

Journal

2008 PLD 410

Court

LAHORE HIGH COURT

Date

2008-05-26

Appeal No.

WRIT PETITION NO. 9940 OF 2007

Judge

SYED HAMID ALI SHAH

Parties

SHAKEEL AHMAD (PETITIONER) VERSUS ADDITIONAL DISTRICT JUDGE, LAHORE AND ANOTHER (RESPONDENTS)

Lawyers

CH. ALI MUHAMMAD FOR PETITIONER. MISS ALIA NEELUM FOR RESPONDENT NO.2.

Statutes

WEST PAKISTAN FAMILY COURTS ACT (XXXV OF 1964) - SS. 5, 7(2) AND SCHEDULE
CONSTITUTION OF PAKISTAN (1973) - ARTICLE 199 INTERPRETATION OF STATUTES

Judgment

SYED HAMID ALI SHAH, J.-Suit of respondent No.2 for the recovery of dowry articles or value thereof in the sum of Rs.6,99,075, was instituted in the Family -Court at Lahore. Learned Judge, Family Court, vide judgment and decree, dated 25-11-2002, decreed the suit against the petitioner and in favour of respondent No.2. The appeal was accepted on 12-9-2003, whereby, learned appellate Court set aside the impugned decree and directed learned Family Court to decide the question of territorial jurisdiction as well. Learned Judge, Family Court, vide it's decision dated 10-9-2005, returned the plaint under Rule 5 of the West Pakistan Family Court Rules, 1965 and held that Family Court at Lahore has no jurisdiction to entertain the suit of the plaintiff. The appellate Court, vide impugned order dated 24-3-2007, reversed the finding of learned Family Court on the issue of jurisdiction and remanded the case to the Family Court for recording detailed findings on Issues Nos. 1, 3 and 4, in accordance with law. Hence this petition.

2. Learned counsel for the petitioner has contended that marriage was dissolved at Gojra, amicably on 14-1-2001 and eight (8) days, thereafter, the suit was filed at Lahore. It was asserted in the plaint that dowry articles were lying at the house of the petitioner. Learned counsel added that defendant/petitioner resides at Gojra, parties last resided together at Gojra and articles of dowry, as per pleadings are statedly lying at Gojra. While referring to Rules 5 and 6 of the West Pakistan Family Court Rules, 1965, it is submitted that Family Court at Lahore has no jurisdiction to entertain and adjudicate upon the suit of the respondent. Learned counsel has submitted that the suit was remanded to the Family Court for the determination of question of jurisdiction. What requires consideration is to ascertain whether Rule 6 will apply or the schedule.

Learned counsel emphasized that territorial jurisdiction is governed under Rule 6 of the West Pakistan Family Court Rules, 1965, while for pecuniary jurisdiction, the schedule to Family Courts Act, 1964 has it's applications. Learned counsel went on to argue that dowry articles are movable property and territorial jurisdiction is determined in respect thereof, where such articles are lying or removed illegally. Learned counsel supported his contention by referring to the case of Syed Zia-ul-Hassn Gilani v. Mian Khadim Hussain and 7 others PLD 2001 Lah. 1188.

Learned counsel has contended further that amendment in the Family Courts Act, 1964, was made on 1-10-2002 and the suit was filed on 26- 10-2001. The suit was filed before the law (Family Court Act) was amended. The amendment in law has no retrospective effect and does not apply to the case in hands. He added that Ordinance of 2002 has lapsed. Learned counsel has concluded that other relief can be incorporated in the suit for the dissolution of marriage. But the suit for recovery of dowry articles, filed independently, cannot attract provisions of section 5 and schedule to section 5 of the Family Courts Act, 1964. While referring to the case of Muhammad Bashir and 2 others v. Muhammad Firdos and others PLD 1988 SC 232, it was contended that when existing rights are effected, the amendment has no retrospective effect. The rights are required to be protected rather than extinguished, through amendment. Learned counsel has summed up his arguments with the contention that appellate order, impugned in this petition, is without reasoning and as such, is not sustainable. Learned counsel, in support of his contentions, referred to the case of Muhammad Akram v. Mst. Shahida Perveen and others PLD 2004 Lah. 249.

