

2017 Y L R 1814

[Lahore]

Before Jawad Hassan, J

Mst. SADAF and others---Petitioners

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

W.P. No. 25770 of 2014, decided on 9th February, 2017.

Family Courts Act (XXXV of 1964)---

---Ss. 9, 14 & Sched.---Dowry articles, entitlement to---Financial status of father of wife---Scope---Wife assailed order of Appellate court by which decree of Family Court to the extent of recovery of dowry articles in favour of wife was set aside---Wife contended that findings recorded by Family Court were corroborated through witnesses regarding contents of items, time of delivery, receipts of purchase and financial status of father of wife---Validity---Record showed that factum of handing over and receiving of dowry articles was also admitted from the side of husband, in such circumstances, the findings of Family Court in presence of tangible and corroborative piece of evidence, could not be brushed aside---Record showed through evidence of witnesses, that father of wife was running a shop for the last thirty years, therefore, it could not be presumed that dowry articles were not given to her at the time of marriage and it was sufficient that father of wife was in a position to give dowry articles---Normally, dowry articles were handed over along with the list to the parents of the male spouse at the time of Rukhsati---No doubt the courts were supposed to decide cases in accordance with law but in family cases particularly, the normal traditions of the society could not be ignored---Wife had succeeded to prove her claim for recovery of dowry articles by adducing confidence inspiring evidence and Appellate Court without referring anything from the record, had set aside judgment of Family Court---Order of Appellate Court was set aside and Constitutional petition was allowed accordingly.

Mst. Kishwar Sultana and another v. Muhammad Saddique and another 2009 CLC 61 ref.

A.D. Bhatti for Petitioners.

Ustad Muhammad Iqbal for Respondents.

ORDER

JAWAD HASSAN, J.---Through this petition, the Petitioners have called in question judgment and decree dated 05.07.2014 passed by learned Additional District Judge, Faisalabad and that judgment and decree dated 15.03.2014, passed by learned Judge, Family Court,

Faisalabad.

2. Seemingly, the Petitioners are aggrieved of judgment and decree dated 5.07.2014, whereby the learned Additional District Judge, Faisalabad through the above said consolidated judgment dismissed the Appeal of the Petitioners to the extent of dowry articles and upheld the same to the extent of recovery of Rs.5000/- per month as maintenance allowance of Petitioner No.1 of her Iddat Period while that of Petitioner No.2 to the tune of Rs.5000/- per month with 10% annual increase and partially allowed the appeal of Khalid Javed/Respondent No.3, as both appeals were emanated out of judgment and decree dated 15.03.2014. The claim of the Respondent No.3, for custody of minor was declined with the direction to the Petitioner No.1 to arrange meeting of the minor with the Respondent No.3 once in a month.

3. Arguments heard and record perused.

4. From the perusal of record it reveals that after recording issue wise findings the learned Judge Family Court, Faisalabad has passed judgment and decree dated 15.03.2014, whereby maintenance allowance was fixed in favour of Petitioners Nos.1 and 2 after recording issue wise findings as mentioned above, whereas he after giving detailed issue wise findings on Issue No.1 and Issue No.2-A, held entitled Petitioner No.1 to recover Rs.2-lacs as alternate price of dowry articles, but the learned Appellate Court while upholding the decision of Family Court to the extent of maintenance allowance set aside the findings of Family Court to the extent of recovery of dowry articles.

5. After appraisal of whole evidence it reveals that findings recorded by learned Judge Family Court, Faisalabad on Issues Nos.1 and 2 are corroborative through convincing evidence of PW-1, PW-2 and PW-3. The PW-1 stated in his evidence that dowry articles were handed over to the Defendant side about 3/4 days before the marriage, whereas PW-3 corroborated the contents of the plaint while stating that at the time of marriage dowry articles were given to the Petitioner No.1/Plaintiff. The PW-1 and PW-2 both stated that receipts of purchasing dowry article were in the custody of their counsel. The PW-2 also corroborated the version of the plaintiff regarding financial status of her father while deposing that the father of the Petitioner has been running a shop of electronics in Kachehri Bazar for last thirty years. The factum of handing over and receiving of dowry articles is also admitted from the side of Defendant/Respondent No.3, therefore, in such circumstances, the findings of learned Judge Family Court in presence of such tangible and corroborative piece of evidence, could not be brushed aside. It has also come on record through cogent and convincing evidence of PWs, that father of Petitioner was running a shop for the last thirty years, therefore, it cannot be presumed that dowry articles were not given to her at the time of marriage and it was sufficient to prove that family of the Petitioner was in a position to give dowry articles. The Respondent No.3 could not controvert/rebut the evidence and contention of the Petitioners and findings recorded by learned Judge Family Court. Normally, the dowry articles are handed over along with the list to the parents of the male spouse at the time of Rukhsati. No doubt the Courts are supposed to decide the cases in accordance with law but in family cases, particularly the normal traditions of the society cannot be ignored. In our society, it has now become imperative for all the parents irrespective of poor or rich to give dowry articles to their daughters at the time of marriage. Reliance in this respect is placed upon Mst. Kishwar Sultana and another v. Muhammad

Saddique and another (2009 CLC 61); wherein it has been held as under:--

"In this regard, it is observed that in our society, normally it is very difficult to save or keep the receipts of dowry articles by the parents. The evidence produced by the petitioner and the findings recorded by the learned trial Court while deciding issue No.5 it was proved on record that the father of the petitioner is running a medical store one brother of petitioner is agency holder of a medicine company and other brother is medical surgeon so this is sufficient to prove that the family of the petitioner was well to do and it is not difficult for such like family to give the dowry articles worth Rs. 2 lac."

6. In view of the above, the petitioners have succeeded to prove her claim for the recovery of dowry articles by adducing confidence inspiring evidence and the learned Appellate Court without referring anything from the record, has set aside the judgment of the learned Judge, Family Court.

Resultantly, this writ petition is allowed and the impugned judgment and decree dated 15.03.2014 passed by Appellate Court is set aside.

MQ/S-10/L

Petition allowed.