Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 21 of 2022

[Muhammad Fareed vs. Mst. Uzma Sartaj & another]

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Appellant	Through Mr. Shamim Akhtar, Advocate.
Respondent	Through Mr. Imtiaz Ali Effendi, Advocate
Date of Hg.	22.08.2025
Date of Order	22.08.2025

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ARSHAD HUSSAIN KHAN, J. The appellant through instant second appeal has challenged the concurrent findings of the two courts below and has sought the relief as follows:

a) That this Court be pleased to allow this appeal and set-aside the order dated 01-11-2021, passed by the learned Ist Appellate Court in Civil Appeal No.141/2021.

b) That this Court be pleased to set-aside the impugned Judgment & Decree dated 01-04-2021, passed by the Learned IIIrd Senior Civil Judge Karachi Central in Civil Suit No.1236/2018 and restore the same after hearing and evidences of the parties for just decision of the suit on merits, in the larger interest of justice.

c) That this Court be pleased to suspend the operation of Order dated 01-11-2021, passed by the learned Ist Appellate Court and also to suspend the operation of Judgment & Decree passed in Civil Suit No.1236/2018 by the Learned IIIrd Sr. Civil Judge, at Karachi Central, as the both the courts below have imposed penalty upon the appellants to the extent of Rs.10,000/-.

d) To call R & P of the Suit No.1236/2018 from the Court of IIIrd Sr. Civil Judge at Karachi Central for kind perusal of this Appellate Forum.

e) Any other relief or reliefs which this Court may deem fit & proper in the circumstances of the case.

2. Learned counsel for the appellant has argued that the impugned judgments are perverse, arbitrary, and the result of non-reading and misreading of the material facts and evidence available on the record. It is submitted that the penalty of Rs.10,000/- imposed by the learned trial court is unjust, unfair, and contrary to the principles of sound administration of justice. Counsel contends that the learned trial court rendered its judgment in an undue haste and failed to cite or rely upon any provision of law while dismissing the appellant’s suit. Such a

dismissal, being devoid of cogent reasoning and legal foundation, is liable to be set aside. It is further argued that respondent No.1 unlawfully took possession of the appellant's belongings, including original documents [CAA Card, Medical Card, CNIC, Educational Certificates], golden ornaments belonging to the appellant's sister, eight prize bonds of Rs.40,000/- each, a cash amount of Rs.26,000/-, and a mobile phone. The total value of the said articles amounts to Rs.7,03,000/-, while other articles are valued at Rs.3,88,500/-. The learned counsel submits that all these facts stand corroborated by documentary evidence duly produced before the learned trial court in the plaint. However, the trial court, as well as the appellate court, failed to appreciate such evidence and ignored the material illegality and irregularity committed in the proceedings. Lastly, learned counsel has contended that both the impugned judgments, being contrary to law, facts, and evidence on record, are liable to be set aside in the interest of justice.

3. On the other hand, learned counsel for the respondent remained called absent.

4. Heard learned counsel for the appellant and perused the material available on the record.

Concisely, the appellant's case is that he entered into marriage with respondent No.1 on 06.01.2017, against a dower amount of Rs.200,000/-, which was duly paid on the very night of the marriage. Thereafter, upon the demand of his in-laws, the appellant shifted his residence to Liaquatabad, in close proximity to their house, and transferred thereto all his valuable articles, original documents, and the gold ornaments belonging to his sister from his former residence. After the lapse of four months from the marriage, the respondent No.1 began demanding divorce from the appellant, as respondent No.1 was allegedly interested only in the appellant's service benefits and golden handshake amount. On 22.05.2017, when the appellant attempted to change his residence, respondent No.1, along with her family members, allegedly assaulted him and unlawfully took possession of all his belongings, including the gold ornaments of his sister, original documents [including CNIC, service card, and academic certificates], cash amount, prize bonds, and other valuables. Subsequently, the

appellant executed a divorce deed in favour of respondent No.1 and also lodged complaints before the concerned SHO and other higher police authorities. Thereafter, respondent No.1 instituted a family case for recovery of dower and dowry articles, and, pursuant to the orders of the family court, she obtained possession of her articles. Subsequently, the appellant/plaintiff instituted suit bearing No.1236/2018 against the respondent/defendant for recovery of his original documents, gold ornaments, and personal articles valued at Rs.703,000/-, as well as articles of *Bari* amounting to Rs.388,500/-, with the following prayers:

a) To direct the defendant to return entire articles of plaintiff valued Rs.7,03,000/-, gold ornaments of plaintiff so also his sister's gold ornaments & in lieu thereof to pay the cost of the same as per list.

