachi 602), *Mahbub Ahmad v. First Additional District Judge and another* (PLD 1976 Karachi 978) and *Fazal Khitab v. Mst. Naheed Akhtar and another* (PLD 1979 SC 864).

9. In another judgment reported as *Rafiq Ahmad v. Judge Family Court, Khanewal and another* (1996 CLC 1820), it was held that the expression "ordinarily resides" has been interpreted in the following terms:--

"8. Secondly, the expression "ordinarily resides" appearing in Rule 6 of the West Pakistan Family Courts Rules, 1965 means a place where the wife comes to stay at any place of her own choice and this has been enacted for the convenience of the female."

The import of this rule came up for consideration before this Court in *Mst. Shahnaz Kausr v. Muhammad Boota* (PLD 1982 Lahore 350) wherein at page 352 it was observed as follows:--

"By this proviso the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. It is clear that this has been done for the convenience of female upon whom the law has been bestowed greater care. It would not, therefore, be wrong to attach more weight to the convenience of the female than to the convenience of the male while making order for transfer of cases as well. "

10. The judgment relied in this case upon by learned counsel for the petitioner is not relevant because the instant case of *Major Khalid Karim* case *supra* relates to a custody matter and not for the recovery of maintenance allowance and dowry articles. In the judgment relied above, a comparison was studied within section 7(2) of Family Courts Act, 1964 and section 9(1) of the Guardians and Wards Act, 1890 and point considered by the apex Court was with regard to the jurisdiction of a Court dealing with the custody matter under the Guardians and Wards Act, 1890.

11. Further in the case reported as *Mst. Irshad Mai v. Additional District Judge and another* (1997 CLC 742), it has been observed as under:--

"10. The proviso by the very nature of its language is an enabling provision and is for the benefit of wife. The words "ordinarily resides" must, therefore, be construed in the context of an estranged wife who has left her husband abode and has sought residence at any other place of her own choice, it will be that place which should answer to the concept. Therefore, in such an event, it is the intention of the wife to stay at a particular place, which is material for the determination of territorial jurisdiction of the Court. The very language of the proviso, therefore, would enable her to file a suit for dissolution of marriage at any place where she has come to reside. "

12. Dicey in his book "Conflict of Laws" at page 96 explains "ordinarily resides" as:--

"It is not, as a matter of law, necessary that the residence should be long in point of time, residence for a few days or even for part of a day is enough. Indeed, a immigrant can acquire a domicile immediately upon his arrival in the country in which he intends to settle. The length of residence is not important in itself. "

13. Further, at page 197 of "Conflict of Laws" by Graveson, 6th Edition, it is mentioned:--

"Where residence is made the basis of jurisdiction for any purpose, such as taxation, voting rights and certain types of matrimonial causes, it may have acquired a special legal or statutory definition and it is necessary in such cases to examine the fact of residence in the light of the relevant branch of law."

14. This Court is of the opinion that both the courts below have rightly decided the Issue No.5 in favour of the Respondent No.2 by holding that residence includes the place where wife come to stay of her own choice and that residence should not be in long time and residence of few days is also enough.

In view of the above, the learned Appellate Court has rightly upheld and maintained the judgment and decree of learned trial Court. Learned counsel for the petitioner has failed to point out any illegality or misreading and non-reading of evidence determining the issue involved in this matter. Writ petition being devoid of merit is hereby dismissed.

ZC/K-1/L

Petition dismissed.