

Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.5610 of 2014

Mst. Naureen

Versus

Additional District Judge and 2 others

JUDGMENT

Date of hearing:	21.11.2017
Petitioner by:	Mr. Muhammad Zafar Khan Sial, Advocate.
Respondent No.3 by:	Malik Muhammad Ahsan Karol, Advocate.

MUJAHID MUSTAQEEM AHMED, J: Petitioner and Mazhar Hussain-respondent No.3 (respondent) were married on 19.01.2003. Rukhsati took place on 13.12.2003. After leading two years matrimonial life, the petitioner approached learned Judge Family Court, Kabirwala, District Khanewal for composite reliefs including dissolution of marriage on Khula (payment of 'Khula' consideration is at the anvil in this petition), whereas the suit was resisted by respondent. On 21.10.2005, the suit of petitioner for dissolution of marriage was decreed by the learned Judge Family Court, Kabirwala under Section 10(4) of West Pakistan Family Courts Act, 1964 and issue No.1-A was framed regarding marriage benefits, which is as under:-

ISSUE NO.1-A

Whether the defendant is entitled to recover 8-Kanals of land, 5-Tolas gold ornaments from the plaintiff as the

plaintiff has get divorce under Section 10(4) of Muslim Family Courts Act, 1964? OPD

After recording evidence of the parties, vide judgment dated 21.10.2008, the learned Judge Family Court while answering the above issue in favour of respondent, passed an order for return of marriage benefits as under:-

“Suit of the plaintiff for dissolution of marriage was decreed by my learned predecessor under section 10(4) of the Family Clourt Act, 1964 on 21.10.05 and the plaintiff is directed to return Haq-ul-Maher i.e 5-tolas gold ornaments and 8-Kanals land”

Subsequent thereto the petitioner lost her appeal before learned first appellate court/Additional District Judge, Kabirwala vide judgment dated 19.02.2009 and thereafter petitioner assailed these concurrent judgments by filing Writ Petition No.2375 of 2009, which was decided by this Court vide order dated 28.01.2010, concluding as under:-

“It is admitted that the petitioner No.1 was given 8 kanals of land and Rs.50,000/- in cash (equivalent to 5 tolas of gold ornaments) as dower. Reading of the plaint shows that the petitioner had developed aversion and hatred for respondent No.3 and had sought dissolution of marriage on the ground of khula which is clearly spelled out in paragraph 6 of the plaint. In any case, dissolution of marriage under Section 10(4) of the Family Courts Act, 1964 on the basis of khula was ordered on 21.10.2005 which was not challenged by the petitioner, therefore, it had attained finality. It is also admitted that she took the consideration for marriage i.e dower as mentioned above, therefore, Section 10(4) of the Family Courts Act, 1964 fully applies to the case of the petitioner. No illegality or material irregularity surfaces from the impugned judgments, therefore, regarding issue No.1-A, this petition is dismissed. ”

The respondent approached learned Judge Family Court/Executing Court for return of marriage benefits and the petitioner on 17.01.2011 submitted objection petition denying her liability to return the marriage benefits. The objection petition was dismissed vide order dated 30.11.2013 by the learned Judge Family Court, Kabirwala while observing as under:-

“In consequent of op-cit discussion I have no hesitation to hold that instant objection petition is without any legal substance and is a ploy mean to avoid the decree and to divest and strip the decree holder from the fruits of decree awarded in his favour by the learned decretal court and confirmed by the Hon’ble High Court. Accordingly the instant objection petition is hereby dismissed...”

Thereafter, the petitioner assailed this order in appeal but it was dismissed vide order dated 17.03.2014, passed by learned Additional District Judge, Kabirwala, District Khanewal, while observing as under:-

“As the matter has already been decided up till high Court and findings of trial court were maintained in appeal as well as writ petition. Hence, the objection petition on the same matter filed by appellant is not maintainable.”

As such by filing this writ petition, the petitioner has assailed the above orders passed by learned lower fora mainly on the grounds of against facts, law, based on misreading and non-reading of evidence, as such not sustainable.

