

PLJ 2021 Lahore 222

Present: MASUD ABID NAQVI, J.

ABDUL RASHEED--Petitioner

versus

LEARNED ADDL. DISTRICT JUDGE, BHAKKAR etc.--Respondents.

W.P. No. 233749 of 2018, decided on 11.3.2019.

Constitution of Pakistan, 1973--

----Art. 199--Suit for recovery of maintenance allowance, dower, dowry articles and gold ornaments--Partially decreed--Appeal--Dismissed--Non-challenging of entries of nikahnama--Obligation of petitioner--Preference of documentary evidence--Challenge to--Case of petitioner/defendant is that respondent/plaintiff No. 1 maneuvered entries of Nikahnama but failed to prove same through confidence inspiring evidence--Petitioner/defendant has not challenged entries of Nikahnama before any competent forum. There is no cavil to proposition as held in number of judgments by superior Courts that oral evidence cannot be given preference to documentary evidence--Petitioner/defendant is under an obligation to pay of Rs. 5,000/-and a house measuring 15-marlas or its market value as dower/haq-ul-Mehar to Respondent No. 3/ex-wife as he never objected to entry in Nikahnama at time of marriage rather endorsed same by signing Nikahnama. Hence, findings of learned Courts below are upheld/maintained--Courts below have meticulously examined entire evidence of parties and thereafter reached at conclusion regarding controversy. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in impugned judgments and decrees passed by Courts below--Petition was dismissed. [Pp. 224 & 225] A, B, C & D

2010 SCMR 473 and 2010 SCMR 1073 *ref.*

Ch. Imran Arshad Naro, Advocate for Petitioner.

Mr. Muhammad Aslam Ch. Advocate for Respondents No. 3 and 4.

Date of hearing: 11.3.2019.

ORDER

Brief facts leading to the filing of this writ petition are that the Respondents No. 3 and 4/plaintiffs being wife and son filed a composite suit for recovery of maintenance allowance, dower, gold ornaments, dowry articles and possession of house. The defendant/petitioner resisted the suit by way of filing the written statement and by raising factual as well as legal objections. Out of divergent pleadings of the parties issues were framed by the learned trial Court. The parties produced their respective evidence and after recording the same, learned trial Court partially decreed the suit *vide* judgment and decree dated 28.03.2017 to the effect that the plaintiff No. 1 is entitled to recover her maintenance allowance at the rate of Rs. 6000/-per month for her Iddat period. The plaintiff No. 2 being minor son is entitled to maintenance allowance at the rate of Rs. 2500/-per month with 10% annual increase from the institution of the suit till his legal entitlement. The plaintiff No. 1 is also entitled to recover Rs. 5000/-as dower on demand. She is also entitled to get alternate price of house measuring 15-marlas from defendant. Plaintiff No. 1 is also entitled to recover Rs. 50,000/-also alternate price of dower articles, however, the suit for recovery of gold ornament was dismissed. Feeling aggrieved, petitioner/defendant filed appeal and learned Additional District Judge *vide* judgment & decree dated 17.04.2018 dismissed the same. Being dissatisfied, the petitioner/defendant has filed the instant writ petition and challenged the validity of the judgments and decrees passed by the learned Courts below to the extent of dower of Rs. 5000/-and a house measuring 15-marlas.

2. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

3. From bare reading of Nikahnama, there remains no doubt that as per entries at column No. 13 and 17 of Nikahnama/Exh.P.2,

Rs. 5,000/-and a house measuring 15-marlas are mentioned as deferred dower. Learned Family Court decreed the suit for recovery of dower of Rs. 5,000/- and house measuring 15-marlas or its market value and in appeal learned appellate Court endorsed the finding of Family Court. The case of the petitioner/defendant is that respondent/plaintiff No. 1 maneuvered the entries of Nikahnama but failed to prove the same through confidence

inspiring evidence. The Nikahnama is a public document and presumption of truth is attached to it until and unless otherwise proved. The petitioner/defendant has not challenged the entries of Nikahnama before any competent forum. There is no cavil to the proposition as held in number of judgments by the superior Courts that oral evidence cannot be given preference to the documentary evidence. Reliance is placed on Shamshad VS Arif Ashraf Khan and others (2010 SCMR 473). The petitioner/defendant candidly/ frankly confirmed his signature on the Nikahnama. Therefore, the petitioner/defendant is under an obligation to pay of Rs. 5,000/-and a house measuring 15-marlas or its market value as dower/haq-ul-Mehar to Respondent No. 3/ex-wife as he never objected to the entry in Nikahnama at the time of marriage rather endorsed the same by signing the Nikahnama. Hence, the findings of learned Courts below are upheld/maintained.

4. Even otherwise, with respect to interference in concurrent findings of the Courts below, the Hon'ble Supreme Court of Pakistan in a case reported as *Mst Farhat Jabeen vs. Muhammad Safdar and others* (2011 SCMR 1073) has held that:

"It is settled rule by now that interference in the findings of facts concurrently arrived at by the Courts should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."

5. In the present case, no such defects have been pointed out by the learned counsel for petitioner in order to seek interference by this Court. Learned Courts below have meticulously examined the entire evidence of the parties and thereafter reached at the conclusion regarding the controversy. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in the impugned judgments and decrees passed by the learned Courts below, therefore, this writ petition is dismissed.

(Y.A.)) Petition dismissed