

[Peshawar]

Before Abdul Latif Khan and Lal Jan Khattak, JJ

MUHAMMAD SHAHID----Petitioner

Versus

Mst. AASMA NOSHEEN and 2 others----Respondents

Writ Petition No.319 of 2012, decided on 6th June, 2013.

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

---S. 5, Sched---Constitution of Pakistan, Art. 199---Constitutional petition---Scope---Suit for recovery of dowry articles and gold ornaments---Contention of husband was that wife had taken away with her all the jewelry and dowry articles in his absence---Suit was decreed concurrently--
-Validity---Father of defendant-husband came with jirga members but without the gold ornaments due to which jirga did not reach to any settlement---Gold ornaments belonging to the plaintiff-wife were with the defendant-husband---Said ornaments had been given to his second wife by the defendant-husband---Husband had not produced any evidence which could show that plaintiff wife had taken with her jewelry and dowry articles---Findings of the Trial Court were based on proper appreciation of evidence---No illegality in the concurrent findings of the courts of competent jurisdiction was found---Concurrent findings could not be interfered with in constitutional jurisdiction as powers of High Court under constitutional jurisdiction were not that of an appellate court---High Court could set at naught order passed by subordinate court if same was without lawful authority and jurisdiction but at the same time High Court could not substitute its own judgment to that of the subordinate court---Constitutional petition was dismissed in circumstances.

Tariq Abbas Qureshi for Petitioner.

Zain-ul-Abidin for Respondent.

Date of hearing: 6th June, 2013.

JUDGMENT

LAL JAN KHATTAK J.--- This writ petition is directed against the judgment and decree dated 3-7-2012 of the learned Additional District Judge-III, D.I. Khan whereby appeal of the petitioner, against the judgment and decree dated 27-4-2011 of the learned Judge Family Court-IX, D.I. Khan, was dismissed. The petitioner has prayed through the instant writ petition that both the judgments and decrees of the Courts below be set aside and suit of the respondent No.1 be dismissed.

2. Brief facts of the case are that the respondent No.1 filed a Family suit against the petitioner for the following relief;

- (i) "Decree for recovery of dower amount of Rs.5000/-.
- (ii) Decree for dissolution of marriage.
- (iii) Decree for recovery of golden ornaments weighing 15 tolas i.e. 5 Tolas from the side of respondent No.1, while 10 Tolas from petitioner's side, or its prevailing market price.
- (iv) Decree for recovery of dowry articles as per list attached with the plaint valuing Rs.3,61,350/- or its price.
- (v) Decree for recovery of maintenance allowance at the rate of Rs.5000/- per month for last 7 months and also for future at the same rate."

3. Petitioner contested the suit by filing his written statement wherein he also prayed for a decree of conjugal rights against the respondent-wife. The learned trial Court after recording pro and contra evidence decreed the suit of the respondent-wife vide its judgment and decree dated 27-4-2011 in the following manner;

- (i) "Granted decree for dissolution of marriage.
- (ii) Granted decree for recovery of dower amount of Rs.5000/-.
- (iii) Granted decree for recovery of 15 Tolas of golden ornaments. OR the market value of 15

Tolas of gold ornaments.

(iv) Decree for recovery of dowry articles in the used condition or its price valuing Rs.1,00,000/-.

(v) Decree for recovery of past maintenance for 7 months at the rate of Rs.2500/- per month and future maintenance from date of institution of suit till its decision at the rate of Rs.3500/- per month and also for Iddat period at the rate of Rs.2000/-."

4. Against this judgment and decree, the petitioner went in appeal but his appeal was dismissed vide judgment and decree dated 3-7-2012. Both the above judgments and decrees have now been assailed by the petitioner through the instant writ petition.

