IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 23-P OF 2017
(On appeal against the judgment dated 12.05.2017 passed by the Peshawar High Court, Peshawar in Civil Revision No. 699-P/2013)

Pirzada Noor-ul-Basar

... Appellant

Versus

Mst. Pakistan Bibi and others

...Respondent(s)

For the Appellant:	Mr. Javed Iqbal Gulbela, ASC **(Through video link from Peshawar)**
For the Respondent (1):	Mr. Abdul Sattar Khan, ASC **(Through video link from Peshawar)**
For other Respondents:	Ex-parte
Date of Hearing:	29.03.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal under Article 185(2)(d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has assailed the judgment dated 12.05.2017 passed by the learned Single Judge of the Peshawar High Court, Peshawar whereby the Civil Revision filed by the respondent No. 1 was allowed, the judgments and decrees of the learned two courts were set aside and the suit of the respondent No.1/plaintiff was decreed.

2. Briefly stated the facts of the case are that respondent Mst. Pakistan Bibi was married to one Noor Muhammad Khan in the year 1967. She filed a suit on 23.12.1998 seeking declaration to the effect that she is the owner of the suit property measuring 122 kanals 5 marlas situated in Mouzas Gambti, Tolkai and Qila Sher Pao, Tehsil Tangi through dower deed dated 09.04.1967 and the defendants have nothing to do with the

suit property. She also sought correction in the revenue record and sought permanent injunction against the defendants not to interfere in the possession of the plaintiff. It was averred by the respondent/plaintiff that her marriage took place with Noor Muhammad Khan, predecessor-in-interest of the defendant Nos. 1 – 9 in the year 1967 and at the time of Nikah, the said Noor Muhammad transferred the suit property being owner in the name of plaintiff. She also claimed that after the Nikah and dower, she became full owner of the suit property and also took possession but being a *Parda Nashin Lady* she was unaware that the dower deed is not incorporated in the revenue record. It was further averred that the defendants are taking benefit of the wrong entries in the revenue record and transferred certain property in their name vide inheritance mutation Nos. 41 & 42 and also want to transfer the suit property in their name. The defendants did not join the trial proceedings and were declared ex-parte. Vide judgment and decree dated 24.01.2000, the suit of the respondent/plaintiff was decreed ex-parte. The appellant/defendants sought setting aside of the ex-parte decree, which was accepted by the First Appellate Court, who vide order dated 29.05.2007 remanded the matter back to the Trial Court with the direction to give an opportunity of hearing to defendants. Ultimately, vide judgment and decree dated 31.07.2008, the suit of the respondent/plaintiff was again decreed. The appellant preferred appeal but the same was dismissed vide judgment dated 31.05.2010. The appellant then filed Civil Revision before the Peshawar High Court, which was accepted and the matter was again remanded to the Trial Court to record the cross-examination of the material witness RPW-8 and decide the case on its own merits. The learned High Court also directed to consider the evidence of the alleged tenants examined as PW-5 to PW-7 in the light of the revenue record. After post-remand proceedings, the learned Trial Court dismissed the suit of the respondent/plaintiff vide judgment dated 19.12.2012. Being aggrieved, she challenged the same before the First Appellate Court but it also met the same fate vide order dated 23.07.2013. Then she filed Civil

Revision No. 699-P/2013 before the learned Peshawar High Court, which has been allowed vide impugned judgment. Hence, the instant appeal.

3. At the very outset, learned counsel for the appellant contended that the respondent No. 1 has claimed the property as dower but instead of seeking her remedy before the Family Court, she has filed the civil suit, which was not maintainable. Contends that the *Nikah Nama* was not authenticated document because neither any oral nor documentary evidence has been produced by the respondent/plaintiff in this regard. Contends that the learned High Court failed to take notice that according to Articles 103/104 of the Limitation Act, the time of limitation started from the year 1974 when the husband of the respondent died, therefore, the suit of the respondent/plaintiff was hopelessly barred by time. Lastly contends that the impugned judgment is the result of misreading and non-reading of the evidence, therefore, the same may be set at naught.

