IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CPLA No.1106 of 2024
(Against judgment dated 04.12.2023 of the Peshawar High Court, Peshawar passed in W.P. No.4688-P of 2018 with CM No.2331-P of 2018).
&
CMA No.3330 of 2024
(Stay application)

Maqbool Ali and another

...Petitioners/Applicants

Versus

Mst. Raheela and others

...Respondents

For the Petitioners / Applicants: Syed Azmat Ali Bukhari, ASC.

For the Respondents: Mr. Muhammad Sadiq Khan, ASC with Syed Rifaqat Hussain Shah, AOR.

Date of Hearing: 13.05.2025.

ORDER

MIANGUL HASSAN AURANGZEB, J.- Through the instant petition, the petitioners assail judgment dated 04.12.2023 passed by the Peshawar High Court, whereby writ petition No.4688-P of 2018 with CM No.2331-P of 2018 filed by respondent No.1, Mst. Raheela, against the concurrent judgments and decrees dated 14.10.2017 and 11.06.2018 passed by the Judge, Family Court and the appellate Court, respectively, was allowed by setting aside the said judgments and decrees and decreeing the suit filed by respondent No.1. Vide said judgment and decree dated 11.06.2018, the learned appellate Court had dismissed respondent

No.1's appeal against the learned Family Court's judgment and decree dated 14.10.2017.

2. On 03.01.2015, respondent No.1 instituted a suit for recovery of dower against petitioner No.1 before the Family Court at Nowshera. Since respondent No.1's husband had passed away, she had filed the suit against her father-in-law / petitioner No.1. Vide judgment and decree dated 14.10.2017, the said suit was dismissed. Respondent No.1's appeal against the said judgment and decree was dismissed by the appellate Court vide judgment and decree dated 11.06.2018. The said concurrent judgments and decrees were assailed by respondent No.1 in writ petition No.4688-P/2018 before the Peshawar High Court. After a thorough re-evaluation of the evidence on the record, the High Court allowed the writ petition. The High Court not just set-aside the said judgments and decrees, but proceeded further by decreeing respondent No.1's suit.

3. Respondent No.1, in her suit had sought recovery of dower i.e., a house built on 05 *marlas* of land and a separate 10 *marla* plot not on the basis of entries in the *nikah nama* but on the strength of a gift deed / *tamleeq nama* executed on 26.09.2017 by her father-in-law / petitioner No.1 in favour of her late husband and another *kabeen nama* / *tamleeq nama* executed on the very same day by her late husband in her favour. The Family Court and the appellate Court concurrently held that the execution of the above-mentioned deeds had not been proved. The High Court took the view that the learned Courts below had dealt with the case as though it was a civil a suit, and that in family cases the provisions of the Qanun-e-Shahadat Order, 1984 and the Code of Civil Procedure, 1908 are not to be applied strictly. The High Court also

referred to the testimony of the witnesses which it considered sufficient for proof of the execution of the said deeds. The High Court also referred to the statement made by petitioner No.1 that the properties which were the subject matter of the said deeds would be given to respondent No.1 if she handed over custody of the children to him.

4. We are refraining from delving deep into the merits of the dispute between the contesting parties as it is not necessary for deciding the instant petition. However, the vital question that needs to be answered is whether the High Court while issuing a writ of *certiorari* under Article 199(1)(a)(ii) of the Constitution with respect to the concurrent judgments of the trial Court / Family Court and the appellate Court dismissing a suit for recovery of dower, decree the suit.

5. In the case at hand, the High Court had identified the evidence that had not been read by the learned Courts below while dismissing respondent No.1's suit. This may well have been reason enough for interference with the concurrent findings of the learned Courts below but having done this, the High Court could not have substituted its own findings for those of the learned Courts below by decreeing respondent No.1's suit. The High Court in exercise of its Constitutional jurisdiction cannot arrogate to itself the powers of a family Court and issue decrees.

6. There is a *catena* of case law in support of the proposition that the High Court in exercise of Constitutional jurisdiction cannot substitute its own views on the merits of the case with those of the Courts / Tribunals below. Interference by the High Court can be made when the findings of the Courts / Tribunals below are based on insufficient evidence, misreading of evidence,

non-consideration of material evidence, erroneous assumption of facts and patent errors of law. Where however, interference with the findings of fact of the Courts / Tribunals below is considered imperative, the High Court ought not to substitute its own views with those of the Courts / Tribunals below. In such instances, the proper course for the High Court is to remand the matter to the Courts / Tribunals below for corrective measures to be taken.

