

**Judgment Sheet**

**IN THE LAHORE HIGH COURT**

**MULTAN BENCH, MULTAN**

**JUDICIAL DEPARTMENT**

**Writ Petition No.2888 of 2017**

**Fayaz Hussain**

**Versus**

**Addl. District Judge and others**

**JUDGMENT**

Date of hearing:	30.10.2018
Petitioner by:	Mr. Zargham Haider Jafri, Advocate.
Respondents by:	Syed Nasir Abbas Bukhari, Advocate.

**MUJAHID MUSTAQEEM AHMED, J:** By invoking the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the concurrent judgments passed by learned courts below by which suit of Nargis Batool-respondent No.3 for recovery of dower 10-Marla house stood decreed.

2. The concise facts of the family litigation culminating into this writ petition and necessary for its fair adjudication are that present petitioner and respondent No.3 (respondent) were married on 15.04.1998 against consideration (Haq-ul-Mehr) of Rs.500/- in cash. Vide column No.16 of the 'Nikah Nama' Annexure-A, the petitioner also agreed to transfer 5-Marla house in favour of respondent. In year 2014, respondent alongwith her three minor issues approached learned Judge Family Court, Alipur, District Muzaffargarh for multiple reliefs including recovery of 'Haq-ul-Mehr' i.e residential house measuring 10-Marla (herein after to be referred 'dower'). Whereas this claim was

contested by present petitioner denying any such stipulation of Haq-ul-Mehr against column No.16 of 'Nikah Nama' Annexure-A. To resolve controversy between parties, following relevant issue was framed:-

### ISSUES

2. Whether plaintiff No.1 is entitled to get the dower house measuring 10 marlas situated in Mouza Makwal Hadair valuing Rs.10,00,000/- from the defendant?  
OPP

Relief.

3. After recording evidence of the parties, vide consolidated judgment dated 19.04.2016, learned Judge Family Court decreed the suit of respondent in the following terms:-

*“The instant suit of the plaintiff No.1 for recovery of dower as constructed house measuring 10 marlas alongwith four wall boundary situated in Mouza Makwal Hadair is decreed.”*

The petitioner assailed the above judgment and decree before learned Additional District Judge, Alipur whereas respondent also filed cross appeal and vide impugned judgment and decree dated 19.11.2016, learned Ist Appellate Court confirmed the findings of learned Judge Family Court regarding the controversy in hand and consequently the appeal of the petitioner was dismissed.

4. As such by filing the instant writ petition, the petitioner while assailing the above judgments/decrees passed by learned Courts below has made the following supplications:-

*“....that this petition may kindly be accepted, judgments and decrees of both the learned Courts below may be set aside, the area of 10-Marla of dower house may be corrected as five Marla, plaintiff-1 may be directed to join & live with the petitioner/defendant as a friend and obedient wife for the betterment of Kids and family- and the justice.”*

5. During the course of arguments, learned counsel for the petitioner has maintained that impugned judgments are against facts and law, as such not sustainable. Learned counsel for the petitioner has further maintained that as per copy of 'Nikah Nama' Annexure-A and

admission of respondent and her witnesses, 'Haq-ul-Mehr' 5-Marla residential house was settled between the parties and the learned Courts below were not justified to decree the claimed dower. Whereas learned counsel for respondent has maintained that infact petitioner agreed to transfer 10-Marla residential house as 'Haq-ul-Mehr' in favour of his wife but due to inadvertence 5-Marla residential house has been mentioned in the 'Nikah Nama', as such learned Courts below were fully justified to believe the oral version of respondent to decree the claimed dower.

6. Arguments heard. Record perused.

7. The respondent as PW-1 in her affidavit Exh.P1 deposed that present petitioner at the time of 'Nikah' has agreed to transfer 10-Marla house in her favour. During cross examination she rejected the suggestion that petitioner has not agreed to give the claimed dower to her. Ghulam Muhammad-PW2, father of respondent in his affidavit Exh.P2 endorsed the claim of respondent. However, during cross examination he conceded that as per entries of 'Nikah Nama' the petitioner had agreed to transfer only 5-Marla residential house. Muhammad Masood-PW3, real brother of respondent also deposed in the same fashion. Whereas the petitioner in his affidavit Exh.D1 deposed that only Rs.500/- cash was fixed as 'Haq-ul-Mehr', which stood paid at the time of 'Nikah'. During cross examination he categorically denied the suggestion that he has agreed to transfer 10-Marla house with all amenities in favour of respondent.

