

**2010 M L D 1118**

**[Peshawar]**

**Before Mazhar Alam Khan Miankhel and Imtiaz Ali, JJ**

**MEHDI KHAN---Petitioner**

**Versus**

**Mst. ARMOOS BEGUM and 2 others---Respondents**

Writ Petition No. 936 of 2010, decided on 20th April, 2010.

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

----S. 5 & Sched.---Constitution of Pakistan (1973), Art.199---Constitutional petition---Suit for dower---Petitioner/husband contended that courts below had wrongly decreed dower of five tolas of gold ornaments which were given by petitioner to respondent/wife but the same were snatched from her by sister of the petitioner (husband)---Validity---Respondent/wife's admission that gold ornaments were snatched from her by sister of petitioner did ,tot absolve him from responsibility/liability as the same were snatched by his sister who was living in his house---Dower was an indefeasible right of wife, if ornaments were snatched by husband or his family members, wife was entitled to recover the same through Family Court---Factum of snatching ornaments was within the knowledge of husband, his silence in that regard amounted to permission and consent for performance of the act---Gold ornaments given in dower if snatched or taken forcibly by husband, the act of snatching would not be transformed into civil liability---Respondent/wife's claim of dower was genuine and was rightly dealt with by courts below---Petitioner failed to point out any jurisdictional defect or misreading of evidence which could necessitate interference in constitutional jurisdiction---Constitutional petition, being meritless, was dismissed.

Muhammad Tariq v. Mst. Shaheen and 2 others PLD 2006 Pesh. 189 rel.

Qaisar Abbas Bangash for Petitioner.

**ORDER**

**MAZHAR ALAM KHAN MIANKHEL, J.**---Through the instant writ petition, defendant/petitioner has impugned the concurrent findings of the Courts below regarding the decretal of dower of 5 Tolas of gold ornaments in favour of respondent/wife.

2. Learned counsel for the petitioner contended that the two Courts below have not properly appreciated the evidence on record regarding payment of dower in the shape of 5 Tolas of gold. He was of the view that the said dower was paid to the respondent/wife and afterwards as per her allegation, said gold was snatched by the sister of the petitioner would not come under the domain of Family Court as the liability of the petitioner regarding payment of dower was over and snatching of gold by the sister of the petitioner was a dispute of a civil nature outside domain of the Family Court.

3. We have heard the learned counsel for the petitioner and have gone through the record of the case. The record of the case reveals that because of strained relations between the spouses, respondent/wife was left with no option but to approach the Court of law wherein after the conclusion, the marriage between the spouses was dissolved on the basis of ex parte decree which later on was set aside but the dissolution of the marriage was declared to be 'Talaq-e-Batil' as the ex parte decree was set aside after the three months and during this period, no efforts of reconciliation were made. However, the dower of five Tolas of gold and maintenance allowance of Rs.1000 per month were decreed in favour of respondent/wife. The petitioner/husband had filed his appeal before District Judge against maintenance @ Rs.1000 and dower of five Tolas of gold. But he confined himself to dower alone as no appeal lies for a maintenance allowance of Rs.1000 or less. Hence in this constitutional petition, the only question which requires consideration by this Court was payment of dower to respondent/wife which was later on allegedly snatched from her, whether such an act would debar a Family Court to decide the matter.

4. No doubt, the wife has admitted that the dower of 5 Tolas of gold was given to her at the time of her marriage but later on the same was snatched from her by the sister of petitioner/husband. Her categorical admission on this issue would not absolve husband from his liability as the same was snatched by the sister of husband within his knowledge and in his house. Apparently it appears to be a factual controversy whether the dower was paid to wife or the same was still outstanding. But the legal aspect of the fact would be that dower is an indefeasible right of a wife if snatched by husband or by his family members as in this case, the wife will have the remedy to recover the same through Family Court and in such a situation, it will not transform into a civil liability. The factum of snatching of ornaments was brought into the notice of the husband and his silence in this regard would amount to an act if performed with his permission and consent. This aspect of the case has well been answered in the case of Muhammad Tariq v. Mst. Shaheen and 2 others (PLD 2006 Peshawar 189). Relevant paragraphs from the judgment are reproduced as follows:

"Now adverting to the point under discussion, in our humble view, dower remains as dower, neither it undergoes any change nor it is transformed to a civil liability in case it is snatched or taken back forcibly from wife by the husband.

Neither Muslim Family Laws Ordinance, 1961 nor the provisions of the Family Court Act, 1964 has provided either impliedly or expressly that when the dower paid is snatched by the husband then for its retrieval, the wife shall have to make recourse to the civil Court. The view held in the cited case amounts to taking away the absolute and exclusive jurisdiction of the Family Court which has never been the intention of the Law

Makers, otherwise it would have provided for such course either expressly or by necessary implication.

The fundamental principle for construing a statute is that Court shall strive in search of that construction which would advance the cause of justice by providing relief to a party entitled to it and to suppress the mischief of denying such right on the ground of unessential technicality. Once a Tribunal of exclusive jurisdiction is established/constituted for the trial of particular cases/disputes then in the absence of express provision, its jurisdiction cannot be taken away on the ground that the matter triable by it has undergone a trivial change due to the act or omission of the party at fault. Looked at from this angle too, dower paid to the wife and snatched by the husband would automatically restore his liability to repay the same and it shall remain as a dower due to the wife, triable by the Family Court alone."

5. After having gone through the above judgment wherein the case of Allauddin Arshad reported in (1984 CLC 3369) of Lahore High Court was also distinguished, one can safely declare in the light of the evidence and the circumstances of case that the claim of dower of respondent/wife is genuine and in accordance with law which has rightly been dealt with by the forums below.

6. Learned counsel for the petitioner was unable to point out any misreading or non-reading of the material evidence on the record any other jurisdictional defect on the record which could otherwise have invited the interference by this Court in its constitutional jurisdiction. So, in this view of the matter, we would not like to intervene in the factual controversy regarding payment or otherwise of the dower which is outside the domain of this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan. So, this writ petition being meritless is dismissed as such in limine.

A.R.K./140/P

Petition dismissed.