

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitution Petition No.S-231 of 2025
(Mst. Kiran Memon Vs. Sajjad Ahmed and others)

Petitioner: Mst. Kiran, daughter of Late Haji Shamsuddin, *through* Mr. Abdul Rehman A. Bhutto, Advocate.

Respondent-1: Sajjad Ahmed, son of Late Imdad Ali Memon, *Through*, Mr. Irfan Ahmed Memon.

Respondent- 2 to 4: The Learned Family Judge Shikarpur and Others, *through* Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of hearing: 28.08.2026.

Date of Order: 28.08.2026.

ORDER

Ali Haider 'Ada', J:-, Through this petition, the petitioner has challenged the judgment dated 14.06.2025 and decree dated 17.06.2025, passed by the learned Additional District Judge-V, Shikarpur, (Appellate Court) in Family Appeal No.05 of 2025, whereby the learned appellate Court set aside the judgment and decree dated 01.03.2025 passed by the learned Family Judge, Shikarpur, in favour of the petitioner. Being aggrieved by the said judgment and decree of the appellate Court, the petitioner has assailed the same through the instant petition.

2. The brief facts, as emerging from the record, are that the petitioner instituted a family suit before the learned Family Court seeking dissolution of marriage and return of dowry articles, including 11 tolas of gold ornaments. In support of her claim, the petitioner produced a list and receipts relating to the gold ornaments. The respondent, in his written statement, denied the allegations and disputed the claim regarding the gold ornaments being in his possession. The marriage between the parties was dissolved; thereafter, the learned Family Court framed issues on 28.10.2023.

3. After framing of the issues, the petitioner entered the witness-box and recorded her statement. She also examined her brothers, the Union Counsellor, one Sarfraz Khan, a neighbour, and a goldsmith in support of her claim. In rebuttal, the respondent examined himself and produced his cousin Muhammad Yasir alias Bilal as well as another cousin, namely, Furqan, as defence witnesses.

4. Upon conclusion of the evidence and after hearing the parties, the learned Family Court passed judgment dated 01.03.2025, whereby the family suit was decreed in favour of the petitioner and the respondent was directed to return the 11 tolas of gold ornaments.

5. The said judgment and decree were assailed by the respondent before the learned appellate Court. The learned Additional District Judge-V, Shikarpur, vide impugned judgment dated 14.06.2025, allowed the appeal, set aside the judgment and decree of the learned Family Court and consequently dismissed the claim of the petitioner.

6. Learned counsel for the petitioner contended that the learned appellate Court failed to properly appreciate the material available on record and, without advertting to the evidence led by the parties, passed the impugned judgment, which is not sustainable in law. According to learned counsel, the petitioner had duly established her claim through both oral and documentary evidence, whereas the learned appellate Court, without properly determining the points arising from the evidence and without assigning cogent reasons for discarding the findings of the learned Family Court, interfered with a well-reasoned and speaking judgment. It is further contended that the impugned judgment suffers from misreading and non-reading of material evidence. Learned counsel, therefore, prayed that the impugned judgment and decree passed by the learned appellate Court be set aside and the judgment and decree of the learned Family Court be restored.

7. Conversely, learned counsel appearing for respondent No.1 supported the impugned judgment and submitted that the learned appellate Court had rightly appreciated the evidence and identified material deficiencies in the petitioner's case. According to learned counsel, the learned Family Court had misread the evidence while decreeing the suit, whereas the learned appellate Court properly considered the deficiencies in the evidence and, after assigning reasons, rightly set aside the judgment and decree of the learned Family Court. He, therefore, prayed for dismissal of the instant petition.

8. Learned Assistant Advocate General, supported the judgment of the learned Family Court and submitted that its findings were based upon proper appreciation of the evidence available on record. He further contended that the suggestions put to the petitioner during cross-examination were material, particularly the suggestion that the gold ornaments weighing approximately 11 tolas, which were allegedly given at the time of marriage, remained in the possession of respondent No.1's family. According to him, such material aspect of the evidence could not have been ignored by the learned appellate Court while deciding the appeal. He, therefore, supported the judgment and decree passed by the learned Family Court.

9. Heard learned counsel for the parties and perused the record with their assistance.

10. Upon perusal of the record, it transpires that no further question was put to the petitioner/wife in cross-examination with regard to her assertion made in examination-in-chief that the dowry articles, including the gold ornaments, remained in the possession of respondent No.1. Such assertion, having not been specifically controverted in cross-examination, remained unrebutted and, therefore, could not be discarded without assigning cogent reasons. It is settled that where a material assertion made by a witness in examination-in-chief is not specifically challenged in cross-

examination, the same may be treated as having remained unchallenged. Reliance in this regard is placed upon **Muhammad Naeem v. Additional District Judge (2021 YLR 108)**.

11. It is further evident from the proceedings that the receipts pertaining to the gold jewellery were produced and exhibited in evidence, while the goldsmith was also examined by the learned trial Court, who supported and corroborated the petitioner's claim. The objection raised regarding the dates appearing on the receipts, to the effect that the same were prepared prior to the date of solemnization of the marriage, does not appear to be sufficient to discard the petitioner's claim. The record reflects that the marriage was solemnized in the year 2016, whereas the receipts pertaining to the gold ornaments were prepared prior thereto. The mere fact that the ornaments were purchased before the marriage does not, by itself, render the receipts doubtful or unreliable, particularly when it is not unusual for parents or family members to purchase gold ornaments in anticipation of an upcoming marriage. Thus, the said objection, in the peculiar facts of the case, could not validly constitute a ground for disbelieving the documentary evidence, particularly when the same stood corroborated through the testimony of the goldsmith. Reliance in this regard may be placed upon **Behzad Hussain v. Bibi Ansa and 2 others (2023 CLC 143)**.

12. It is also well settled that constitutional jurisdiction is an extraordinary jurisdiction, and a High Court, while exercising such jurisdiction, ordinarily cannot substitute its own assessment of evidence for that of the trial Court merely because another view is possible. The appraisal of evidence primarily falls within the domain of the trial Court. However, where the findings recorded by a subordinate Court are shown to be the result of gross misreading or non-reading of material evidence, are inconsistent with the testimony of other witnesses, or are otherwise shocking, perverse or contrary to the pleadings and material available on record, interference may be warranted. In the present case, however, the learned appellate Court, while reversing the findings of the learned

trial Court, has not pointed out any such material discrepancy, perversity or misreading of evidence warranting interference with the findings of the trial Court. Rather, the impugned judgment does not demonstrate proper determination of the material points arising from the issues and evidence led by the parties.

13. In view of the foregoing discussion and the facts and circumstances of the case, the impugned judgment passed by the learned appellate Court, without properly determining the material points arising from the issues and without assigning cogent reasons for discarding the evidence relied upon by the learned trial Court, cannot be sustained. Consequently, the instant petition is allowed. The impugned judgment dated 14.06.2025 and decree dated 17.06.2025, passed by the learned Additional District Judge-V, Shikarpur, in Family Appeal No.05 of 2025, are hereby set aside. Consequently, the judgment and decree dated 01.03.2025, passed by the learned Family Judge, Shikarpur, in Family Suit No.117 of 2023, are restored and maintained.

JUDGE