

ORDER SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH MULTAN.
JUDICIAL DEPARTMENT

Abdul Malik etc. Versus Mst. Subbha Mai alias Sabbah Mai.

06.08.2015. Mr. Muhammad Amir Khan Bhutta, Advocate for the petitioner.
Mr. Muhammad Akram Khan Gulyani, Advocate for the respondent.

Brief facts for decision of this Civil Revision are that respondent filed a family suit for recovery of dower property on 25.03.2011, regarding land measuring 16 Kanals, claiming therein that she was married to Haji Ghulam Esa on 03.12.1983 and at the time of marriage, she was given 16 Kanals of agricultural land, which was fixed as deferred dower. She claimed that the fact of dower of the said land was mentioned in the *Nikah Nama*. Haji Ghulam Esa had died and she is entitled to the said property in dower. The petitioners, who are legal heirs of the deceased being nephews and nieces, refused to satisfy the claim of dower, which compelled her to file the said suit. The present petitioners appeared before learned Judge Family Court and filed their contesting written statement. Learned Judge Family Court, after framing of issues, recording of evidence and hearing arguments of both the parties, proceeded to pass decree awarding said land as dower in favour of the respondent vide judgment and decree dated 10.09.2012. Feeling aggrieved therefrom, the present petitioners preferred an appeal before learned Additional

District Judge, Ali Pur, District Muzaffar Garh, which was dismissed vide judgment and decree dated 28.10.2013. Through the instant revision petition, both the aforesaid judgments and decrees have been challenged by the petitioners with the following prayer:-

“Under the circumstances, it is most respectfully prayed that the instant Civil Revision may graciously be accepted/allowed and impugned judgment & decree dated 25.10.2013 passed by learned Additional District Judge, Alipur, District Muzaffargarh and judgment and decree dated 11.09.2012 passed by learned Civil Judge, Alipur, District Muzaffargarh may kindly be declared as illegal, void ab initio, against the law, without lawful authority, capricious, harsh one and be set aside and resultantly the suit filed by the respondent/plaintiff may very kindly be dismissed, in the interest of justice.”

2. Learned counsel for the petitioners submits that respondent never claimed the suit property during life time of Haji Ghulam Esa, and the relevant entries of *Nikah Nama* are based on collusion and *malafide*, and both the learned Courts below failed to consider this vital aspect of the matter. Further submits that both the learned Courts have ignored the factum of tampering in Ex.P-4, which is evident from the record. Adds that there is no description of suit property in columns No.15 & 16 of *Nikah Nama*. He also pointed out that there are glaring contradictions in statements of witnesses produced by the respondent, which have been over looked by both the leaned courts while passing impugned judgments and decrees. Learned counsel for the petitioner also questioned the jurisdiction of Family Court to decide the matter pertaining to dower when it is given in form of immovable property. According to him, for settlement of such dispute, Civil Court is the competent forum.

3. Learned counsel for the respondent submits that the impugned judgments and decrees are quite in conformity with the evidence brought on record and law applicable thereon, and the petitioners have failed to point out any illegality or legal infirmity in the same, hence, the impugned judgments and decrees are liable to be upheld under the law.

4. Arguments of learned counsel for the parties have been heard, record perused.

5. It is evident from the *Nikah Nama* and evidence brought on record by the parties that landed property mentioned in *Nikah Nama* was given to the respondent by Haji Ghulam Esa as dower and the same was incorporated in relevant column of *Nikah Nama*. Under the law, once a husband gives immovable property as dower and it is incorporated in the *Nikah Nama*, such property becomes property of the wife. During his lifetime, if the deceased husband of respondent was of the view that the entries of *Nikah Nama* / *Nikah* Register were tampered with, he could have approached the Deputy Commissioner concerned, who was controlling authority, but he never objected to it during his life time. This fact alone is sufficient to prove that the property in question was given to the respondent wife at the time of her marriage and there appears to be no manipulation or fabrication of any sort from the contents and circumstances surrounding it.

6. Under the law, once entries are incorporated in the *Nikah Nama*, the same are equated to a registered deed. Strong presumption of truth is attached to such entries made in the *Nikah Nama*. In the instant case, the petitioners have failed to rebut the presumption attached to the contents of *Nikah Nama* through any cogent evidence. Therefore, respondent wife is entitled to the award of decree as passed

by the learned Courts below. Reference in this regard can be made to the following judgments:-

- i. Mst. Ishrat Bano v. Noor Hussain and 2 others (2010 YLR 2452)
- ii. Nazish Ishaq and another v. Additional District Judge Liaquatpur and 3 others (2013 YLR 1118)
- iii. Mst. Nabeela Shaheen and others v. Zia Wazeer Bhatti and others (PLD 2015 Lahore 88)
- iv. Mst. Kanizan Begum v. Additional District Judge, Layyah and 2 others (2014 MLD 1479)
- v. Dr. Asma Ali v. Masood Sajjad and others (PLD 2011 Supreme Court 221)
- vi. Ashiq Ali and others v. Mst. Zamir Fatima and others (PLD 2004 Supreme Court 10)

In the case of Ashiq Ali and others supra, the Hon'ble Supreme Court of Pakistan, has observed as under:-

