

**2020 C L C 380**

**[Balochistan]**

**Before Naeem Akhtar Afghan and Abdul Hameed Baloch, JJ**

**AZIZ-UR-REHMAN----Petitioner**

**Versus**

**Mst. BIBI JAMEELA and 2 others----Respondents**

C.P. No.39 of 2019, decided on 23rd September, 2019.

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

---S.5, Sched.---Suit for recovery of dowry articles and dower---Family Court decreed the suit and appeal was dismissed by the Appellate Court---Validity---Not possible for wife to keep the record of purchased articles and prepare list of dowry articles and obtain signatures of husband and witnesses---Whosoever alleged existence of a particular fact was to prove the same---Solitary statement of wife was enough to prove dowry articles---When marriage had not been consummated then wife would be entitled to half of the fixed dower only and remaining half should be returned/restored to husband unless he waived such right voluntarily---Impugned judgments and decrees passed by the Courts below to the extent of dowry articles were modified and amount of dowry articles was reduced---Constitutional petition was disposed of accordingly.

Muhammad Habib v. Safia Bibi 2008 SCMR 1584; Shakeela Bibi v. Muhammad Israr 2012 MLD 756 and Muhammad Akbar v. Shazia Bibi PLD 2014 SC 693 rel.

Noor Muhammad Kakar for Petitioner.

Muhammad Usman Yousafzai for Respondent.

Date of hearing: 16th September, 2019.

## **JUDGMENT**

**ABDUL HAMEED BALOCH, J.---**This order shall dispose of Constitution Petition No.39 of 2019, which is directed against the judgment and decree dated 14.02.2018 (impugned judgment) passed by the learned Additional Family Judge-I, Quetta ("trial court") and against the judgment dated 19.12.2018, passed by the learned Additional District Judge-V, Quetta ("appellate Court"), whereby the 'Suit for Recovery of Dowry Amount, Dowry Articles Maintenance allowance for Iddat Period and Past Maintenance' filed by the respondent/plaintiff was decreed by the trial court and appeal filed thereon was dismissed by the appellate Court.

2. Brief facts of the case are that the respondent No.1 has filed a suit for recovery of dower amount Rs.3,00,000/-, dowry articles worth of Rs.472,800 and past maintenance allowance of Iddat period at the rate of Rs.15,000/- p.m, and lastly prayed for decree of suit with the following terms:

- i. Decree be passed in favour of plaintiff against the defendant. Directing the defendant to pay the Dower amount Rs.300000/- to the plaintiff in lum sum.
- ii. defendant be directed to pay the maintenance allowance from February 2014 till October 2014 and to pay the maintenance allowance for the Iddat Period at the rate of Rs.15000/- per month.
- iii. Defendant be directed to return the dowry articles detail mentioned in the Para No.3 or to pay the market value of the dowry articles to the plaintiff amounting to Rs.472,800/-
- iv. Defendant be directed to return the original Educational document to the plaintiff.
- v. any other relief which this Hon' able Court deem fit and proper in the circumstance of the case be awarded to plaintiff
- vi. All cost of suit.

3. The petitioner/defendant on receipt of notice filed a written statement while denying the claim of the plaintiff stating therein that the plaintiff has taken away all of her dowry articles which she had brought from her father house in the presence of the representative of Assistant Commissioner Karezat namely Shahab-ud-Din and prayed for dismissal of the suit.

4. Out of pleadings of the parties, the trial court framed the following issues:

1. Whether the parents of the plaintiff had gifted her with dowry articles according to the list annexed with the plaint?
2. Whether the dowry Articles of the plaintiff are in possession of the defendant? If yes, whether the plaintiff is entitled to the recovery of dowry articles of their value i.e. 4,72,800/-?
3. Whether the plaintiff had brought her educational documents with her to the defendant's house? If yes, whether the same are in possession of the defendant?
4. Whether the dower amount of plaintiff was fixed as Rs.300000/-? Whether the plaintiff is entitled to the recovery of the dower amount?
5. Whether the plaintiff is entitled to maintenance from February, 2014 till October, 2014 and Iddat period? If yes at what rate?
6. Relief?

5. The trial court after recording the statement of the parties decreed the suit of the plaintiff in the following terms:

6. Being aggrieved of the impugned judgment passed by the trial court the petitioner

preferred an appeal before the appellate Court. The appellate Court upheld the judgment passed by the trial court and dismissed the appeal. Hence this petition.

7. Learned counsel for the petitioner that the dowry articles has been given to the respondent by the representative of Assistant commissioner Karaizat Shahab-ud-Din with receipt; that the petitioner also filed an application before the trial court for calling the Assistant Commissioner but it was not entertained. He therefore prayed for remand of the case to the trial court with direction to summon the representative of the than Assistant Commissioner Karaizat Shahab-ud-Din for provision of the receipt of the dowry articles.

8. Learned counsel for the respondent/plaintiff vehemently opposed the contention of the learned counsel for the petitioner contended that the courts below after proper appraisal of the evidence have rightly passed the impugned judgment and decree. He therefore urged for dismissal of the petition.

9. Heard. Record perused. It is an admitted fact that the marriage tie between the parties did not exist as the petitioner has pronounced divorce to respondent No.1. Both the parties had produced evidence in order to prove their contention. The petitioner in his written statement has taken specific plea that all the dowry article which had been brought by the respondent No.1 from her parents home, had been handed over to plaintiff in presence of the representative of the Assistant Commissioner and receipt whereof has also been obtained by the representative of the Assistant Commissioner. It is settled principle of law of evidence that whosoever alleges existence of a particular fact must prove the same.

In order to prove the above plea, the petitioner produced representative of the Assistant Commissioner before the trial court but the representative did not produce any receipt in respect of return of dowry articles. The petitioner has failed to prove his plea.

10. It is pertinent to mention here that in our society it is not possible for the bride/wife to keep the record of purchased articles and to prepare list of the dowry articles as well as to obtain signatures of the husband and witnesses. In this regard reliance is placed on the case of Muhammad Habib v. Safia Bibi 2008 SCMR 1584.

11. In the plaint respondent/plaintiff admitted that the petitioner has handed over seven suits, three pairs of shoes. The petitioner had voluntarily returned the clothes and shoes. Dowry articles comprising of daily use items depreciate/ lost their value. The solitary statement of wife is enough to prove dowry articles as held in the case of Shakeela Bibi v. Muhammad Israr 2012 MLD 756.

12. As far as the dower is concerned, the respondent through witnesses proved that the dower was fixed Rs.3,00,000/-. The petitioner has taken plea that consummation of marriage was not effected between spouses, which fact was also admitted by the plaintiff in cross-examination that:

13. According to Islamic Law, it is well settled principle that where the marriage has not been consummated, the wife is entitled to only half of the fixed dower and the remaining half is to be returned/restored to the husband, unless such right is waived by him voluntarily. Reliance is placed on the case of Muhammad Akbar v. Shazia Bibi PLD 2014 SC 693.

In view of above discussion we are of the opinion that the concurrent findings of the courts below to the extent maintenance for iddat period and dower amount need no interference and same are hereby upheld. However the dowry articles being daily use items depreciate day by day, therefore the impugned judgments and decrees passed by the courts below to the extent of cost of dowry articles is modified and amount of dowry article worth of Rs.4,72,800 is reduced to that of Rs.3,00,000.

The petition is disposed of with the above modification.

ZC/119/Bal.

Order accordingly.