

Judgment Sheet  
**IN THE LAHORE HIGH COURT,  
LAHORE.**  
JUDICIAL DEPARTMENT

WP No.38286/2016

Tanzeela Butt vs Additional District Judge Sargodha etc.

**JUDGMENT**

|                 |                                   |
|-----------------|-----------------------------------|
| Date of hearing | 06.10.2017                        |
| Petitioner By   | Petitioner in person.             |
| Respondents By  | Mr. Azhar Maqbool Shah, Advocate. |
|                 |                                   |

**JAWAD HASSAN, J.** -Through this Constitutional Petition, the Petitioner has called in question judgment and decree dated 16.06.2016 passed by the Respondent No.1.

2. Facts briefly for the disposal of this Constitutional Petition are that the Petitioner was married to the Respondent No.3 on 3.2.2010 against dower amount of Rs.50,000/-, out of which Rs.1000/- was paid while the residual amount of Rs.49,000/- was deferred. An agreement dated 1.2.2010 (the "Agreement" or "Iqrar Nama") was also entered into inter se the parties and Nikah Nama dated 3.2.2010 (the "Nikkah Nama") and it was agreed vide agreement dated 1.2.2010 that the House No.295 measuring 06 Marlas 258 Sq. ft. at Cheema Colony Chak No.47, North Tehsil and District Sargodha in the name of the Respondent No.3 will be

in the ownership of the Petitioner after the Respondent No. 3 passes away.

3. Subsequently the relations between the spouses became strained as a consequence whereof, the Respondent No.3 divorced the Petitioner on 23.06.2011 without paying her amount of deferred dower. Subsequently, the Respondent No.3 allegedly prepared a forged document in the name of his nephew namely Muhammad Farooq of anti-dated on the basis of which he obtained a consent decree from the Civil Court Sargodha on 15.10.2010.

4. Faced with this situation, the Petitioner filed a suit for recovery of dower amount of Rs.49,000/- before Judge Family Court, Sargodha, which was dismissed vide judgment and decree dated 4.9.2013. Feeling aggrieved, the Petitioner assailed the said judgment and decree before the learned Additional District Judge, Sargodha which was allowed vide judgment and decree dated 04.06.2014 and as a consequence whereof, the impugned judgment and decree was set aside and the Petitioner was allowed to produce copy of the Nikah Nama in her additional evidence before the learned trial Court and the learned trial court was directed to give an opportunity to the Respondent No.3 to produce any evidence in rebuttal of the Nikah Nama. The learned Trial Court after hearing the parties and perusal of the record of the case, decreed the suit in favour of the Petitioner on 19.02.2015. Being dissatisfied, the Respondent No.3, filed an appeal which was allowed and dismissed the suit of the Petitioner vide judgment and decree dated 6.7.2015. Feeling aggrieved, the Petitioner assailed the said judgment & decree before this Court by filing

WP No.26362/2015, which was allowed vide order dated 12.01.2016 and impugned judgment and decree dated 06.07.2015, was set aside and the matter was remitted to the learned Appellate Court to re-write the judgment after providing fair opportunities to the parties. In the post remand proceedings, the learned Additional District Judge, Sargodha, vide judgment and decree dated 16.06.2016 set aside the impugned judgment and decree dated 19.02.2015 and dismissed the suit filed by the Petitioner.

5. The Petitioner has argued that the impugned judgment dated 16.06.2016 of the Additional District Judge is against law and facts of the case and the judgment of the Family Court be upheld. She argued that according to the Agreement and the Nikahnama, it was settled between the parties that the house in the name of the Respondent No.3 (House No.295 measuring 6 Marlas 258 Sq.ft. situated at Cheema Colony Chak No.47, Tehsil and District Sargodha), will be given to the Petitioner by the Respondent No.3. She further argued that the Respondent No.3 had prepared a fictitious and forged document in the name of his nephew namely Muhammad Farooq and obtained a consent decree fraudulently from Civil Court on 15.10.2010 and then the Petitioner filed an application under Section 12(2) CPC against the judgment and decree dated 15.10.2010 which was accepted and suit for specific performance titled as "Muhammad Farooq vs. Abdul Latif" was dismissed. She has further argued that the learned Additional District while passing the impugned judgment and decree dated 16.06.2016 has totally ignored this fact that fictitious suit for specific performance was dismissed by filing

application under Section 12(2) CPC by the Petitioner and the Civil Revision No.1823/2015 filed by the Respondent No.3 against the said order has also been dismissed on 18.06.2015.

6. On the other hand, counsel for the Respondent No.3 has supported the impugned judgment dated 16.06.2016. He has argued that claim of the Petitioner was based upon the Agreement (Ex.P.1) and the Nikah Nama (Ex.P-3) and that the Ex.P-1, does not create any title. The learned trial Court has ignored the law on the subject. The Nikah Nama was not written in presence of the Petitioner and entries were made subsequently, even otherwise, the Petitioner had received amount of dower, therefore, she was not entitled to a decree.