2. Arguments heard. Record perused.

3. The first ground of attack taken by learned counsel for the petitioner is that 8-kanal agriculture land was incorporated against column No.16 of “Nikah Nama” Exh.D1 and as such only civil Court has the jurisdiction to entertain and decide such claim. In support of the contention, reliance has been placed on case ‘Syed Nadeem Raza through Attorney General Versus Mst. Amna-Tuz-Zahra and 2 others’ (2011 CLC 726 Lahore) wherein it has been held that entries in column No.16 of ‘Nikah Nama’ cannot be equated as ‘Haq-ul-Mehr’. Whereas in latest case ‘Mst. Yasmeen Bibi Versus Muhammad Ghazanfar Khan and others’ (PLD 2016 Supreme Court 613) it has been held that undertaking given in ‘Nikah Nama’ regarding transfer of landed property in the name of wife could be construed as part of dower or gift to wife in consideration of marriage and it falls within exclusive domain of family Court to pass a

decree in relation with such landed property. Similar view has been taken by this Court in case 'Mst. Mithan Versus Additional District Judge, Jatoi and 7 others' (2017 MLD 1101). In view of the settled legal proposition, the objection of the petitioner being devoid of merits is discarded.

The second ground of attack taken by learned counsel for the petitioner is that in order dated 21.10.2008, learned Judge Family Court has "directed" the petitioner to return Haq-ul-Mehr and such direction does not amount to decree executable by Court of competent jurisdiction. In support of this contention, he has referred case 'Mst. Nadia Bibi Versus Additional District Judge and others' (PLD 2013 Lahore 41) and 'Abdul Rashid Versus Mst. Shahida Parveen and another' (2013 YLR 2616 Peshawar), whereas learned counsel for respondent has referred copy of decree sheet dated 21.10.2008 passed in family suit in between the parties, wherein present petitioner has been "ordered" to return dower/marriage benefits. To my view, the facts of the reported cases are quite distinguishable from the case in hand, as the entire controversy raised by moving objection petition stood settled vide judgment dated 28.01.2010, passed by this Court in writ petition No.2375 of 2009 (referred supra) and the petitioner has not assailed the same before Hon'ble Supreme Court of Pakistan and the same has attained finality and as such this contention is repelled.

4. Third and last ground of attack, in respect of impugned orders voiced by learned counsel for the petitioner Mr. Muhammad Zafar Khan Sial is that the landed property was not transferred in favour of the petitioner on the date of marriage or "Nikkah" but subsequently on 18.12.2003 vide mutation of *tamleek* Exh.D-2 and as such the same cannot be termed as "marriage benefit", on the strength of dictum laid down in case 'Rana Shah Nawaz Khan Versus Judge Family Court, Lahore and another' (PLD 2009 Lahore 227), 'Abdul Aleem Khan Versus Tabinda Naseer Qazi and another' (PLD 2011 Karachi 196) and 'Shakeel Saood Khan Versus Rizwana Khanum and another' (PLD 2012

Lahore 43). To my view, this contention is devoid of merits. If such ground was available to the petitioner, it was to be agitated before the learned Courts below or this Court in earlier round of litigation. In view of Section 11 explanation IV of Civil Procedure Code, 1908 read with Section 17 of West Pakistan Family Courts Act, 1964, it will be presumed that this controversy was directly and substantially in issue in previous suit and has been heard and finally decided (rejected) by this Court.

5. As a sequel to above discussion, to my view all the factual and legal objections taken in the “objection petition” by the petitioner filed in execution petition stood already resolved in earlier round of litigation. It is an unsuccessful attempt on the part of the petitioner to avail the relief of dissolution of marriage on the basis of Khula without return of the marriage benefits, determed by Court of competent jurisdiction, also bearing stamp of validiation by this Court. As such this writ petition being devoid of merits is dismissed.

(Mujahid Mustaqeem Ahmed)
Judge

APPROVED FOR REPORTING.

Judge

Shahzad Ahmad Nasir