

2018 Y L R 438

[Lahore]

Before Jawad Hassan, J

MUHAMMAD MOHSIN SAEED---Petitioner

Versus

RABIA BASHIR and others---Respondents

W.P. No.8672 of 2013, heard on 22nd September, 2017.

Family Courts Act (XXXV of 1964)---

---S.5 & Sched.---Suit for recovery of dowry articles---Grant of gold ornaments among dowry articles---Financial status of respondent (wife) family---Scope---Petitioner/defendant (husband) contended that gold ornaments had wrongly been decreed among dowry articles---Respondent/Plaintiff contended that two Courts below had rightly decreed gold ornaments among dowry articles as said gold ornaments were kept in the Bank locker by her in-laws---Validity---Record revealed that the petitioner himself had deposed during cross-examination that whatsoever gold ornaments he had given to the respondent were in custody of the respondent but he could not produce their receipts of purchase as the receipts were also in the custody of the respondent---Said piece of evidence shattered the whole evidence of other witnesses of the petitioner---While respondent had established through cogent and confidence inspiring evidence that whatsoever jewelry articles she had brought with her as dowry, were obtained by the parents of the petitioner to keep those articles in the Bank locker---Evidence of the respondent also showed that in addition to gold articles all the other dowry articles were yet lying at petitioner's house---Evidence showed that respondent (wife) was a doctor and her father was a retired officer in Grade-21 and her mother was also Lady Health Visitor and also practiced in private clinic who was also the owner of a private school---Perusal of impugned judgments revealed that both the courts below had passed the decrees and judgments after fully appreciating the evidence on record---High Court in its extra-ordinary jurisdiction could neither substitute the findings of facts recorded by family Court, nor it could give its opinion regarding quality or adequacy of the evidence---Appraisal of the evidence was the function of the Family Court, which was vested with exclusive jurisdiction in such regard---No illegality and infirmity having been noticed in the impugned judgments and decrees passed by the two Courts below---Constitutional petition was dismissed accordingly.

Abdul Rehman Bajwa v. Sultan and 9 others PLD 1981 SC 522; Perveen Umar and others v. Sardar Hussain and others 2003 YLR 3097; Muhammad Ashiq v. Addl. District Judge Okara 2003 CLC 400; Aqal Zaman v. Mst. Azad Bibi and others 2003 CLC 702 and Waqar Haider Butt v. Judge, Family Court and others 2009 SCMR 1243 ref.

Ch. Muhammad Anwar Bhaur for Petitioner.

Shahzad Saleem Khawaja for Respondents.

Date of hearing: 22nd September, 2017.

JUDGMENT

JAWAD HASSAN, J.---Through this petition, the Petitioner has called in question judgments and decrees dated 27.07.2011 and 10.12.2012 passed respectively by Judge Family Court and District Judge, Faisalabad, whereby suit filed by the Respondent No.1 and appeal filed against the same by the Petitioner was dismissed. These concurrent findings of facts have been assailed through this constitutional petition.

2. Facts briefly for the disposal of this Constitutional Petition are that as a consequence of suit for return of dowry articles, judgment and decree dated 27.07.2011 was passed by Judge Family Court, Faisalabad, whereby the Respondent No.1, was held entitled to get recovered dowry articles as mentioned in the list enclosed with the plaint or alternate its price amounting to Rs.19,66,000/-. The said judgment and decree was assailed by the Petitioner through an appeal before the learned District Judge, Faisalabad, which was dismissed vide judgment and decree dated 10.12.2012.

3. Learned counsel for the Petitioner has argued that while passing the impugned judgments and decrees both the courts below have not applied their judicious mind and in a slipshod manner have decreed the suit for return of dowry articles without adhering the evidence available on record in its true perspective. He further argued that the impugned judgments and decrees are result of misreading and non-reading of evidence. He argued that the learned Judge Family Court after having misconstrued the evidence has passed the judgment and decree, which is liable to be set aside. He mainly laid much emphasis on the argument that the Petitioner was residing at Canada, so there is no question of the receipt of dowry articles. He further argued that list of dowry articles was not prepared at the time of Rukhsati but the same was maneuvered at the time of filing of the suit, therefore, it is an inadmissible evidence. He lastly argued that while passing the impugned judgments and decrees, both the courts below have failed to appreciate that father of the Respondent No.1 was not in position to give dowry articles of such a huge amount. In support of his contentions he has placed reliance upon Mst. Allah Rakhi v. Tanvir Iqbal and others (2004 SCMR 1739) and Abdul Aziz Butt v. Muhammad Arshad and another (1985 MLD 148). Lastly, he prayed for setting aside of the impugned judgments and decrees.

4. On the other hand counsel for the Respondent No.1 has supported the impugned judgments and decrees and contended that both the Courts below have concurrently passed the impugned judgments and decrees, therefore, no exception can be taken to it. In support of his contentions, he has placed reliance upon Shahzada Jawaaid v. Mst. Sadia Rauf and another (2000 MLD 1301), Noor Nabi v. Mst. Shamim Akhtar (1995 MLD 1149), Mst. Yasmin v. Additional District and Sessions Judge Okara and another 2010 YLR 519 and Muhammad Habib v. Mst. Safia Bibi and others (2008 SCMR 1584). Lastly, he prayed for dismissal of the writ petition.