7. Where the High Court is of the view that the conditions for interference with concurrent findings of fact of the Courts / Tribunals below are satisfied in any particular case, the proper course is to remand the case to the Courts / Tribunals below for recording fresh findings after considering the material or the law, which had earlier been omitted from consideration. We take this view on the strength of the law laid down in the following cases:-

(i) In the case of Azmat Ali Vs. The Chief Settlement and Rehabilitation Commissioner (PLD 1964 SC 260), it was held as follows:-

> *"In a proceeding of this extraordinary nature where a superior Court calls for the records of judicial or quasi-judicial authorities or Tribunals, which are not subject to its appellate jurisdiction, the superior Court no doubt has the full power to do justice but does not as a rule, even in a case where it does interfere, substitute its own decision for the decision of the inferior authority or Tribunal. Where it is felt that questions have been left undecided by such Tribunal or authority or a question has to be decided after the taking of fresh evidence, it is more appropriate to return the case to the authority or Tribunal concerned for a decision in accordance with law, after quashing the order complained against."*

(ii) In the case of Nawaza Vs. The Additional Settlement and Rehabilitation Commissioner (PLD 1970 SC 39), this Court held that the High Court, in the exercise of its writ jurisdiction, does not act as a Court of facts and ought not to enter into and decide disputed questions of fact, although it can interfere with a finding of fact given by a subordinate Court or a Tribunal or other

authority if the finding is based on no evidence or is based on a complete misreading of the evidence. Furthermore, it was held that the High Court, in writ jurisdiction, cannot decide disputed questions of fact and that a finding of fact if based on no evidence or misreading of evidence can be interfered with but nevertheless proper course is to remand case back to lower Tribunal for decision.

(iii) In the case of Shabbir Hussain Vs. Muhammad Afzal (1972 SCMR 47), it was held as follows:-

> *"Court exercising [writ] jurisdiction does not sit as a Court of Appeal but merely as a Court for correcting a grave illegality. Where an inferior authority has acted contrary to law or to rules of natural justice, the practice is to set aside the order of the inferior authority and send the case back for proper decision by that authority, particularly, where that authority has, as in this case, exclusive jurisdiction in the matter. This was pointed out in the cases of Syed Azmat Ali v. Chief Settlement and Rehabilitation Commissioner (PLD 1964 SC 260), Begum B. H. Syed v. Mst. Afzal Jahan Begum (PLD 1970 SC 29) and Sh. Khursheed Muhammad v. Settlement and Rehabilitation Commissioner (PLD 1971 SC 498).*
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> *We see no reason to depart from the principle laid down in the above-mentioned decisions and are in agreement with the learned counsel that the High Court had exceeded its jurisdiction under Article 98 of the Constitution in reversing a finding of fact arrived at by the Settlement Authorities as if it was a Court of Appeal."*

(iv) In the case of Muhammad Younus Khan Vs. Government of N.-W.F.P. (1993 SCMR 619), it was held as follows:-

> *"Where the case has been considered by various authorities, their decision on fact can be disturbed in exercise of writ jurisdiction if it is against the material on record or without any basis. Even in such cases the High Court refrains from substituting its own finding of fact and proper course is to remand the case to lower Tribunal for proper determination of the controversy."*

8. In view of the above, we are not inclined to interfere with the impugned judgment to the extent whereby the concurrent judgments and decrees passed by the Family Court and the appellate Court have been set-aside. However, as regards the decision of the High Court to decree respondent No.1's suit, the same being beyond the jurisdiction of the High Court, is liable to

be set-aside. Consequently, leave to appeal is granted only to the extent of the High Court's decision to decree the suit; the petition is converted into an appeal to the said extent only and allowed; and the matter is remanded to the Family Court for a decision afresh on the basis of the material on the record and the observations made by the High Court in the impugned judgment.

CMA No.3330 of 2024

Since the main petition has been decided, the prayer sought in the instant application has been rendered infructuous. Consequently, the said application is dismissed as such.

Chief Justice

Judge

Judge

Islamabad, the
13th May, 2025
Not approved for reporting
Ahtesham Majid