

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR**  
JUDICIAL DEPARTMENT

**W.P No. 1177-P of 2016**

**JUDGMENT**

**Date of hearing ....06.05.2019**

*Mst. Hajira Bibi*

***Vs***

*Abidullah & others*

Petitioner by:

Mr. Naseemullah Khan, advocate

Respondents by:

Mr. Hassan U.K Afridi, advocate.

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**QAISER RASHID KHAN, J:-.** Aggrieved of the judgments and decrees dated 31.01.2013 and 22.12.2015 of the learned Judge Family Court, Kohat and the learned Additional District-IV, Kohat, respectively, the petitioner Mst. Hajira Bibi has preferred the present petition.

2. Succinctly, facts of the case are that on 24.05.2011 the petitioner-wife filed a suit against the respondent-husband and others for the recovery of 16 tolas gold ornaments or its market value, 2/13<sup>th</sup> share in a constructed house, detailed in the head note of the plaint, Rs. 12,00,000/- as price of 6 marlas plot along with Rs.2000000/- for its construction and maintenance

allowance at the rate of Rs.5000/- per month from September 2010 till the decision of the suit.

3. On being summoned, the respondents-defendants appeared before the learned trial court, submitted their written statement wherein they raised various legal and factual objections. Keeping in view the divergent pleadings of the parties, the learned trial court framed as many as 6 issues including the relief whereafter the parties recorded their respective evidence and finally on 30.01.2013, the learned Judge Family Court, Kohat decreed the suit of the petitioner-wife against the respondents as follow;

1. Recovery of sixteen tolas gold or its market value prevailing on date of institution of the suit, defendant No.1 legal share in house and current market value of six marlas plot at Jungle Khel, Kohat.
2. Recovery of maintenance allowance at the rate of Rs. 2000/- per month from September 2010 till actual payment of dower and thereafter subject to performance of conjugal duties;
3. Recovery of articles at serial No. 1 to 11, 14,18 to 32, 34,35,37 to 39, 41 to 42, 49 and one bed sheet;
4. Defendant was held entitled to the decree for the restitution of the conjugal rights, subject to payment of dower.

4. Feeling aggrieved from the judgment and decree dated 30.01.2013 to the extent of the prayers refused

to her, the petitioner-wife preferred appeal No. 41/FCA of 2013 while the respondent-husband also filed appeal No.42/FCA of 2013. Both the appeals were consolidated and vide a common judgment and decree dated 22.12.2015, the learned ADJ-IV, Kohat modified the judgment and decree dated 30.01.2013 of the learned trial court whereby the petitioner-wife was held entitled to the decree for possession of 2/13<sup>th</sup> share in a house through partition, recovery of all the dowry articles as per list Ex:PW-8/1. However, her suit for possession of 6 marlas plot along with costs of construction was dismissed while the decree for restitution of conjugal rights was directed to remain intact, hence the present petition.

5. All that the learned counsel for the petitioner-wife vehemently contends is that the marriage tie between the parties still exists and that she is not interested in divorce but the respondent-husband is not willing to take her to his house and to provide her proper accommodation and maintenance and that is how she is entitled to the recovery of her entire dower and dowry articles as well as maintenance allowance but both the learned courts below without taking the material available on record have declined to extend the whole reliefs to her. However, the main thrust of the arguments of the learned counsel for the

petitioner is that as against the learned trial court which had acceded to the request of the petitioner in terms of decreeing the market value of 6 marlas plot at Jungle Khel, Kohat which is mentioned in column No.17 of the Nikah Nama vide its judgment and decree dated 30.1.2013, the same was set aside by the learned appellate court in disregard to the evidence so adduced as well as the law on the subject.

The learned counsel for the respondent-husband resisted such contentions of the learned counsel for the petitioner-wife and supported the judgment and decree dated 22.12.2015 of the learned appellate Court on almost the same grounds as detailed therein.

6. Arguments heard and the available record perused.

7. During the course of trial, the petitioner-wife produced Zahir Shah, Nikah Registrar as PW-1, who deposed about the contents of Nakah Nama, Ex:PW-1/1. Ramzan (PW-2), Safiullah (PW-3) and Abdul Hadi (PW-4) who are the marginal witnesses of Nikah Nama. Haji Qamar Zaman and Haji Mir Zaman Shinwari along with Haji Iftikhar Ahmad, who had made efforts for reconciliation between the parties also recorded their statements as PW-5, PW-6 and PW-7 respectively. The petitioner Mst. Hajira

Bibi herself appeared as PW-8 and gave a detailed account of the events right from her marriage till she was taken to her parents house by her husband and she also produced the list of dowry articles as Ex:PW-8/1. She was subjected to a long and taxing cross examination by the learned counsel for the respondent-husband but she stuck to her stance regarding the whole episode and her ordeal and her statement to the extent of material facts went un-rebutted at the respondent-husband's end.

Contrarily, the respondent-husband recorded his statement as DW-2 and also produced one Hameedullah (DW-1) in support of his stance wherein they have completely failed to substantiate that the petitioner-wife had left their house of her own volition. They were unable to rebut the statements of PWs and also their assertions in respect of the contents of the Nikah Nama.

8. Although, the learned trial court through the impugned judgment and decree dated 30.01.2013 had decreed the current market value of six marlas plot at Jungle Khel Kohat in favour of the petitioner but has been turned down in appeal. In column No.17 of the Niakah Nama Ex: PW-1/1, it has been mentioned that the husband-respondent would purchase 6 marlas plot for the petitioner-wife and

construction was to be made thereon. The learned appellate court through the impugned findings has rightly held that such entry amounts to a promise which is enforceable through the court of plenary jurisdictions. However, on the basis of such promise/commitment made through entry in column No.17 of the Nikah Nama, a suit filed before the learned Family Court is not maintainable being out of the ambit of the schedule to Section 5 of the West Pakistan Family Courts Act, 1964.

9. Accordingly, I hold that the impugned findings of the learned appellate court dated 22.12.2015 whereby it has modified the findings of the learned trial court to a certain extent are based on proper appreciation of evidence and material available on record and do not suffer from any jurisdictional error so as to in turn call for the interference of this court through the present petition and the same thus stands dismissed with no order as to costs.

**Announced.**  
**06.05.2019**

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**SENIOR PUISNE JUDGE**

*Hon'ble Mr. Justice Qaiser Rashid Khan (SB)*