4. On the other hand, learned counsel for the respondent No. 1 defended the impugned judgment by stating that the learned High Court has passed a well reasoned judgment, which is based on correct appreciation of the evidence available on the record, therefore, the same needs no interference.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. This case has a chequered history. There is no denial to this fact that the matter is lingering on since 1998 and it was thrice remanded back to the learned Trial Court due to one reason or the other. In the first two rounds, the suit of the respondent/plaintiff was decided in her favour and the same was decreed. It was in the third round that the learned Trial Court dismissed the suit of the respondent/plaintiff, which judgment was upheld by the learned Appellate Court. Probably, it was due to this reason that the learned High Court has threadbare examined the evidence to find out as to what was the reason that the learned two courts below in the instant round of litigation have decided the case against the respondent/plaintiff. It was the case of the respondent that she is owner

in possession of the suit property through dower deed dated 09.04.1967, which is Nikah Nama and the same has been exhibited in evidence as Ex.PW-4/2. It was further claimed that in the revenue record, the suit property was still in the name of her husband, due to which the defendants are bent upon to transfer the disputed property in their name and inheritance mutation Nos. 41 & 42 were wrongly attested. In the said Nikah Nama, it is clearly mentioned that the suit property was given to the respondent by her husband Noor Muhammad in lieu of dower in the year 1967. There is no denial to this fact that the said Noor Muhammad was owner of the suit property and there was no bar on him to transfer the property to her wife in his lifetime. Although the learned counsel for the appellant tried to challenge the authenticity of the Nikah Nama before this Court but it is an admitted position that the same was never objected to before the lower forums in any round of litigation. It is for the first time that the learned counsel has raised this question before this Court. This is settled law that this Court in its appellate jurisdiction would generally not determine any ground or question of fact that had not been pleaded or raised by the parties at early stage before the lower court & High Court and has been for the first time raised in appeal before this Court. The appellant has no right to raise an absolutely new plea before this Court and seek a decision on it nor could such plea be allowed to be raised as a matter of course or right on the pretext of doing complete justice. Reliance is placed on Wali Jan Vs. Government of KPK (2022 PLC(CS) 336). Even otherwise, we have noted that in the very plaint of the appellant before this Court, this fact has been admitted in para 'E'. The learned High Court has rightly held that the Nikah Nama is a 30 years old document and according to Articles 100 & 79 of the Qanun-e-Shahadat Order, 1984, the presumption of correctness is attached to it. The land in question was in exclusive ownership of the respondent and she used to receive *Ijjara* from the tenants. The two tenants of the respondent namely Israr-ud-Din (RPW-6) and Noor Muhammad (RPW-7) appeared in the witness box and stated on oath that they are cultivating the suit property for the last 40 years on behalf of the respondent. They also admitted that they are paying *Ijjara* to

the respondent. Learned counsel for the appellant could not show us anything, which could suggest that the said tenants were ever approached by the appellant for payment of *Ijjara* even after the death of Noor Muhammad. The witness produced by the appellant namely Maqsood Ahmed also admitted that the property in question belonged to the said Noor Muhammad and that the respondent was his wife. So far as the question of limitation is concerned, the learned counsel argued that according to Articles 103/104 of the Limitation Act, 1908, the time of limitation to file a suit started from the year 1974 when the husband of the respondent died, therefore, the suit of the respondent/plaintiff was hopelessly barred by time. However, we do not tend to agree with the learned counsel. Article 103 speaks about the time period of three years by a muslim for exigible dower (mu'ajjal) "*when the dower is demanded and refused or where, during the continuance of the marriage no such demand has been made when the marriage is dissolved by death or divorce*." Whereas Article 104 speaks about the time period of three years by a muslim for deferred dower (mu'wajjal) "*when the marriage is dissolved by death or divorce*." Admittedly, the property was in the exclusive possession of the respondent and the tenants were also paying *Ijjara* to her. The respondent never said that she did not receive the dower rather it was her claim that she is enjoying the proceeds/fruit of the land. Therefore, the matter in-fact related to wrong entries in the revenue record and the same in no way can be termed as a matter relating to dower. The learned High Court by placing reliance on the judgment of this Court reported as Abdul Sattar Khan Vs. Rafiq Khan (2000 SCMR 1574) and Articles 120 and 144 of the Qanun-e-Shahdat Order, 1984 has rightly held that the period of six years is to be counted from the date when the right to sue accrued. In these circumstances, neither the suit of the respondent can be termed as barred by time nor she had to approach the learned Family Court for redressal of her grievances. The learned High Court has rightly held that respondent was a *Parda Nashin Lady* and under no circumstances it can be presumed that she had the knowledge that after the Nikah and the Nikah Nama, the registration as well as the

incorporation in the revenue record was mandatory. Under the *bona fide* belief, in our part of the world, the presumption of completeness of transaction, after the execution of Nikah Nama is there and since the *Ijjara* was being received by her, as such, she was under *bona fide* belief that during the lifetime of Noor Muhammad as well as after his death, the transaction is complete and she is the owner of the property in question."

7. For what has been discussed above, we are of the view that the learned High Court while passing the impugned judgment has scrutinized the evidence in its true perspective, which being well reasoned does not warrant interference. Consequently, this appeal having no merit is dismissed.

JUDGE

JUDGE

Islamabad, the
29th of March, 2023
Approved For Reporting
Khurram