3. Learned counsel for respondent No.2 has submitted that respondent, under the threat of her life, had left Gojra for Lahore. She is now residing at Lahore and has competently instituted the instant suit before the Family Court at Lahore. Learned counsel stood behind the impugned judgment and supported it with full vehemence. Learned counsel has submitted that the suit for dowry articles was not mentioned in schedule to section 5 of the West Pakistan Family Courts Act, 1964, but the omissions stood rectified through later amendment. Respondent No.2 was residing at Lahore and her suit for recovery of dowry articles was competent at Lahore. Learned counsel has supported her contention by referring to the cases of Nazir Ahmad v. District Judge 1996 MLD 2017 and Mahboob Ahmad v. First Additional District Judge and another PLD 1976 Kar. 978 and Muhammad Iqbal v. Parveen Iqbal PLD 2005 SC 22.

4. Heard learned counsel for the parties and record perused.

5. Petitioner has assailed the judgment of the appellate Court, mainly on the ground that the suit was filed on 26-10-2001 and amendment brought in the Family Court Act, 1964, was made on 1-10-2002 and as such the suit of the plaintiff/respondent No.2, was not competent, being instituted prior to amendment. Lower appellate Court, on the other hand, has observed that the omission was rectified through subsequent amendment. The observations of the appellate Court are well founded as by virtue of Act VII of 1997, the schedule to section 5 of the West Pakistan Family Courts Act, 1964 was amended and "dowry" was incorporated at serial No.8, after entry No.7. The suit of the plaintiff was instituted before the Family Court, when entry No.8, stood incorporated in the schedule through Family Courts (Amendment) Act, 1997. Such suit, within the contemplation of proviso to subsection (2) of section 7, can be instituted within the jurisdiction of Family Court, where wife resides and provisions of Rule 6, have no application. While holding so, I am fortified by the law enunciated by the august Supreme Court in the case of Muhammad Iqbal (*supra*), wherein it has been held as under:-

"Learned counsel for the petitioner vehemently argued that in view of Rule 6 of the Family Courts Rules, 1965 suit for dissolution of marriage or dower can only be competently filed before the Family Court where wife ordinarily resides. According to him since the respondent used to reside at Chakwal, as such, Family Court, Chakwal had the jurisdiction in the matter, therefore, the impugned order is not in accordance with law and suffers from legal infirmity."

The contentions of petitioner's counsel are devoid of force mainly for the reason that an amendment has been brought in section 7 of the Family Courts Act, 1964, whereby a proviso is added in its marriage and dower, the suit for maintenance, personal property, belongings of wife, custody of children and visitation rights of parents to meet their children can also be instituted before Family Court where wife resides. It is borne out from the record that respondent Mst. Parveen Iqbal is residing with her son at Jhang in the house of her parents, as such, Guardian Judge, Jhang has the jurisdiction to try the suit. In view of this provision of law, the above mentioned Guardian Petition has been rightly withdrawn from the Court of Senior Civil Judge/Family Judge, Chakwal and transferred to the Court of Guardian Judge, Jhang. The impugned order is proper and it does not require any interference."

6. It is wife's right to bring the suit within the local limits of Family Court, where she ordinary resides. The ordinary residence cannot be determined through hard and fast rules. The intention of a wife to stay at a particular place is material and not the length of stay. Provisions of Statute and rules made thereunder are to be read in conjunction. The a Rules cannot be read in isolation. Reading the Statute in conjunction with rules, it becomes manifestly clear that neither C.P.C. nor Qanun-e-Shahadat Order, is applicable to the matters falling within the jurisdiction of Family Court. It is the ordinary residence which is the determining factor for the jurisdiction of the Family Court.

7. Respondent No.2 has filed the suit for recovery of dowry articles as far back as in 2001 and has not as yet succeeded in decision of her case/suit on merits. The parties are fighting on technicalities of her past seven (7) years and the case is yet to be decided on merits.

8. For the foregoing, this petition has no merits and is accordingly dismissed with the direction to the Judge, Family Court to decide the pending suit of the plaintiff on its own merit, as expeditiously as possible, without granting unnecessary adjournments to either party.

Petition dismissed.