

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

WP No. 213 of 2017/BWP

Shazia Parveen
vs
ADJ etc

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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24.09.2018	M/s. Mian Mansoor Ahmad Sheikh and Jam Abdul Majeed Mustafai, Advocates for petitioner. Pir Ahmad Masood Chishti, Advocate for respondents.
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Through instant constitutional petition, the petitioner has called in question the judgment dated 01.07.2016, passed by Judge Family Court, Rahim Yar Khan whereby the said court has dismissed the suit of the petitioner for recovery/possession of House No.52-D, Street No.5, Block-Y, Gulshan-e-USman, District Rahim Yar Khan (“**House**”) in lieu of dower agreed to be paid by respondent No.3 in terms of Column No.16 of the Nikahnama entered between the parties on 07.07.1991 and has also called in question the consolidated judgment dated 15.12.2016 passed by learned Addl: District Judge, Rahim Yar Khan whereby the afore referred decision of the Judge Family Court, Rahim Yar Khan was upheld by

dismissing the appeals filed by both the parties to the extent of House.

2. Learned counsel for the petitioner has argued that the petitioner had produced in evidence an agreement (Tamleeknama)(Exh-P1), executed by respondent No.3 in favour of the petitioner relating to transfer of afore referred House as dower and the courts below have misread the evidence available on record by referring to admission of the petitioner that dower had already been paid and dismissed the suit to the extent of House.

3. Conversely, learned counsel for respondent No.3 has supported the impugned judgments of the courts below and argued that Exh-P1 produced in evidence by respondent No.3 to show transfer of House as Tamleek has not been proved by producing any of its marginal witnesses, scribe or stamp vendor to show that the said agreement is genuine, therefore, Column No.16 of the Nikahnama cannot be interpreted so as to include House mentioned above as liable to be paid in terms of dower. Besides submits that the Judge Family Court had no jurisdiction to entertain the matter relating to Tamleeknama.

4. Heard. Record perused.

5. It is observed that learned trial court in its judgment while dismissing the claim of the petitioner on Issue No.1 relied upon an admission of the petitioner that dower had been received by her but the said court has not mentioned that in what perspective such admission was made and even if the courts below had reached the conclusion that dower had been paid, then what was the mode of payment of dower to the petitioner in terms of her admission. Even the appellate court has not given any finding about the afore referred admission as to how the dower was paid to the petitioner when the claim of respondent No.3 is that the said dower was paid in cash and the petitioner claims that it was in shape of the afore referred house.

6. This aspect of the matter was required to be determined before deciding the issue relating to dower in terms of Column No.16 of the Nikahnama which has not been properly determined and it appears that the admission of the petitioner has been considered in piecemeal before using the same for decision of the matter. It is settled by now that the admission is to be accepted or rejected as a whole which has not been *prima facie* done by the courts below, therefore, it would be

appropriate to remand the matter to the trial court to the extent of issue relating to payment of dower as per Column No.16 of the Nikahnama. The said court may allow the parties to lead fresh evidence, if required.

7. Consequently, this constitutional petition is partly *allowed* in the above terms and the matter is remanded to the trial court for decision afresh.

(MUZAMIL AKHTAR SHABIR)
JUDGE

*Naveed **