7. Arguments heard and record perused.

8. It is reflected from perusal of the record that the Petitioner has assailed judgment and decree dated 16.06.2016 passed by the learned Additional District Judge, Sargodha, wherein he set aside the judgment and decree dated 19.02.2015 and dismissed the suit filed by the Petitioner. From the perusal of record it reveals that the Agreement (Ex.P-1) was executed between the Respondent No.3 and Muhammad Suleman Butt, the brother of the Petitioner and the Petitioner is neither party nor signatory of the said Ex.P-1. According to the terms of the Agreement, after the death of the Respondent No.3, the Petitioner would be his legal heir and in case of death of the Petitioner, her brother Muhammad Suleman Butt would be the legal heir of the Petitioner and would become exclusive owner of the legacy of the Petitioner. The legal heir can only be determined according to the

Sharia and law of inheritance, it is settled principle of law that no one can be declared as legal heir of deceased by virtue of Iqrar Nama.

This contention is supported in the case of **Lalan vs. Maqsood Mai 2014 YLR 2053 Lahore,** where it was held that:

*“Upon death of predecessor, the inheritance automatically opened and devolution of property took place through inheritance immediately without any other intervention- iqrarnama which remained unproved would have no bearing upon the legal right of inheritance as the legal heir was to be considered in constructive possession of the property.”*

9. It is evident that this Agreement (Ex.P-1) has no legal value in the eye of law primarily since the same wasn't executed between the Petitioner and the Respondent No. 3. Generally, as evident from the case of **Karachi Water And Sewerage Board vs. Karachi Electric Supply Corporation 2012 CLD 1225 Karachi,** third party rights could not confer right or impose obligations arising thereunder on another person except party thereto. This has been stated in **Mastersons vs. Ebrahim Enterprises 1988 CLC 1381 Karachi,** however, in para 12 of the judgment it has been stated that there are exceptions to the rule which is being reproduced hereunder for ease of reference:

*“A contract cannot (as a general rule) confer rights or impose obligations arising under it on any person except party to it.”*

*“In certain cases, however, third parties are entitled to sue in their own right. The learned counsel for the plaintiffs has relied upon the case of Nawab Khawaja Muhammad Khan v. Nawab Hussaini Begum reported in 1952 Indian Appeal 156. In the case of Nawab Khawaja*

*Muhammad Khan v. Nawab Hussaini Begum, an agreement was executed by appellant with the respondent's father to pay Rs.50 p.m. Khurchi Pandan to the respondent for consideration of her marriage with his son. The suit was filed by the respondent for enforcement of agreement which was resisted on the ground that she was not party to this agreement, and therefore, could not enforce it. However, Privy Council held, that she was beneficially entitled under the agreement and therefore, was entitled to proceed in equity to enforce her claim. In a case reported in A I R 1942 Cal. 251 it is held, that there are two exceptions to the general rule that a stranger to contract which reserves a benefit for him cannot sue upon it. The first exception is where the contract between the parties is so framed as to make one of them as trustee for other. In such case latter may sue to enforce the trust in his favour and no objection can be taken to his being stranger to the contract. The other exception covers those cases where promisor, between whom and the stranger, no privity exists, by his conduct and by acknowledgment or otherwise, constitutes himself as agent of the third party. It was held, that in the case coming in the first exception, the third party is allowed to sue entirely on the footing that the instrument created a trust in their favour. Similar view was taken in A I R 1973 Cal. 401 wherein it was held, that though the common law principle is generally applicable in India with the effect that only the party to the contract is entitled enforce the same, but where an obligation in equity amounting to trust arising out of contract exists, the beneficiary has a right to sue.”*

10. However, in this circumstance, the Petitioner is not looking to enforce the Agreement (Ex.P-1), but has only submitted the same in evidence to show the intention of the Respondent No. 3 at the time of execution of the Agreement. If for the sake of arguments, it is presumed that the same was executed inter se the parties then as per its contents, the same would be executed and operated only after the death of the Respondent No.3 and the same cannot be acted upon during his life time. Further, it is nowhere mentioned in the

Agreement (Ex.P-1) that the house mentioned supra would be given to the Petitioner, as dower. The dower is based upon Iqrar Nama and the contents of the same have negated the said stance of the Petitioner. Furthermore, in order to prove Iqrar Nama (Ex.P-1), which is an unregistered document, Mst. Tanzeela Butt, Petitioner herself appeared as PW-1, but she is neither a party of the said document nor signatory of the said Iqrar Nama. Muhammad Arif, appeared as PW-2, who stated that the Iqrar Nama (Ex.P-1) was written in his presence which carries his signature and according to the said Iqrar Nama, the Respondent No.3 agreed to transfer the House No.295 of Chak No.47/NB as dower in favour of the Petitioner. But the said factum of dower is nowhere mentioned in the Iqrar Nama (Ex.P-1), hence, PW-2 has failed to support his contention through documents. Further, Muhammad Suleman Butt, who is real brother of the Petitioner and also signatory of the Iqrar Nama was alive but he never appeared nor produced by the Petitioner as witness. In this manner, a best evidence has been withheld by the Petitioner. It is a settled principal of law that burden to prove the facts of the case lies with the petitioner as seen in the case of **Muhammad Younus vs. Kaniz Fatima PLD 2000 Karachi 348**, which the Petitioner has failed to discharge. Further, in Column No.16, it is nowhere mentioned that the House No.295 measuring 6-Marla 258 sq. ft situated at Cheema Colony Chak No.47 RB Sargodha would be given as dower, but the said Column simply stipulates that *“the house which is in the name of the bridegroom, the same would be the ownership of the bride.”* The Column No.13 of

