

**2019 Y L R 84**

**[Lahore (Bahawalpur Bench)]**

**Before Jawad Hassan, J**

**Mst. RUKHSANA MAJEED---Petitioner**

**Versus**

**ADDITIONAL DISTRICT JUDGE and others---Respondents**

Writ Petition No.6780 of 2016, heard on 12th September, 2018.

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

---S. 5 & Sched.---Suit for recovery of dower---Gold ornaments and a constructed house was incorporated in the Nikahnama as "dower" at the time of marriage---Execution of exhibited agreement admitted by the party---Effect---Petitioner/ ex-wife contended that Appellate Court had wrongly set aside the decree passed by the Family Court as written agreement exhibited by the respondent/ex-husband was disbelieved by the Family Court---Respondent contended that petitioner had waived off the right incorporated in Nikahnama in light of agreement between the parties duly written on stamp paper---Validity---Record revealed that petitioner/plaintiff (ex-wife) had admitted the fact that she purchased the stamp paper, mentioning certain serial number and date, which contained her signature as well as thumb impression; she also admitted that she signed the stamp paper after the same was written---Record revealed that document exhibited by the respondent bore the serial number and date as referred to by the petitioner---Respondent produced not only attesting witnesses and the scribe of said exhibited document, but also one witness to prove the purchase of exhibited stamp paper---Witnesses proved the fact that the petitioner had waived her dower in favour of the respondent while she admitted the execution of the document exhibited by the respondent---Appellate Court had rightly appreciated the evidence on record---High Court upheld the impugned decree and judgment passed by the Appellate Court---Constitutional petition was dismissed accordingly.

Nadeem Iqbal Chaudhry for Petitioner.

Respondents proceeded against, ex parte vide order dated 21.5.2018.

Date of hearing: 12th September, 2018.

## **JUDGMENT**

**JAWAD HASSAN, J.**--Through this Constitutional Petition, the Petitioner has called in question judgment and decree dated 26.04.2016 (the "impugned order and judgment and decree"), passed by learned Additional District Judge, Bahawalpur whereby he accepted the

appeal of the Respondent No.2 and set aside the judgment and decree dated 11.03.2015 passed by learned Judge Family Court, Bahawalpur.

2. Facts briefly for the disposal of this Constitutional Petition are that as a consequence of suit for recovery of dower filed by the Petitioner judgment and decree dated 11.03.2015 was passed by Judge Family Court, Hasilpur, whereby the Petitioner was held entitled to get a constructed house measuring 05-marlas situated at Gulistan Colony, Bahawalpur from the Respondent No.2. The said judgment and decree was assailed by the Respondent No.2 through an appeal before the learned Additional District Judge, Bahawalpur, which was allowed vide judgment and decree dated 26.04.2016, whereby the impugned judgment and decree was set aside. Hence this constitutional petition.

3. Learned counsel for the Petitioner has argued that while passing the impugned judgment and decree the learned Appellate Court has not applied its judicious mind and in a slipshod manner has set aside the judgment and decree passed by learned Judge Family Court which is well reasoned and based on correct appreciation of evidence on record; that the Appellate Court totally overlooked that the agreement dated 17.05.2012 (Exh.D-1) has been disbelieved by the Family Court vide judgment dated 11.03.2015 rendered in the recovery suit titled as "Muhammad Saleem v. Rukhsana Bibi" filed by Respondent No.2 for recovery of gold ornaments and cash Rs.5 lac on the basis of Exh.D-1; that the Respondent No.2 is a cheater who contracted second marriage with his first wife and accordingly divorced the Petitioner. His cheating is also manifest from his pleadings wherein he denied the Rukhsati of the Petitioner while admitted the same in his recovery suit. Further the DWs also verified her Rukhsati and living as spouse with the Respondent No.2 for several years. Lastly, he prayed for setting aside of the impugned judgment and decree.

4. On the other hand, the Respondent No.2 has been proceeded against ex-parte vide order dated 21.05.2018.

5. Arguments heard and record perused.

6. From the perusal of record it reveals that in order to substantiate her claim, the Petitioner herself appeared as PW-1 and stated that her marriage took place with the Respondent No.2 on 15.06.2011 and at the time of Nikah, 10 Tolas gold ornaments and house measuring 5 Marlas or in alternate of house Rs.25,00,000/- were fixed as dower, but subsequently the relations between the spouses became strained she claimed her dower from the Respondent No.2, but he instead of giving the house ousted the Petitioner from his house and divorced on 19.08.2013. She further deposed that 10-Tolas gold ornaments were also taken into possession by the Respondent No.2 on the pretext that he was leaving for abroad. She also admitted the fact that she purchased the stamp paper at serial No.1201 dated 17.05.2012, which admittedly contained her signature as well as thumb impression and that stamp paper was purchased from stamp vendor at Tehsil Kahrar Pacca. She further admitted that she signed the stamp paper after it was written. On the perusal of document (Exh.D-1) it is evident that Exh.D-1 is written on stamp paper No.1201 dated 17.05.2012 on which the signature and thumb impression are admitted by the Petitioner. Moreover, the attesting witnesses of documents Ex.D-1 were produced by the Respondent No.2. One Ahmad Bakhsh

Incharge Mohafiz Khana DC Office, Lodhran was produced as DW-1 to prove the purchase of the stamp paper No.1201. Moreover scribe of Ex.D-1 was produced as DW2 and Muhammad Aftab Akbar attorney of the Respondent No.2 appeared as DW-5.

7. From the perusal of record it reveals that all the said witnesses proved that fact that the Petitioner waived her dower in favour of the Respondent No.2. As the Petitioner herself admitted the execution of document Ex.D-1 which is fully proved by producing the attesting witnesses, scribe and purchase of the stamp paper, therefore, the learned appellate Court has rightly observed and held that the learned Judge Family Court seriously erred in deciding issue No.1 in favour of the Petitioner. It also transpires that after the divorce, the Petitioner opted to file the suit. The learned Appellate Court rightly appreciated and evaluating the whole oral and documentary evidence, rightly accepted the appeal of the Respondent No.2 and set aside the judgment and decree passed by learned Judge Family Court, which apparently was based on surmises and conjectures. In the circumstances mentioned above, the impugned judgment and decree passed by learned Appellate Court is upheld.

8. Consequently, this writ petition being devoid of force is dismissed.

MQ/R-10/L

Petition dismissed.