5. Learned counsel for the petitioner contended that both the Courts below have wrongly decreed the respondent's suit for which she was not entitled to; that the petitioner has paid the entire amount of dower to the respondent and nothing is left outstanding; that the petitioner has not ousted the respondent from his house and to this effect stance of the respondent has changed from her pleading to evidence which shows that she has not deposed truth before the learned two Courts below; that the respondent No.1 took with her all the jewelry and dowry articles in absence of the petitioner and her claim to this effect is totally wrong and unfounded. The learned counsel lastly argued that both the Courts below have not taken the case evidence in its true perspective which omission has resulted in grave miscarriage of justice to the petitioner.

6. As against the above, learned counsel for the respondent No.1 defended the judgments and decrees of the two Courts below and submitted that no legal error or flaw is there in the judgments and decrees of the two Courts below which are based on proper appreciation of the case evidence and need no interference from this Court in its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

7. We have heard learned counsel for the parties and perused the record of the case.

8. While arguing the case main thrust of the learned counsel for the petitioner was that findings of the two Courts below on the point of gold ornaments and dowry articles are contrary to the material brought on the case file. We have gone through the evidence in this respect brought by the parties. Respondent-plaintiff appeared as P.W.-3 and deposed that at the time of her marriage she was given 5 tolas gold ornaments by her parents and 10 tolas by the petitioner. She further deposed that one day after giving severe beating, the defendant let her to her parents house. After some time her father-in-law approached for resolution of the differences through Jirga which offer was accepted by her father subject to the condition that the petitioner/husband must come along with the entire gold ornaments. Record of the case shows that the respondent has consistently claimed from the petitioner her 15 tolas gold ornaments. Father of the respondent also appeared as P.W.4 who deposed that the petitioner's father contacted him for resolution of the dispute but he was told that the matter will be resolved through Jirga subject to the condition if they come in Jirga along with the gold ornaments given to the respondent by the petitioner. Record transpires that though petitioner's father came with Jirga members but without

the gold ornaments on which the Jirga did not reach to any settlement. Further petitioner himself appeared as DW-1 and in his cross-examination he admitted that he did not give any gold ornaments to his second wife but when he produced Nikahnama of his second marriage as Exh.DW1/D-1 on the demand of the respondent it transpired that 8 tolas gold ornaments have been given by the petitioner to his second wife. This delivery of 8 tolas gold ornaments to his second wife by the petitioner cements the stance of the respondent No.1 that the petitioner has withheld her gold ornaments because on the one hand the petitioner has denied in his cross-examination the delivery of 8 tolas gold ornaments to his second wife while on the other hand he has not produced any receipts of the 8 tolas gold ornaments prepared by him for his second wife. This fact shows that the gold ornaments given to the second wife by the petitioner were of the respondent. Perusal of record further shows that it was a persistent demand of the respondent's side that prior to convening a Jirga the petitioner/defendant must bring with him all the gold ornaments. This pre-condition put forth by the wife side clearly indicates that the required gold ornaments were with the petitioner. Had it not been the case, there could have been no such demand on behalf of the respondent.

9. Regarding findings of the two Courts below about the dowry articles, suffice it to say that the petitioner has not produced any evidence which could show that the respondent took with her the dowry articles. Finding of the learned trial Court on Issue No.5 is based on proper appreciation of case evidence in which reference has been made to each and every aspect of the issue in hand. We found no evidence on record which could show that the respondent No.1 took with her either 15 tolas of gold ornaments or the dowry articles as is claimed by the petitioner.

10. Both the Courts below have properly appreciated the available evidence. There appears to us no illegality in the concurrent findings of the Courts of competent jurisdiction and as such the same can not be interfered with in Constitutional jurisdiction a powers of the High Court under Constitutional jurisdiction are not that of an appellate court, though it could set at naught an order passed by a subordinate court if being without lawful authority and jurisdiction but at the same time a High Court cannot substitute its own judgment to that of the subordinate Courts.

11. For the above discussion and reasons, we are not persuaded to interfere with the judgments and decrees of the two Courts below, therefore, the instant writ petition being bereft of any merit is dismissed.