5. Arguments heard and record perused.

6. According to evidence available on record, Mst. Rabia Bashir, the Respondent No.1, submitted her affidavit in support of her version as Ex.P/1 wherein she stated that her Nikah was solemnized with the Petitioner on 16.06.2009 and Rukhsati was taken place on 25.05.2010 when the Petitioner returned from Canada. At that she took away dowry articles mentioned in the annexed list valuing Rs.19,66,000/-. She remained in the house of her in-laws for one week till her husband, the Petitioner remained in Pakistan. Then on return of her husband to Canada, her in-laws kept all gold ornaments in bank lockers while including her name as signatory and her in-laws took away said gold ornaments from the bank lockers.

7. From the perusal of record it reveals that the learned Judge Family Court, Faisalabad considered the evidence of Respondent No.1/Plaintiff, PW-1 and her witnesses as the PW-2 and the PW-3, who corroborated the stance of the Respondent No.1. Consequently, the learned Judge Family Court, after recording issue-wise findings decreed the suit of the Respondent No.1 vide judgment and decree dated 27.05.2011, whereby the Respondent No.1/Plaintiff was held entitled to have the decree for return of dowry articles as mentioned in the list enclosed with the plaint or in alternate its price amounting to Rs.1966,000/-. The said judgment and decree was up-held by the learned District Judge, Faisalabad in an appeal preferred by the Petitioner and appeal was dismissed vide judgment and decree dated 10.12.2012. No convincing arguments were advanced by the learned counsel for the Petitioner to convince the court that both the courts below have committed any illegality while determining the financial status of the Petitioner. Although all the Petitioner's witnesses have denied to the fact that any of the dowry articles were given to the Respondent No.1 by her parents. Further, regarding custody of dowry articles and gold ornaments, it is established that the Petitioner himself has deposed during cross-examination that whatsoever gold ornaments he had given to the Respondent No.1, the same are in custody of the Respondent No.1, but he cannot produce their receipts of purchase as the receipts are also in custody of the Respondent No.1. The above said piece of evidence of Respondents shatters the whole evidence of other DWs. Further it is established through cogent and confidence inspiring evidence of the PW-1 that whatsoever jewelry articles she had brought with her as dowry, were obtained by the parents of Petitioner to keep those articles in bank locker. It has also come in evidence of the PW-1 that in addition to gold ornaments all the other dowry articles are yet lying at Petitioner home. Regarding financial status of the Respondent No.1, it has come in evidence of the Respondent No.1 that she is herself a lady doctor and her father was also a retired officer of Grade-21 in Education Department and her mother was also Lady Health Visitor and also practices in a private clinic and was also owner of a Private School. From the perusal of impugned judgments it reveals that both the courts below have passed the impugned judgments and decrees after fully appreciating the evidence on record.

8. The High Court in its extra ordinary jurisdiction can neither substitute findings of facts recorded by Judge Family Court, nor can give its opinion regarding quality or adequacy of the evidence. The assessment and appraisal of evidence is the function of the Family Court, which is vested with exclusive jurisdiction in this regard. Reliance in this regard is placed upon the case of Abdul Rehman Bajwa v. Sultan and 9 others (PLD 1981 SC 522) Perveen Umar and others v. Sardar Hussain and others (2003 YLR 3097) Muhammad Ashiq v. Addl. District Judge Okara (2003 CLC 400) and Aqal Zaman v. Mst. Azad Bibi and others (2003 CLC 702). Furthermore when a factual controversy had been settled by the two courts below unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the said order passed

by courts below, was without jurisdiction or there was a visible irregularity while deciding the same, High Court might interfere. Regarding concurrent findings reliance is also placed upon Waqar Haider Butt v. Judge, Family Court and others (2009 SCMR 1243), wherein it has been held as under:--

"Suit filed by wife and minor children was decreed in their favour and appeal filed by husband was partly allowed by Lower Appellate Court and monthly maintenance of minors was reduced. High Court in exercise of constitutional jurisdiction declined to interfere in judgment and decree passed by Lower Appellate Court. Validity. Petition under Art.199 of the Constitution was not maintainable against concurrent findings of Tribunals below. Both the Courts below had given findings of fact against husband, therefore, High Court was justified to dismiss constitutional petition and the same was in accordance with law laid down by Supreme Court. Normally Supreme Court did not meddle with findings of fact reached at by primary Courts or High Court when it was satisfied that finding of Courts below were reasonable and were not arrived at by disregarding any of the provisions of law or any accepted principle concerning appreciation of evidence, notwithstanding that a different view might also was possible. The High Court, while exercising constitutional jurisdiction had rightly refused to interfere with findings of fact recorded by Courts of competent jurisdiction. Supreme Court did not find any infirmity or illegality or any misreading of evidence on record by the Courts below. Leave to appeal was refused."

No illegality or irregularity had been pointed out in the concurrent findings of fact recorded by two courts below and impugned judgments and decrees do not suffer from any legal discrepancy or infirmity.

9. In view of above, this writ petition being devoid of force is dismissed.

MQ/M-1/L

Petition dismissed.