Nikahnama (Ex.P-3) depicts that dower was fixed as Rs.50,000/- and as per Column No.14 (Rs.1000/-) was fixed as prompt dower and the remaining as deferred dower. The case in discussion is being distinguished by the case titled **Saira Zulfiqar vs. Additional District Judge, Multan 2008 MLD 1673 (Lahore)**, where a constitutional petition was allowed where the terms of both the Nikkah Nama and Iqrar Nama were clear and the petitioner was entitled to the properties and gold ornaments:

*“iqrarnama and its contents had become integral part of Nikahnama and as such the contents/entries in Nikahnama were to be read in conjunction with iqrarnama. Marriage being a contract, the parties to the marriage were at liberty to enter into the terms of their choice. The Two Courts below could not interpret the terms on their own when such interpretation specifically stood negated by the contents of Nikahnama and iqrarnama. Both the documents revealed that amount of dower of Rs.20,00,000 was independent in itself and property and gold ornaments were in addition to the amount of Haq-ul-Mehar. Findings of both the Courts below that gold ornaments and the property were in lieu of amount of Haq-ul-Mehar were totally falsified by evidence on record. Both the Courts below erroneously and illegally held that the wife was not entitled to the property mentioned in Nikahnama and iqrarnama. The High Court, in exercise of Constitutional jurisdiction, set aside the findings of both the courts below to the extent of properties mentioned in their judgments. The High Court modified the judgments and decrees passed by both the Courts below and included properties and gold*



*ornaments in the decree as envisaged in Nikahnama with iqrarnama. Constitutional petition was allowed accordingly.”*

11. In the instant petition, wordings of the Column No. 16 of the Nikkah Nama submitted in evidence are vague and do not specify which property is being referred to and the Petitioner is not even a party to the Iqrar Nama and the main party to the Iqrar Nama has not been presented in court for evidence. Therefore, the Petitioner has failed to establish her case on all accounts.

12. Conversely, from the wording of the Column No.16 of the Nikah Nama, it is crystal clear that it refers to past transaction. It never covenants between the parties for some future liability rather same is considered as an explanation for an act done in compliance and in furtherance to agreed amount of payable dower. Furthermore, if the wife has received the dower as mentioned in Column No.13, then she cannot claim the property which is mentioned in column No.16. It is also proved through cogent evidence of the Respondent No.3 who appeared as DW-1 and asserted that at the time of divorce he gave Rs.100,000/-with the explanation that he paid Rs.49,000/- as dower and remaining amount Rs.51,000/- as maintenance allowance for “Idat” period. There was no cross-examination on this aspect to the matter. This clearly reveals that

the Petitioner has received remaining deferred dower Rs.49,000/- and receiving of the whole amount mentioned in the Column No.13 denotes that she has waived off her right of the property which is mentioned in Column No.16 in lieu of dower. Further, the Petitioner while appearing as PW-1 has also fortified the assertion of DW-1 during her cross-examination that “it is true that she had received an amount of Rs.100,000/- from Abdul Latif, Respondent No.3 after divorce and also gave its receipt to him”. As seen in the case titled *Saadia Usman vs. Muhammad Usman Iqbal Jadoon (2009 SCMR 1458) and Syed Shoukat Gillani vs. Mst. Ansar Gillani (2017 MLD 1677)*, it is settled law that dower is described only one time and the same can be prompt or deferred. The learned Appellate Court has rightly held that the learned Trial Court has wrongly given the findings while decreeing the suit. The learned Appellate Court has also rightly observed that the trial Court has decided the controversy of the dower of the Column No.16 on the basis of presumptions and judgment cannot be passed merely on the basis of presumptions by giving observation that although there is no mentioned the detail of the house in the Column No.16 of the Nikah Nama but as in the Agreement/Iqrar Nama the address of the Respondent No.3 is given as House No.295, Cheema Colony and the same might have been given to the Petitioner, as dower. It was bounded duty of the Petitioner to prove that the said house was clearly mentioned in the Iqrar Nama and Nikah Nama and the same was given as dower, but she had badly failed to substantiate her claim through her available oral as well as

documentary evidence given as no details of the property were laid down in Column No. 16 of the Nikah Nama. The Petitioner has failed to point out any legality or perversity in the impugned judgment, which otherwise is apt and calls for no interference by this Court in constitutional jurisdiction.

. In view of above, this writ petition being devoid of force is **dismissed.**

**(JAWAD HASSAN)  
JUDGE**

ZAHOOR