

2018 C L C 1350

[Lahore]

Before Jawad Hassan, J

ASIF ALI----Applicant

Versus

ADDITIONAL DISTRICT JUDGE, FAISALABAD and others----Respondents

W.P. No.8131 of 2012, decided on 11th April, 2018.

(a) Oaths Act (X of 1873)---

---Ss. 9 & 10---Qanun-e-Shahadat (10 of 1984), Art.163---Special Oath---Acceptance or denial of claim on oath---Where an offer of Special Oath made by one party was accepted by the other party, none could be allowed to travel beyond the offer made.

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

---S.5 & Sched.---Dowry articles---Special Oath---Wife made offer of Special Oath only to the extent of claim of dowry articles which was accepted by the husband---Husband while recording his statement on Special Oath regarding claim of dowry articles travelled beyond the offer and introduced a new factum of gold ornaments alleging the same in possession of wife---Held, that voluntary portion introduced by the husband during his Special Oath was not the mandate of the offer made by the wife---Said portion could neither be read in favour of the husband nor against the wife---Constitutional petition was dismissed.

(c) Dowry and Bridal Gifts (Restriction) Act (XLIII of 1976)---

---S.5---Dowry---Vesting of dowry in the bride---Gold ornaments were included in the bridal gifts and were exclusive property of wife---Section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976 clearly stated that the articles given as dowry and bridal gifts to the bride shall remain property of the bride.

Muhammad Arshad v. Additional District Judge and 2 others 2015 CLC 463; Mst. Mussarat Iqbal Niazi v. Judge Family Court and others 2013 CLC 276; Najeeb Ullah v. Mst. Makhdoom Akhtar and another 2009 YLR 1823; Mst. Shahnaz Begum v. Muhammad Shafi and others PLD 2004 Lah. 290 and Ghulam Rasool v. Judge, Family Court 1991 CLC 1696 ref.

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

---S.5, Sched. & S.9---Counter claim of gold ornaments by husband---Written statement---Scope---Neither S.9 nor Sched. of S.5 of Family Courts Act, 1964 envisaged that the

husband/defendant could establish counter claim of gold ornaments in his written statement.

Ch. Sadaqat Ali for Petitioner.

Azeem Sarwar Baryar for Respondent No.3.

JUDGMENT

JAWAD HASSAN, J.---Through this Petition, the Petitioner has prayed to set aside the order dated 17.02.2012, passed by the learned Judge Family Court, Faisalabad and 17.03.2012, passed by the learned Additional District Judge, Faisalabad.

2. Brief facts of the case are that the Respondent No. 3 filed a suit for dissolution of marriage and recovery of dowry articles against the Petitioner before the learned Judge Family Court, Faisalabad and the Petitioner defended the suit by filing the written statement and in that suit the Petitioner stated that the gold ornaments were still lying with the Respondent No.3 which she took away when she left the house of the Petitioner. The learned Judge Family Court dissolved the marriage on 23.02.2012 and framed the issue of dowry articles. After hearing the parties, the learned Judge Family Court passed the judgment against the Petitioner and held that the Petitioner is not entitled to recover the gold ornaments from the Respondent No.3 and also held that as the suit has been filed by the Respondent No.3 against the Petitioner, therefore, he cannot claim the gold ornaments as counterblast from the Respondent No.3. It is further held that the gold ornaments are purely bridal gift which are not recoverable and if the Petitioner has any grievance he would file an appropriate suit before the appropriate forum. When the Petitioner filed an appeal before the learned appellate court, the learned appellate court after hearing the parties, upheld the judgment of the Family Court observing that on the issue of special oath the Respondent No.3 is not required to return the dowry articles and stated that the Petitioner is not entitled to recover the gold ornaments which have been excluded on the basis of special oath.

3. Learned counsel for the Petitioner contended that the Respondent No.3 has obtained the impugned judgment and decree dated 23.02.2011, passed by the learned Judge Family Court by concealing the true facts; that during the trial on 29.06.2011, the learned counsel for the Respondent No. 3 made an offer to the Petitioner that if he gave Oath on Holy Quran that he possessed dowry articles only to the extent of list annexed with the written statement then the Respondent No.3 would have no objection to the decision of the lis on that basis; that he by accepting that offer administered the oath on 21.07.2011 and added that his gold ornaments weighing 5-1/2 Tola still lying with the Respondent No.3 might be got returned to him, which has been admitted by the Respondent No.3, but the Court failed to consider it; that the Respondent No.3 with regard to claim of the Petitioner submitted an application for repeat of oath which was dismissed by the Court; that the observations of both the learned courts below that the Petitioner cannot claim the gold ornaments in the suit filed by the Respondent No.3 is against the norms of law, the Petitioner can put his claim through written statement in the suit filed by the Respondent No.3; lastly argued that both the learned courts below have failed to note that otherwise, after deviation from the offer made by the Respondent No.3, both the parties have reverted to the original position, therefore, the proceedings should have been started from the prior to offer made and its acceptance, therefore, the judgments passed by the learned courts

below are required to be set aside.

