

2018 Y L R 1642

[Lahore]

Before Jawad Hassan, J

Mst. SHAKEELA BIBI---Petitioner

Versus

DISTRICT JUDGE, OKARA and others---Respondents

W.P. No.8640 of 2012, heard on 28th March, 2018.

Family Courts Act (XXXV of 1964)---

---S. 5, Sched---Suit for recovery of dowry articles---List of dowry articles---Minor contradictions in the statement of witnesses--- Effect--- Family Court dismissed the suit on the ground that scribe and author of the receipts of dowry articles were not produced for examination but Appellate Court decreed the suit partially---Contention of husband was that wife had shifted dowry articles from his house---Validity---Family Court rejected the evidence of plaintiff-wife on the ground of variations in the price of articles and their number in the testimonies of witnesses---Said discrepancies and variations were minor and were not fatal to the case of plaintiff-wife---Husband had not denied the factum of receipt of dowry articles at the time of marriage---Plaintiff wife had admitted that she had shifted some dowry articles to the house of her uncle---Family Court had wrongly viewed that wife had failed to give full details of each item of dowry articles mentioned in the list and price of the said items---Normally, dowry articles were handed over along with the list to the parents of male spouse at the time of Rukhsati---Dowry articles mentioned in the list consisted of daily use which were generally given to the brides at the time of their marriage---No dowry article mentioned in the list was extravagant or beyond the financial status of plaintiff's parents---Plaintiff could not be non-suited on the ground of minor discrepancies in her statement---Appellate Court had rightly set aside the judgment and decree passed by the Family Court---No illegality or irregularity had been pointed out in the impugned judgment and decree passed by the Appellate Court--- Constitutional petition was dismissed in circumstances.

Zahid Janan v. Mst. Kausar Begum and 2 others 2016 YLR Note 43; Muhammad Habib v. Mst. Safia Bibi and others 2008 SCMR 1584; Saheb Khan through Legal Heirs v. Muhammad Pannah PLD 1994 SC 162; Abdul Qayyum through Legal Heirs v. Mushk-e-Alam and another 2001 SCMR 798 and Hamid Ali v. Mst. Nabila Riaz and 2 others 2012 YLR 2693 rel.

Khadim Hussain Tahir Hashmi for Petitioner.

Ijaz Yousaf for Respondent No.3.

Date of hearing: 28th March, 2018.

JUDGMENT

JAWAD HASSAN, J.---Through this Constitutional Petition, the Petitioner has called in question judgments and decrees dated 23.11.2011 and 13.03.2012 (the "impugned judgments and decrees"), passed respectively by Judge Family Court and learned Additional District Judge, Okara.

2. Facts briefly for the disposal of this constitutional petition are that as a consequence of suit for recovery of return of dowry articles and gold ornaments judgment and decree dated 23.11.2011 was passed by Judge Family Court, Okara, whereby the suit of the Petitioner was dismissed. Feeling aggrieved thereof, the Petitioner filed appeal before the learned Additional District Judge, Okara, which was allowed vide impugned judgment and decree dated 13.03.2012, and impugned judgment and decree was set aside and as a consequence whereof, the suit of the Petitioner was decreed as per list Ex.P-5, valuing Rs.2,94,350/- after deleting the dowry articles mentioned in Mark-A Mark-G, Mark-H and Mark-I from the list Ex.P-5. The claim regarding recovery of gold ornaments was denied by the learned Appellate Court. Hence this constitutional petition.

3. Learned counsel for the Petitioner has argued that while passing the impugned judgment and decree the learned Additional District Judge, Jhang has not applied his judicious mind and in a slipshod manner has passed the impugned judgment and decree which is not warranted by law; that while passing the impugned judgment and decree, the learned courts below have misread the evidence on record and arrived at a conclusion which is contrary to law as claim for recovery of dowry articles is very much proved through oral as well as documentary evidence. He further argued that the Petitioner submitted receipts of dowry articles as proof thereof, but the learned trial Court has not considered this fact; that Respondent No.3, while appearing as DW-1 admitted that he had gifted 7 tolas gold ornaments to the Petitioner, whereas DW-2 stated during cross-examination that gold ornaments weighing 8 tolas were gifted to the Petitioner but both the Courts below failed to appreciate the evidence on record while passing the impugned judgments and decrees. Lastly, he prayed for setting aside of the impugned judgments and decrees.

4. On the other hand counsel for the Respondent No.3 has supported the impugned judgments and decrees and contended that both the Courts below have passed the impugned judgments and decrees, in accordance with law therefore, no exception can be taken to it. Lastly, he prayed for dismissal of the writ petition.

5. Arguments heard and record perused.

6. From the perusal of record it reveals that the learned Judge Family Court, Okara after recording issue-wise findings dismissed the suit of the Petitioner vide judgment and decree dated 23.11.2011. The said judgment and decree was assailed by the Petitioner before the learned Additional District Judge, Okara in an appeal, which was allowed vide judgment and decree dated 13.03.2012, in the terms mentioned supra.