b) To direct the defendant to return the articles of Bari valued Rs.3,88,500/= to the plaintiff, or in lieu thereof to pay the cost of the same.

c) To direct the defendant to immediately hand original documents consisting of original CAA Card, medical card, CNIC, certificate of SSC, Intermediate, BA degree of plaintiff to him.

d) To direct the defendant, her mother and her brothers not harass the plaintiff with dire consequences.

e) Cost of the suit.

f) Any other further relief (s), which this Hon'ble Court may deem fit and proper under the circumstances of the case.

5. Before the learned trial court, the respondent/defendant filed her written statement wherein she categorically denied the allegations levelled against her in the plaint. It was contended that the suit was nothing but a counterblast to the family suit earlier instituted by the defendant, which stood decreed, whereby the plaintiff was directed to pay Rs.200,000/- towards dower. It was further pleaded that the appellant/plaintiff's first wife had already removed all the articles of the plaintiff from the rented premises, and that the plaintiff had managed to procure false receipts of gold. The defendant, therefore, prayed for dismissal of the suit with costs. Thereafter, issues were duly framed and evidence of both the parties was recorded. In support of his case, the appellant/plaintiff, through his affidavit-in-evidence, produced a receipt of Hamza Jewellers dated 17.01.2013, exhibited as Exh. P/2. Conversely, the attorney of the respondent/defendant filed his affidavit-in-evidence. Both the plaintiff and the defendant were subjected to

cross-examination by their respective learned counsel. Upon conclusion of the proceedings and after hearing learned counsel for the parties, the suit of the appellant/plaintiff was dismissed through the impugned judgment dated 01.04.2021, rendered by the learned IIIrd Senior Civil Judge, Karachi [Central].

6. The aforesaid judgment and decree of the trial court were challenged before the Additional District Judge-IV, Karachi [Central] in Civil Appeal No.141 of 2021, which was also dismissed; the judgment and the decree of the trial court were maintained, vide order of the appellate court dated **01.11.2021**, the appellate court while dismissing the appeal has observed as follows:

> "I am of the view that the learned trial court has not committed any error in holding that the plaintiff / appellant is not entitled for the relief claimed. Hence, I am of the view that judgment & decree dated 01-04-2021, do not require interference, the same are upheld, consequently, the appeal of the appellant is dismissed with cost of Rs.10,000/- to be deposited by the appellant / plaintiff with the Nazir of this Court within 15 days of this judgment. Instant civil appeal stands disposed of in the above terms."

The appellant has challenged the above concurrent findings in the present appeal.

7. From a perusal of the judgment rendered by the learned trial Court, it appears that the Court, while recording its findings, observed that the suit was maintainable. The appellant/plaintiff deposed that the respondent/defendant had taken away certain jewelry articles, including a golden chain, tops, and one golden biscuit. However, he failed to recollect the exact weight of the golden biscuit. He further denied, albeit incorrectly, that he had not mentioned anything regarding the golden biscuit in his plaint. Similarly, he also denied, without justification, that he had not produced the receipt of the golden biscuit along with his affidavit-in-evidence. In the course of his testimony, he admitted that the receipt exhibited as Exh. P/2 contained no reference to the golden biscuit. The contradictions and admissions surfacing in the testimony of the appellant/plaintiff were sufficient to cast serious doubt on the credibility of his evidence. Moreover, the appellant/plaintiff failed to adduce any other cogent evidence in support of his claim. The trial court further observed that even if the appellant/plaintiff had given jewelry to the respondent/defendant at the time of marriage, the same would be treated as bridal gifts, which under

settled law are not returnable. It is also a matter of record that the respondent/defendant, Mst. Uzma Sartaj, had earlier instituted Family Suit No. 834/2014 before the learned XIVth Family Judge, Karachi [Central], seeking dissolution of marriage by way of *Khula*, as well as recovery of maintenance and dowry articles. The said suit was decreed *ex parte* vide judgment and decree dated 29.11.2014. The appeal arising therefrom, bearing No. 15 of 2016, filed by the present appellant Muhammad Fareed, was dismissed on 19.05.2016. In Execution Proceedings No. 28/2015, the respondent, Mst. Uzma Sartaj, obtained possession of her dowry articles. These facts were duly admitted by the appellant/plaintiff during his cross-examination. In view of the above, the learned trial Court, while properly appreciating the evidence on the record, rightly concluded that the appellant/plaintiff was not entitled to the reliefs claimed. Accordingly, the suit of the appellant/plaintiff was dismissed through the impugned judgment dated 01.04.2021.