4. It is contended by learned counsel for the Petitioner that the impugned orders are against the facts and law because the Petitioner in his written statement and while administering oath also claimed the return of his gold ornaments which was also admitted by the Respondent No.3 but the learned courts below did not pass any order to this extent. It is further contended that the Petitioner can put his claim through written statement in the suit filed by the Respondent No.3 and the observation of learned courts below that the Petitioner cannot claim the gold ornaments in that is against the norms of law. It is also maintained that the oath administered by the Petitioner before the appellate court is contrary to the offer and acceptance.

5. Learned counsel appearing on behalf of the Respondent No.3 rebutted the contentions of learned counsel for the Petitioner and supported the judgments and decrees passed by the learned courts below. He maintained that through this Petition and arguments, learned counsel for the Petitioner could not bring on record any illegality and irregularity committed by the courts below while passing it. He argued that the offer made by the Respondent No.3 was accepted by the Petitioner, therefore, the oath was to be administered in view of the offer but while administering the oath the Petitioner travelling beyond it claimed his alleged gold ornaments, so no implicit reliance could be placed on this part of the statement being beyond the offer of the Respondent No.3, thus, application of the Petitioner submitted in this regard has rightly been dismissed by the learned Courts below. Summing his arguments, he maintained that the learned courts below have rightly concluded that the Petitioner is not entitled to the recovery of gold ornaments in the same proceedings which have been concluded on the basis of special oath.

6. Heard. Record perused.

7. Need not to reiterate the facts, which have already been mentioned in Paragraph No.1 of this judgment and also have been discussed by learned counsel for the Parties during their arguments. It has been noted that in response to claim of dowry articles of the Respondent No.3, the present Petitioner in his written statement stated that dowry articles of the Respondent No.3 according to his list attached with the written statement are available and he is ready to return but if the Respondent No.3 administers Special Oath, which was accepted by her and she administered special oath. A discrete study of Article 163 of (Qanun-e-Shahadat) Order, 1984 read with Sections 9 and 10 of the Oath Act, 1873, reveals that when an offer made by one party is accepted by the other party then none can be allowed to travel beyond the offer made. In the instant case, the Respondent No.3 made offer only to the extent of claim of dowry articles which was accepted by the Petitioner who while recording his statement on Special Oath regarding claim of dowry articles travelled beyond the offer and introduced a new factum of gold ornaments alleging the same in possession of the Respondent No.3. It is crystal clear that voluntary portion introduced by the Petitioner during his Special Oath was not the mandate of the offer made by the Respondent No.3. Therefore, the said portion can neither be read in favour of the Petitioner nor against the Respondent No.3, as the recovery of gold ornaments is an assertive question of fact that can only be proved through evidence. As far as nature of claim of the Petitioner regarding gold ornaments is concerned, it is suffice to mention that the gold ornaments are included in the bridal gifts and are exclusive property of a wife, who is the Respondent No.3 in this case. In this regard section 5 of the Dowry and Bridal Gifts (Restriction)

Act (XLIII of 1976) clearly states that the articles given as dowry and bridal gifts to the bride shall remain the property of the bride. Reliance in this respect is placed upon Muhammad Arshad v. Additional District Judge and 2 others (2015 CLC 463), Mst. Mussarat Iqbal Niazi v. Judge Family Court and others (2013 CLC 276), Najeeb Ullah v. Mst. Makhdoom Akhtar and another (2009 YLR 1823), Mst. Shahnaz Begum v. Muhammad Shafi and others (PLD 2004 Lahore 290) and Ghulam Rasool v. Judge, Family Court (1991 CLC 1696). As far as counter claim of gold ornaments established by the Petitioner in his written statement is concerned, suffice her to mention that neither section 9 nor Schedule formulated under section 5 of the West Pakistan Family Courts Act, 1964 envisages that the Petitioner could establish aforesaid counter claim in his written statement.

8. The upshot of the above discussion is that learned counsel for the Petitioner has failed to point out any irregularity or illegality committed by the courts below while passing the impugned judgments and decrees, thus upholding the same, the instant writ petition is dismissed being without any force.

SA/A-41/L

Petition dismissed.