

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT,**  
**MULTAN BENCH, MULTAN**  
**JUDICIAL DEPARTMENT**

**W.P.No. 19061 of 2018**

Sabir Ali.		Vs.	Addl. District Judge, etc.
<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>	

**24.12.2018.** Mr. Abdul Khaliq Dogar, Advocate for petitioner.

Through this constitutional petition, the petitioner has challenged the judgments and decrees dated 17.10.2018 and 25.06.2018, whereby both the courts below have partially decreed the claim of the plaintiff-respondent No.3 (***‘respondent’***).

2. Briefly stated facts of the case are that marriage between the parties was solemnized on 28.05.2010 and the couples remained issueless. On 15.07.2016, the respondent instituted a suit for recovery of dowry articles worth Rs. 6,74,720/-, which was contested by the petitioner. On conclusion of the trial, the learned trial court partially decreed the claim of the respondent and she was held entitled to recover dowry articles except articles reflected at Sr. No. 22,23,24 and 25 or their alternate price Rs. 1,50,000/-. Feeling dissatisfied, both the parties went in appeal. The appeals were consolidated. The learned appellate court, vide judgment and decree dated 17.10.2018, dismissed both the appeals. Hence, this petition.

3. Learned counsel for the petitioner has argued that the impugned judgments and decrees are based on conjectures and surmises. Further argues that the respondent herself did not appear in the witness box to prove her stance; that the marriage between the parties was as a result of *‘watta satta’* marriage and the dowry articles have been returned to the respondent

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through *panchayat*. Finally argues that the impugned judgments and decrees are liable to be set-aside.

4. Heard. Record perused.

5. The claim of the respondent was perused by her brother namely Ghulam Farid, who appeared in the witness box as a special attorney on behalf of the respondent. It was admitted by the prosecution witnesses that marriage was on the basis of exchange as sister of the petitioner was also married to brother of the respondent. It is the stance of the petitioner that after arising of differences between both the families, dowry articles were returned from both the sides on the intervention of respectable of families. The PWs in their evidence have deposed that dowry articles as reflected in the plaint were given to the respondent at the time of marriage. The petitioner while appearing as DW-1 in the witness box has admitted that the respondent was given safe almirah, 02-petties, 02 trunks, floor container etc., which he claimed were returned to her on 25.11.2015 at about 04.00 p.m before a '*panchayat*'. He, however, admitted that no receipt was written regarding return of dowry articles and he himself divorced the respondent. He denied that the respondent was given gold ornaments by her family. It has been admitted by the DW-1 that the dowry articles were shifted through trolley. DW-1 has deposed in evidence that no '*panchayat*' was held before return of dowry articles nor return of dowry articles was settled through '*panchayat*' while DW-2 has very specifically asserted that 05-days prior return of dowry articles he had decided in '*panchayat*' about the same. DW-2 has not participated in the marriage and knows nothing about dowry articles which were given to the respondent. The return of dowry articles through a 3<sup>rd</sup> person was required to be properly in written form. In view of the evidence of the

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DW-1, the holding of '*panchiat*' and return of dowry articles through the said '*panchiat*' is doubtful. The marriage between the parties remained intact for almost 5½ years and with the passage of time, some of the items might have destroyed or lost their utility. The learned trial court partially decreed the claim of the respondent with regard to alternate price of dowry articles excluding certain items as mentioned above keeping in view the period of subsistence of marriage and wear and tear factor and fixed the same as Rs. 1,50,000/-. The learned appellate court has also rightly upheld the findings of the learned trial court.

6. As regards the objection raised by the petitioner that respondent herself did not appear in witness box in support of her claim is concerned, suffice is to say that the C.P.C and Qanun-e-Shahadat Order, 1984, are not applicable to family suits. Besides the respondent has been duly represented by her brother as her attorney, who appeared in the witness box on her behalf and stood the test of cross-examination, hence, non-appearance of the respondent in person in the witness box would not be fatal to her case. Learned counsel for the petitioner has failed to point out any misreading, non-reading or illegality in the impugned judgments. The assessment and appraisal of evidence is the function of the Family Court, which is vested with exclusive jurisdiction in this regard. This Court while exercising constitutional jurisdiction does not ordinarily reappraise the evidence produced before the courts below to substitute findings of fact recorded by the courts below, nor does it give its opinion regarding quality or adequacy of the evidence merely on the ground that another view may also be possible. Consequently, there is no ground to set-aside concurrent findings of fact.

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7. For what has been discussed above, this petition being devoid of any merits **dismissed**.

**(Muzamil Akhtar Shabir)**  
**Judge**

*Zeeshan Khan*