8. Whereas, the learned appellate court, while passing the impugned judgment, categorically recorded its findings that the appellant had failed to produce any cogent evidence in support of his claim for articles valued at Rs. 703,000/-. No witness was examined by the appellant to substantiate such claim. The appellant miserably failed to establish his entitlement before the learned trial court either through documentary or oral evidence. It is further observed that the grounds raised in the instant civil appeal stand in contradiction to the facts earlier pleaded in the suit filed by the appellant. The findings of the learned trial court on each and every issue are clear, reasoned, and strictly in accordance with law. I, therefore, find no legal infirmity or jurisdictional error in the impugned judgment of the trial court. The learned appellate court, upon an independent reappraisal of the material available on record, rightly found no error of misreading or non-reading of evidence on the part of the trial court. Accordingly, it upheld the judgment and decree of the trial court through a well-reasoned decision dated 01.11.2021. Upon perusal of both impugned judgments, it is manifest that the courts below have thoroughly examined the plaint, properly appreciated the evidence, and applied the correct legal principles and reached a concurrent findings.

9. It is a well-settled principle of law that concurrent findings of fact recorded by the courts below cannot be interfered with by the High Court in second appeal, unless it is demonstrated that such findings are vitiated by misreading of evidence, non-consideration of material evidence, or any other manifest illegality.[1] The concurrent findings rendered by the learned courts below are entitled to deference, and in the absence of any jurisdictional defect, legal infirmity, or misapprehension of evidence, which are conspicuously absent in the present case, such findings cannot be disturbed. The learned counsel for the appellants has also failed to point out any material irregularity in this regard.

10. Besides, it is pertinent to note that the instant matter has been brought before this Court in the form of a second appeal under Section 100, Code of Civil Procedure, 1908. The scope of such jurisdiction is strictly circumscribed and can only be invoked on any of the following grounds:

(a) where the decision is contrary to law or a usage having the force of law;

(b) where the court below has failed to determine a material issue of law or a usage having the force of law; or

(c) where there is a substantial error or defect in the procedure prescribed by the CPC or any other law for the time being in force, which may have resulted in an erroneous or defective decision on the merits.

However, none of the above conditions are attracted in the present case.

11. The Supreme Court of Pakistan in the case of *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006] while interpreting the scope and ambit of section 100 of the CPC has observed as follows :

> "The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a

[1] *Keramat Ali and another v. Muhammad Yunus Haji and another* [PLD 1963 SC 191], *Phatana v. Mst. Wasai and another* [PLD 1965 SC 134] and *Haji Muhammad Din v. Malik Muhammad Abdullah* [PLD 1994 SC 291].

> jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already chocked with high pendency of cases".

12. In another case viz. *Muzafar Iqbal vs. Mst. Riffat Parveen and others*, [2023 SCMR 1652] the Supreme Court of Pakistan while dilating upon the scope of second appeal, inter alia, has held as under :

> "There is a marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under section 100, C.P.C., the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat confined to the questions of law which is sine qua non for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court".

13. It may be observed that the Legislature, by circumscribing the scope of a second appeal under Section 100, C.P.C., intended to secure the finality of litigation and to discourage repeated challenges premised merely on questions of fact. Interference with concurrent findings of fact, in the absence of jurisdictional error or a substantial question of law, would not only transgress the statutory boundaries but also frustrate the very object of expeditious and effective dispensation of justice. The High Court, while exercising its jurisdiction under Section 100, C.P.C., is therefore required to exercise caution and restraint, as it cannot assume the role of a fact-finding forum.

Accordingly, in view of the above discussion, this second appeal is **dismissed** being devoid of any merit.

JUDGE

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