

[Peshawar]

Before Qaiser Rashid Khan and Rooh-ul-Amin Khan, JJ

Hafiz GHULAM MURTAZA----Petitioner

Versus

Mst. SAIMA NAZ and another----Respondents

Writ Petition No.894 and Civil Miscellaneous No.694 of 2011, decided on 29th November, 2012.

West Pakistan Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Constitution of Pakistan, Art.199---Constitutional petition---Suit for recovery of dower amount---Execution of Iqrarnama between the spouses at the time of marriage with regard to payment of dower---Plaintiff-respondent (wife) produced the scribe of the deed/Iqrarnama who got exhibited the same along with the extract from relevant register and testified in that behalf---Plaintiff-respondent also produced one marginal witness of the Iqrarnama who fully supported its contents---Both the witnesses were put to the test of lengthy cross-examination, but nothing favourable to the defendant-petitioner (husband) came out from their mouth---Defendant-respondent (husband) produced his father who in his cross-examination admitted that at the time of marriage, a document was executed between the spouses---Defendant-respondent, however, had failed to pay the prompt dower of Rs.50,000 and to hand over the possession of ten marlas of the house to the plaintiff-respondent, which he had agreed to give to the plaintiff-respondent in lieu of prompt dower and for which she was legally entitled to claim and recover---No illegality, irregularity, mis-reading or non-reading of evidence was noticed---Constitutional petition was dismissed, in circumstances.

Muhammad Gazanfar Ali for Petitioner.

Jamal Abdul Nasir for Respondents.

Date of hearing: 29th November, 2012.

JUDGMENT

ROOH-UL-AMIN KHAN, J.---Hafiz Ghulam Murtaza, petitioner herein, through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, has called in question the legality and propriety of the judgment and decree dated 10-10-2011 passed by the learned Judge, Family Court/Civil Judge-IX D.I. Khan, whereby the family suit of Mst. Saima Naz, respondent herein, for dissolution of marriage, recovery of dower, gold ornaments, pocket money, maintenance, dowry articles and possession of the house through partition, fully detailed therein, was decreed.

2. Briefly stated facts of the case leading to the filing of the instant petition are that the marriage ceremony of Mst. Saima Naz, daughter of Zaffar Iqbal, was solemnized with Hafiz Ghulam Murtaza on 13-12-2009 in lieu of dower, i.e. cash of Rs.50,500/- and a portion of house measuring 10 marlas fully described in the plaint vide Iqrarnama dated 13-12-2009. Thereafter relations between the spouses were cordial and the plaintiff happily performed her matrimonial obligations. Hafiz Ghulam Murtaza was serving as Driver in the Pakistan Army at Lahore and to meet his wife, who was living with his parents, used to come to the home on leave for 2/3 days only. According to the averments in the plaint, the plaintiff in absence of her husband, was oftenly maltreated by her parents-in-laws by levelling baseless allegations which were regularly complained to the husband, but he used to give deaf ears to, and thus she was compelled to knock the doors of the court by filing suit against her husband for the dissolution of marriage, recovery of Rs.50,000/- as dower, recovery of gold ornaments weighing five tolas vide Iqrarnama dated 13-12-2009, recovery of Rs.13,500 as pocket money of plaintiff at the rate of Rs.1500/- per month from May, 2010 to January, 2011 and in future at the same rate till decision of the suit; recovery of Rs.27000/- as past maintenance at the rate of Rs.3000/- per month from May, 2010 till January, 2011 along with future maintenance till the decision of the case; recovery of dowry articles fully described in the list annexed with the plaint or its market value and possession of portion of a house measuring 10 marlas in Khasra No.345 vide Mutation No.589 attested on 30-1-2010 through partition which was situated in mouza Qazi Khokhar, Tehsil Paharpur, District D.I. Khan. The husband/defendant contested the suit by filing written statement. The divergent pleadings of the parties gave rise to the framing of as many as eleven issues. Thereafter, pro and contra evidence of the parties was recorded and the learned trial Judge after considering the arguments of the learned counsel for the parties addressed at the bar in the light of record of the case decreed the suit of the plaintiff Mst. Saima Naz, fully described in the judgment and decree dated 10-10-2011. The defendant/husband feeling aggrieved therefrom, has now assailed the same through the instant writ petition.

3. Learned counsel for the petitioner vociferously argued that the plaintiff/respondent had miserably failed to prove her claim against her husband through cogent and tangible evidence brought on record and, therefore, the impugned judgment and decree is the result of misreading and non-reading of materials available on file. He urged that the plaintiff had neither proved the ground of cruelty, nor the ground of dissolution of marriage, thus the grant of decree to her in this respect together with maintenance and pocket money was unwarranted. He urged that the plaintiff had left the house of the defendant/petitioner in his absence when he was on duty in Pak Army at Lahore without his consent and without the permission of his parents, therefore, she was not ousted from the house, rather she had deserted the house of the petitioner due to which she was not entitled to any relief so claimed in the plaint. The last limb of his arguments was that since the plaintiff had wilfully refused to perform conjugal obligations, as such, she was not entitled to any relief. He thus argued that the impugned judgment and decree is not based on facts, rather is the result of surmises and conjectures, without jurisdiction and liable to be set at naught.

4. On the other hand, learned counsel for the plaintiff/respondent-defended the impugned findings of the learned trial Judge on almost the same grounds enumerated therein.

5. We have carefully gone through the record of the case and anxiously considered the valuable arguments of the learned counsel for the parties.

6. The claim of the plaintiff was that her marriage with the defendant was solemnized on 13-12-2009 in lieu of dower amount of Rs.50,500/- and a portion of a house measuring 10 marlas vide Iqrarnama dated 13-12-2009, out of which the defendant had paid Rs.500/- on the spot while the remaining amount of Rs.50,000/- was promised to be paid on demand as prompt dower which was still outstanding and the possession of the aforesaid portion of the house was also with the defendant and for both these dues she was entitled to recover. In order to prove her such claim, the plaintiff produced the scribe of the deed/Iqrarnama, namely, Abdur Rashid-ur-Rahman as P.W.-1 who exhibited the same as Exh.P.W.-1/1 along with the extract from the relevant register as Exh.P.W.-1/2 and testified in this behalf. She also produced one marginal witness of the aforesaid Iqrarnama, namely, Najibullah, as P.W.-2 who fully supported its contents. Both these witnesses were put to the test of lengthy cross-examination, but nothing favourable to the defendant was come out from their mouths. The defendant in support of his version had produced his father Allah Bakhsh as DW-4 who in his examination-in-chief admitted that at the time of marriage, a document was executed between the spouses. It is thus crystal clear from the record that the defendant had failed to pay the prompt dower of Rs. 50,000/- and to hand over the possession of ten marlas of the house in question to the plaintiff, which he had agreed to be given to the plaintiff in lieu of the prompt dower and for which she was legally entitled to claim and recover.

7. From the available facts and circumstances of the case, learned counsel for the petitioner has not been able to point out any illegality, irregularity, misreading or non-reading of evidence brought on record so as to term the impugned findings of the learned trial court as perverse, fanciful or based on surmises and conjectures, which are accordingly maintained.

8. As a result, we find no substance in this writ petition which is hereby dismissed along with C.M. No.694 of 2011 and the interim stay order dated 21-3-2012 passed by this court thereon shall stand vacated.