

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Shafi Siddiqui

Civil Petition No.3455-L of 2022

Against the judgment dated 07.9.2022 passed
by Lahore High Court, Bahawalpur Bench in
W.P. No.6902 of 2013

Muhammad Ajmal etc.

...Petitioner(s)

VERSUS

Mst. Noor Khatoon, etc.

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Ozair Chughtai, ASC
(via video-link, Lahore)

For the Respondent(s):

N.R

Date of Hearing:

03.03.2025

JUDGMENT

Irfan Saadat Khan, J.- The instant leave to appeal has been filed impugning the judgment passed by the Lahore High Court, Bahawalpur Bench in Writ Petition No.6902 of 2013.

2. Briefly stating the facts of the case, the respondent No.1, namely Mst. Noor Khatoon, alongside respondent No.2, her daughter namely Mst. Khush Bakht, filed a Family Suit bearing No.400 of 2009 for recovery of dower in respect of land measuring 12 acres, 1920/4954 share of Khata No.270 *vide*: record of rights 2003-04, Dakhli Mauza Mori, Tehsil Khanpur against the present petitioners, contending therein that her late husband, Khan Muhammad, who had expired sometime in the year-2008, has during his lifetime gave her a parcel of land measuring 12 acres *vide*: agreement dated

26.03.2009, as her *Haq Mahar*, in presence of the witnesses and that he had also delivered the possession of the said land to her. The respondents' claim of ownership/possession of the said land was denied by the present petitioners, who claimed to be in possession of the land, thereby prompting the respondents to file the above-mentioned suit. The matter then proceeded before the Family Judge, Khanpur, who after framing the issues and examining the witnesses, alongwith obtaining other necessary pieces of evidence, decided the matter in favour of the respondents by decreeing the suit in their favour. The petitioners being aggrieved by the said order thereafter filed Family Appeal No.02 of 2012 before the Additional District Judge, Khanpur, who *vide* the judgment and decree dated 02.10.2013 upheld the order of the trial Court. Again, being aggrieved with the said order, Writ Petition bearing No.6902 of 2013 was filed by the petitioners before the High Court, which too was dismissed *vide* judgment dated 07.04.2022 (hereinafter the '**impugned judgment**'), against which the present appeal has been filed.

3. Mr. Muhammad Ozair Chughtai, learned counsel for the petitioners has appeared before us via video-link, from Lahore Registry and has argued that the Family Court lacked jurisdiction to decide the matter, since it was with regard to an agreement, hence such could only be decided by a competent Civil Court. He stated that the concurrent orders of the three fora below are a result of mis-reading and non-reading of the evidences since some crucial aspects of the matter were not properly appreciated. Building upon this line of argument, he highlighted that neither a claim was lodged by the respondent No.1 in the life time of the deceased Khan Muhammad nor any effort was made by her to get the said property transferred in her name, while the deceased was still alive. He submitted that the concurrent orders of the three Courts below may, therefore, be set aside.

4. We have heard the learned counsel for the petitioners at some length and have also perused the record.

5. Before proceeding any further, we would like to reproduce herein below the specific and categoric findings of the three Courts below on this aspect, which are as follows:

Order of the Trial Court (Pages 39-40 of the Paper Book)

17. *Although one of the defendants while appearing as DW.1 deposed that the agreement dated 26.03.2009 is false, frivolous and same is prepared in backdates just to deprive them from their shares of inheritance from the estate of the deceased. Khan Muhammad but they neither produced any other witness before the court in this regard nor any effort on their behalf was ever made for comparison of signature of the deceased Khan Muhammad from hand writing expert by moving application before the court whereas the evidence having come on the record reveals that the plaintiff has successfully proved the execution of the said agreement dated 26.03.2009 by producing the Munir Ahmed scribe as PW.1 and Riaz Ahmed and Zahid Hussain PW.3 and PW.4, the marginal witnesses of the said agreement who testified the execution of the document during the subsistence of the marriage of plaintiff with Khan Muhammad deceased. The defendant namely Muhammad Ajmal also admitted during his cross-examination that the Noor Khatoon plaintiff is widow of deceased Khan Muhammad who surrendered herself to the peaceful domicile of her husband i.e. deceased Khan Muhammad till his death.*

18. *In view of my above discussion, the plaintiff has successfully proved this issue by producing oral as well as documentary evidence in her favour. Hence, this issue is decided in favour of the plaintiff.*

Order of the Appellate Court (Page 28 of the Paper Book)

She has produced Scribe of Ex.P.1 and both the marginal witnesses of same who have fully corroborated the contention of plaintiff with regard to execution of Ex.P.1 by the deceased Khan Muhammad. Although the defendants have submitted application before the learned trial court for permission to produce Akhtar Shah stamp vendor and the plaintiff showed no objection on production of said stamp vendor but the defendants withdrew such application which prima facie also proves the factum of issuance of stamp paper Ex.P.1 by said Akhtar Shah. Therefore, the learned trial court

has rightly answered issue No.1 in favour of plaintiff/respondent No.1 and against the defendants No.3 to 8/appellants.