7. From the perusal of record it reveals that suit of the Petitioner for recovery of dowry articles was dismissed by learned Judge Family Court merely on the ground that in order to

prove the receipts of dowry articles no scribe and author of the receipts was produced by the Petitioner for examination. The said view is contrary to the dictum laid down by this Court in the case reported as *Zahid Janan v. Mst. Kausar Begum and 2 others* (2016 YLR Note 43), wherein it has been held as under:--

"Contention of defendant that plaintiff had not proved dowry articles by producing their receipts was not tenable, as neither their villagers would ask of receipts of wedding shopping, nor would shopkeeper stand as witnesses for their customers."

8. It further divulges that the learned Judge Family Court, Okara shattered the evidence of the Petitioner that there were variations in the price of articles and number of articles in testimonies of the witnesses, but the said minor discrepancies and variations are not fatal to the case of the Petitioner. Further, the learned Additional District Judge, Okara after relying upon the evidence of has categorically mentioned in the judgment that the Respondent No.3 has also not denied the factum of receipt of dowry articles at the time of marriage. The version of the Respondent No.3 in his written statement is that in fact dowry articles valuing Rs.60,000/70,000/- were given to the Petitioner at the time of marriage but those articles were shifted in the house of her uncle Bashir in Ghafoor Colony, Okara. The said version of the Respondent No.3 is corroborative to the testimony of the Petitioner, wherein she stated that dowry articles were shifted to the house of uncle of Respondent No.3/Plaintiff in Ghafoor Colony. The Petitioner herself appeared as PW-1 and she produced Muhammad Aslam, PW-2, Khadim Hussain, PW-3. All the witnesses of the Petitioner through their evidence has proved that dowry articles were purchased and were received by the Respondent No.3 but they failed to explain the exact value/price of each item of dowry articles. On the other hand, Respondent No.3 appeared as DW-1 and he produced Liaquat Ali, DW-2, and Mukhtar Ahmad as DW-3. Regarding financial status of Petitioner's father, DW-1 stated that the father of the Petitioner is property dealer. He further testified the testimony of Petitioner that dowry articles were shifted to the house of uncle of Petitioner in Ghafoor Colony. The statements DW-2 and DW-3 are also in line with the statement of DW-1.

9. The learned Additional District Judge, Okara has set aside the impugned judgment and decree merely on the ground that the list Exh.P-2 appears to have been prepared by the counsel of the Petitioner at the time of institution of the suit. The learned Judge Family Court has wrongly viewed that the Petitioner has failed to give full detail of each item of dowry articles mentioned in the list and price of each item during evidence as it is very difficult to keep in memory the price of each item of dowry articles at a tardy stage. Normally the articles of dowry are handed over along with the list to the parents of the male spouse at the time of Rukhsati and it had now become imperative for all the parents irrespective of their being poor or rich to give dowry articles to their daughters at the time of marriage. Reliance is placed on *Muhammad Habib v. Mst. Safia Bibi and others* (2008 SCMR 1584). So far as dowry articles are concerned, the perusal of list reveals that the same consists of daily use, which is generally given to the brides at the time of their marriages. After perusing the record, I have not found any article(s) which may be termed as extravagant or beyond the financial status and resources of the Petitioner's family. So far as variation in the list of articles and statement of the PW-1 regarding number and price of articles is concerned, the same is not fatal to the case of the Petitioner as minor contradiction/s/discrepancies did occur when statements of witnesses were recoded after a considerable period of time.

Reliance is placed on Saheb Khan through Legal Heirs v. Muhammad Pannah (PLD 1994 SC 162) and Abdul Qayyum through Legal Heirs v. Mushk-e-Alam and another (2001 SCMR 798). The Petitioner could not be non-suited on the ground of such minor contradictions in her statement. Reliance in this respect is placed upon Hamid Ali v. Mst. Nabila Riaz and 2 others (2012 YLR 2693), wherein it has been held as under:--

"Non-preparation of list of dowry articles and non-production of receipts of said dowry articles were not fatal to the case of the respondent. Record revealed that ordinary items were mentioned in the said list. Said list was prepared by the respondent who had appeared in the Trial Court as a witness, and her evidence had been corroborated by other witnesses who were cross-examined at length and nothing favourable to the petitioner had been brought on the record. Contradictions in such evidence pointed out by the petitioner were insignificant. Minor variations in the statement of witnesses did occur when their statement were recorded after a considerable period of time. Respondent could not be non-suited on ground of such minor contradictions in the statement of her witnesses when such statements were recorded after about five years from when the marriage between the parties was solemnized."

10. In view of the above, I am coincided with the finding of learned Additional District Judge, Okara, who has rightly set aside the impugned judgment and decree after rightly evaluating the entire evidence. No illegality or irregularity had been pointed out in the impugned judgment and decree which does not suffer from any legal discrepancy or infirmity. Writ petition being devoid of force is hereby dismissed.

ZC/S-25/L

Petition dismissed.