PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Writ Petition No. 273-A/2017

Date of hearing: …..**07.11.2022**…….

Petitioners (Taj Muhammad) By Mr. Yaseen Ayaz, Advocate.

Respondents (Mst. Khalida Bibi)
By Mr. Ghulam Mustafa Awan, Advocate.

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FAZAL SUBHAN, J.- By way of this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution) the petitioner has prayed the following: -

> ***" it is, therefore, humbly prayed that on acceptance of the instant writ petition, the judgment /decree of respondent No.1 may kindly be set-aside and the judgment/decree of Family Court Abbottabad dated 25.05.2015 may kindly be restored. Any other relief which this Hon'ble Court deem appropriate in the***

circumstances may also be allowed to the petitioner."

2. Brief but relevant facts of the case are that the respondent Mst. Khalida Bibi instituted a suit for recovery of house in lieu of dower/Mehr, situated at Mouza Paswal Mian Tehsil & District Abbottabad, recovery of share in the sale consideration of a vehicle belonging to her deceased husband of Rs. 300,000/-, return of other articles purchased by the spouses while residing at Karachi.

3. After institution of suit the petitioner appeared and filed written statement and denied averments of plaint and on the basis of pleadings of parties, the learned Judge Family court framed issues whereafter both the parties had the opportunity to lead their respective evidence and through its judgment the learned Judge Family court vide its judgment dated 25.05.2015 dismissed the suit of the respondent.

4. Aggrieved from the above findings, the respondent No.1 filed appeal No.02/FC of 2016, which was accepted by the learned Appellate

Court, resultantly, the petitioner preferred this petition.

5. Arguments of learned counsel for the parties heard and record gone through.

6. During his arguments counsel for petitioner raised two-fold objections to the impugned judgment and decree, contending, firstly that for the recovery of properties mentioned in column No. 15, the respondent was required to file a suit before the Civil Court and therefore, suit filed before the Family Court was not competent, and secondly, that the petitioners being father and mother in-law are not bound to pay dower property as dower is a debt and is to be paid by the husband

7. Conversely, counsel for the respondent submitted that Nikah Nama contains fixation of dower as Rs. 50,000/- and in lieu thereof house is mentioned, hence, the appellate court has rightly decreed the suit of the respondent by granting decree of a room in the house.

8. Having heard the above arguments, and considering the record, it is evident that Nikah of respondent was performed with Muhammad Sajid, son of the petitioners and in column No.15 of Nikah Nama a house in lieu of dower amount of

Rs. 50,000/- is mentioned. Under Section 285 of Muhammadan Law dower is defined, as a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage. The husband of respondent has died and she has brought a suit for recovery against both the parents of the husband. Section 5 read with Schedule I of the West Pakistan Family Court Act, 1964 (Act) provide jurisdiction to the Family court to entertain suit in respect of matter mentioned in the schedule I, which includes dower and as the house is mentioned in column No.15 of Nikah Nama, hence, the family court Abbottabad had the jurisdiction to entertain the suit.

9. In respect of the second objection, raised by learned counsel for petitioners, it is to be mentioned that at the time of marriage between Muhammad Sajid and Mst. Khalida, a house is mentioned as dower in lieu of Rs. 50,000/- but no description or details of the house is given therein, and at the same time the petitioners are not signatories of the Nikah Nama to show their acquiescence or consent to the giving of house in dower. As stated above, it was the responsibility of the deceased Muhammad Sajid to provide the

dowered house but till his death she never demanded her dower from her husband and therefore, parents of her deceased husband are not bound to pay dower on behalf of their son. When a similar question came up before the August Supreme court of Pakistan in the case of ***"Fawad Ishaq and others Vs Mst. Mehreen Manoor"*** reported in *PLD 2020 Supreme Court 269*, it was held that: -

> ***"The learned Judge of the High Court was aware that the Property was owned by Mst. Khurshida but had agreed with the decisions of the Subordinate Court because, firstly, the wives of Mst. Khurshida's other sons had been given plots of "2 kanal each", secondly, she did "not question Nikah Nama" and, thirdly, her husband was "guarantor" of the Property. With respect to the learned Judge, none of the three reasons which prevailed with him (and which had persuaded the learned Judges of the Subordinate Courts to respectively decree and uphold the decree) are sustainable in law. If the spouses of the other sons of Mst. Khurshida were given land it was inconsequential since every marriage and its terms are***

independent from every other and there is no legal concept of parity. The other cited reason, that Mst. Khurshida had not questioned (by which we presume the learned Judge meant challenged in court) the contents of the Nikahnama, was irrelevant, since the matter did not concern her; Mehreen and Mansoor were sui juris and had agreed to get married on certain terms, which could not unilaterally be imposed on Mst. Khurshida who had not executed or signed the Nikahnama, therefore, Mst. Khurshida was not obliged to challenge it. Moreover, it was for Mehreen to establish that Mst. Khurshida had agreed to give the Property as dower to her, however, there was no evidence that she had agreed to do so. The obligation to pay dower was incurred by Mansoor and remained his to fulfil. As regards the reason that Mst. Khurshida's husband was a guarantor of the Property it has no legal basis since a husband has no right to his wife's property nor can he 'guarantee' or encumber it without her permission."

10. From the above discussion and while relying on the aforementioned judgment it is held

that the respondent cannot claim her dower from the petitioner and therefore the impugned judgment being wrong, illegal and incorrect on the law on the subject, is not sustainable hence, by accepting this writ petition, the impugned judgment is set aside and that of the Judge Family court dated 25.05.2015 is restored.

Announced
07.11.2022
Muhammad Tariq SSG

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