Order of the High Court (Pages 10-11 of the Paper Book)

7. It has been noticed that a suit for recovery of dower on the agreement was filed by respondent No.3 before Judge Family Court which after adopting due process was decreed. The petitioners filed an application under Order 1 rule 10 CPC before the learned trial court for impleading themselves as party in the suit which was accepted. Petitioners filed an appeal before learned Additional District Judge against the judgment and decree passed by learned Judge Family Court, which also met with the same fate. The question before this Court is that whether Family Court has jurisdiction to entertain the suit filed by the lady for recovery of dowry on the basis of agreement executed in her favour by her late husband in his life time. Section 5 of the Family Court Act, 1964, says that the following matters fall within the jurisdiction of Family Court:-

- 1 Dissolution of marriage (including Khula).*
- 2. Dower*
- 3. Maintenance.*
- 4. Restitution of conjugal rights.*
- 5. Custody of children [and the visitation rights of parents to meet them]*
- 6. Guardianship*
- 7. Jactitation of marriage.*
- 8. Dowry*
- 9. Personal property and belongings of a wife.*

Rule 6 of the Act ibid deals with the jurisdiction of the court to try the suit under the Act. The lady has claimed her dower on the basis of compromise which can be in the shape of cash, moveable or immoveable property. There is no dispute/denial regarding relationship of the spouse being husband and wife, therefore, Family Court had jurisdiction to entertain and decide the suit. Even otherwise, the scribe of the said agreement who deposed that he reduced into writing the same as per dictates of Khan Muhammad deceased appeared as PW.1. PW.3 is the witness in whose presence Khan Muhammad admitted that execution of agreement and delivery of possession in favour of respondent No.3. PW.4 is marginal witnesses of the agreement who admitted his signatures on the same. In this way, respondent No.3 has succeeded to prove her claim through cogent evidence. Nothing favourable could be drawn by the petitioners during cross-examination upon the PW's."

Perusal of the above findings would show that though it has been averred by the petitioners that the agreement is fake, forged and was prepared back-dated but

have not uttered a single word with regard to the fact that the marginal witnesses who appeared before the trial Court have categorically affirmed the contents of the said agreement. It is also an admitted fact that the petitioners have failed to produce any witness to support their stance that the said agreement was fake/forged. To the contrary the witnesses appearing before the trial Court have duly affirmed that the signatures appended on the agreement were those of the deceased Khan Muhammad and that he has signed the agreement in their presence. Moreover, no application was filed by the petitioners, before the trial Court praying for comparing the signatures of the deceased Khan Muhammad, if they were of the view that the said agreement was fake and forged.

6. It is also an admitted fact that when the trial was proceeding, the petitioners moved an application for production of Akhtar Hussain, the Stamp vendor, but subsequently withdrew the same, for the reasons best known to them. Furthermore, the High Court, while affirming the said findings of facts of the trial Court as well as the appellate Court has duly observed that there was no dispute with regards to the relationship between Mst. Noor Khatoon and Khan Muhammad, deceased. It is also pertinent to note that Munir Ahmed, the scribe of the said agreement, has also duly affirmed that the agreement was reduced into writing as per the directions of Khan Muhammad, deceased, who at that time had also confirmed handing over the possession of the said property in favour of the respondent No.1, in presence of the marginal witnesses who have endorsed signing of the said agreement and have also verified the same to be genuine. We would also like to highlight that the High Court has also dealt with the question of jurisdiction, exercised by the Family Court, in a quite elaborate and eloquent manner which in our view, suffers from no defect, hence there exists no reason to interfere with the same.

7. We, therefore, in view of the above uncontroverted facts, do not find any legal and lawful justification to interfere with the concurrent findings recorded by the three Courts below. Reliance in this regard is placed upon the decision of Fozia Mazhar vs Additional District Judge, Jhang¹ and Islamic Republic of Pakistan vs Messers Rashid Builders (Pvt.) Limited². The present petition is thus found to be without any merit, the same, therefore, stands dismissed and leave to appeal refused.

ISLAMABAD
03.03.2025
arshed

"Approved for Reporting"

¹ Fozia Mazhar vs Additional District Judge, Jhang and others [PLD 2024 Supreme Court 771].

² Islamic Republic of Pakistan through Secretary, Ministry of Defence and another vs Messrs Rashid Builders (Pvt.) Limited [2024 SCMR 1816].