8. As per respondent's own case in 'Niakh Nama' (Annexure-A) the petitioner has agreed to transfer 05-Marla house in her favour. Whereas respondent in her plaint has taken the stance contrary to entries in 'Nikah Nama' by alleging that her 'Haq-ul-Mehr' was 10-Marla house. No reason whatsoever has been pleaded in the plaint or assigned during evidence of respondent for mentioning 5-Marla house as Haq-ul-Mehr instead of 10-Marla house in 'Nikah Nama'. Worth mentioning that 'Nikah' of the spouses was solemnized in year 1998. It is settled law that the presumption of truth is attached to the entries in

“*Nikah Nama*” being a public document. As per respondent’s own case, she has not assailed the “alleged” incorrect entries of “*Nikah Nama*” before Deputy Commissioner concerned or custodian of ‘Nikah Register’ or any other competent forum. Similarly the petitioner has also not challenged these entries before any competent forum as per law. It means that plea of the parties to the lis that entries in “*Nikah Nama*” are not correct is without any foundation. In case reported as ‘Jan Muhammad Versus Mst. Salamat Bibi and others’ (2002 SCMR 1408), ‘Abdul Malik and others Versus Mst. Subbha Mai alias Sabbah Mai’ (2016 MLD 925 Lahore) and ‘Mst. Nabeela Shaheen and others Versus Zia Wazeer Bhatti and others’ (PLD 2015 Lahore 88) it has been laid down that ‘Nikah Nama’ is public document and presumption of truth is attached to the entries made therein. As such the version of respondent contrary to ‘Nikah Nama’ regarding claimed ‘Haq-ul-Mehr’ is not entertainable.

9. The careful examination and scrutiny of above evidence leads me to conclude that the judgments of learned Courts below are patently based on mis-reading and non-reading of evidence. It is well settled that men can but documents cannot tell a lie. It is also one of the cardinal principles of appreciation of evidence that when there is conflict in oral and documentary evidence, the latter (documentary evidence) shall be preferred. While dealing with similar proposition, the Hon’ble Supreme Court of Pakistan in case Sher Muhammad and others Versus Muhamad Khalid and others’ (2004 SCMR 826) observed as under:-

*“The concurrent findings of the said learned Courts are based on the overwhelming documentary evidence available on record. Both the Courts were one in holding, and rightly so, that oral evidence which was contrary to the documentary evidence could not be given preference over the said documentary evidence. The only two entries i.e. relating to Rabi 1973 and Kharif 1973 which stood in favour of the petitioner-plaintiff were directed to be removed by the Collector of the District on an appeal filed before him. He had further ordered that the entries as they existed in Rabi*

*1972 should be restored. This order of the Collector was maintained in the second appeal filed by the petitioner before the Additional Commissioner of Sargodha who had dismissed the said appeal through an order dated 13-6-1979. In this view of the matter, the Honourable High Court and the learned Appellate Court were justified in holding that the oral evidence offered by the petitioner-plaintiff which was not supported by the strong documentary evidence available on record, could not be given any credit. The concurrent conclusions reached and the reasons offered therefore could not be said to be based either on misreading or non-reading of evidence". (emphasis supplied)*

Reliance is also placed on case 'Shamshad Versus Arif Ashraf Khan and others' (2010 SCMR 473). Whereas the learned Courts below have not properly scanned the evidence, and thus have violated/trampled the settled principles for appreciation of evidence and have failed to scrutinize the evidence as per law. The failure on the parts of Courts below has resulted in miscarriage of justice. In case "Saqib Pal vs. Mst. Beenish Khushnud and others" (2017 YLR 252 Lahore), this Court has observed that as a general rule appraisal of evidence was the function of courts below and if the findings of courts below were based on proper appraisal of evidence, the same could not be interfered with by the High Court in its constitutional jurisdiction. However, if there was gross mis-reading, non-reading of evidence or jurisdictional defect flouting on the surface of the record, High Court was justified to interfere with under its constitutional jurisdiction to undo injustice.

10. Consequently, the instant writ petition is allowed. The impugned judgments and decrees are modified in the terms that suit of respondent for recovery of dower 5-Marla house with necessary amenities or in alternate its market price, to be determined by the learned executing Court, stands decreed, whereas the remaining claim of respondent for 5-Marla residential house being contrary to terms and conditions of 'Nikah Nama' stands dismissed. The order of this Court be conveyed to the presiding officers of both the Courts below for guidance and expectation that in future they will exercise their judicial

powers, a trust reposed by the state in their favour strictly in accordance with law, rules, equity and conscience considering themselves answerable to Allah Almighty.

**(Mujahid Mustaqeem Ahmed)**  
**Judge**

**Approved for reporting.**

**Judge**

**\*Shahzad Ahmad Nasir\***