“The Nikahnama produced by Mst. Zamir Fatima lends corroboration to his contention that the house in question was gifted to her in lieu of dower, a mention whereof has been made in Serial No. 13 of the Nikahnama with which presumption of truth is attached which could not be rebutted. It can thus safely be inferred that on 29-2-1994 the petitioner had no title to dispose of the house in question. The learned Civil Judge after having gone through the evidence led by the respondents has drawn the following conclusion:--

“8. I have given my anxious consideration to the entire evidence available on record and given due weight to the arguments of learned counsel for the plaintiff and in my considered view, the plaintiff has produced good, cogent and authentic evidence in support of her contention because Exh.P-1 Nikahnama shows that at the time of Nikah, suit property in lieu of dower amount was given to the plaintiff. The plaintiff in order to establish her contention has examined marginal witness of Nikahnama as well as Deed in favour of plaintiff regarding

transfer of suit house as Exh.P-2. As defendant No.1 has transferred his right of ownership in favour of the plaintiff in the year 1986, then, subsequently, he had no right to transfer the suit house by executing any document in favour of defendants. There is no rebuttal on the file to rebut the contention of the plaintiff. So I relying upon the ex parte evidence available on record and decree the suit ex parte with costs. ”

7. Learned Appellate Court noted that Mst. Subbha Mai alias Sabbah Mai / respondent was married to Haji Ghulam Esa on 03.12.1983 and *Nikah* was solemnized by Haji Ghulam Qadir and that seal and signature of Haji Ghulam Qadir *Nikah Khawan* are available on Ex.P-4. The name of said *Nikah Khawan* is also mentioned alongwith parentage in column No.23 of the *Nikah Nama*. *Prima facie*, there is no cutting, tampering or overwriting on Ex.P-4 with reference to fixation of property measuring 16 Kanals as dower. Column No.14 of Ex.P-4 is quite relevant, which reveals that the dower was “*Mowajjal*”. Mst. Subbha Mai had been living with her husband for about 28/29 years. The marriage was properly consummated between the parties of *Nikah*. During his life, Haji Ghulam Esa did not challenge the entries of the said *Nikah Nama*. PW-2 is attesting witness of the *Nikah Nama* who has fully corroborated and supported the version of the respondent being eye witness of the factum of *Nikah* and fixation of 16 Kanals land as deferred dower. Ex.P-6 reveals that Haji Ghulam Esa was owner of property measuring 59 Kanals & 8 Marlas in the area of village Latti vide copy of record of rights for the year 2007-08 in Khewat No.20 Khatooni No.42 to 44. The claim of respondent with reference to dower of land measuring 16 Kanal is quite genuine and the same has been proved through cogent reliable and trust worthy oral and documentary evidence.

Learned counsel for the petitioners has failed to point out that the above findings of fact arrived at by the learned Courts below are not in conformity with the evidence brought on record and law applicable thereto.

8. The contention of learned counsel that Family Court had no jurisdiction to entertain and adjudicate upon the suit regarding the recovery of dower of immovable property, is absolutely misconceived as it has been well settled law that matter wherein property, whether movable or immovable, is claimed as dower, then under section 5 of the West Pakistan Family Courts Act, 1964, the Family Judge has got the exclusive jurisdiction to entertain and adjudicate upon such dispute. Reliance in this regard can be placed on following case law:-

- i. Asia v. Abdul Rehman and another (1994 CLC 1388)
- ii. Liaquat Ali v. Additional District Judge, Narowal and 2 others (1997 SCMR 1122)
- iii. Haris Bin Hassan Akhtar Jang v. Judge Family Court and others (2013 CLC 94)
- iv. Sifat Aizdi v. Dr. Saima Bashir and 2 others (PLD 2008 Peshawar 111)
- v. Sh. Abdul Karim v. Atta Mansoor and another (2007 CLC 1671)
- v. Sifat Aizdi v. Dr. Saima Bashir (2009 CLJ 464)
- vi. Mst. Razia Begum v. Jang Baz and 3 others (2012 CLC 105)

9. It is also pertinent to observe here that appeal, review and revision are creation of statute and the same can neither be presumed nor inferred if they are not specifically provided in the relevant statute. In the instant case, the petitioners have preferred revision against the judgment of the learned Appellate Court, which is not competent as the same is not provided in the West Pakistan Family Courts Act, 1964. Even otherwise, there is no merit in the instant

petition even if it is treated as writ petition, in view of the reasons recorded in the foregoing paragraphs of this judgment. Reliance in this regard can be placed on the following case laws:-

- i. *I.C.I. Pakistan Limited v. Salahuddin and others* **(1991 SCMR 15)**
- ii. *Pakistan through Military Estate Officer, Kharian Cantt. and another v. Abdul Hayee Khan through Legal Heirs and 5 others* **(PLD 1995 Supreme Court 418)**
- iii. *Mst. Maryam v. District Magistrate/Controlling Authority, Muzaffargarh and 2 others* **(PLD 1996 Lahore 336)**
- iv. *Multan Electric Power Company Ltd. through Chief Executive and another v. Muhammad Ashiq and others* **(PLD 2006 Supreme Court 328)**
- v. *Muhammad Husnain and another v. Additional Sessions Judge, Multan and 2 others* **(PLD 2013 Lahore 1)**

10. For what has been discussed above, this petition has no merits and the same is hereby **dismissed in limine**.

(Muhammad Sajid Mehmood Sethi)
Judge

Approved for reporting.