

# **HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

## **Constitution Petition No. 3-502 of 2022**

[Asif Ali Vs. Mst. Asma]

Mr. Jahangir Khan Pathan, advocate for petitioner.

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Date of hearing & order: 14.11.2022.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through instant constitutional petition, the petitioner challenges the legality of Judgment dated 28.04.2022 & Decree dated 06.05.2022 passed by learned District Judge / MCAC, Tando Allahyar in Family Appeal No.22 of 2021, whereby the learned Judge while dismissing the appeal maintained the Judgment dated 30.11.2020 passed by Civil Judge & Family Judge-IV, Tando Allahyar in Family Suit No. 43 of 2020 decreeing the suit filed by respondent for recovery of dower, dowry articles and gold ornaments.

2. I have heard learned counsel for the petitioner and have also gone through the impugned judgments of both the Courts below.

3. It appears from the record that the marriage of petitioner and respondent was solemnized on 27.11.2005 against Haq Mehar of Rs.1000/- same is stated to be still unpaid; that at the time of rukhsati the respondent was given gold ornaments amounting to Rs.180,000/- and other valuable dowry articles worth of Rs.800,000/- by her parents and cash amount given in Salami Rs.40,000/- which are lying at the house of petitioner; that out of wedlock three children were born; that subsequently she was ousted by the petitioner from his house; therefore, she resided at her parent's house and she was not paid even maintenance; as such, she filed the above family suit which was decreed; the family appeal preferred against the above Decree was also dismissed by the Judgment dated 28.04.2022 and Decree dated 06.05.2022; hence the instant petition.

4. Learned counsel for the petitioner argued that learned Appellate as well as Trial Courts did not apply judicial mind at the time of passing impugned judgments & decrees as evidence adduced by respondent was contradictory to her plaint; that both the Courts below ignored the evidence of petitioner side thereby committed mis-reading and non-reading of evidence; that learned Trial Court even did not frame issue in respect of cause of action accrued to the respondent or not and this aspect of the case was ignored by learned Appellate Court, therefore, he prays for allowing

instant constitutional petition by setting-aside the impugned Judgments of Courts below.

5. None present on behalf of respondent though notice was issued; however, she has chosen to remain absent.

6. From the perusal of record, it appears that through present petition the petitioner has sought reappraisal of evidence to arrive at a conclusion other than what has been arrived at, concurrently, by the two Courts below. It is settled proposition of law that where there are concurrent findings of facts recorded by the Courts below against, this Court under its constitutional jurisdiction cannot reappraise the entire evidence, as such, jurisdiction besides being discretionary is very limited and not plenary. Furthermore, the powers of High Court in constitutional jurisdiction are not analogous to those of an Appellate Court. High Court in its extraordinary jurisdiction can neither substitute the finding of fact recorded by the Family Court nor give its opinion about adequacy or quality of evidence. Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, can only be exercised if the lower Court has exceeded its jurisdiction or acted without jurisdiction. When a Court possesses jurisdiction, the finding of fact recorded by it cannot be disturbed merely on the ground that another view is possible on the same evidence unless that finding is based on no evidence, is fanciful or arbitrary.

7. Appraisal of evidence, assessment of its evidentiary value, drawing of inference therefrom and determining the issue of recovery and ancillary issues including the question of the amount of maintenance is the function of Family Court, which is vested with exclusive jurisdiction to decide such matters. In exercise of extraordinary jurisdiction under Article 199 of the Constitution, this Court even cannot correct the errors of facts committed by the subordinate Court during proceeding of Family Case, and for that purpose adequate mechanism has already been provided by relevant law by way of appeal, and that appropriate remedy has already been availed by the petitioner and the controversy must come to an end.

8. The upshot of the above is that in the instant case the two Courts below have given concurrent findings of facts against the petitioner, against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such finding could be termed as perverse or having a jurisdictional defect or based on a misreading of fact. In the circumstances, no case for interference is made out; hence the present constitutional petition is dismissed.

**JUDGE**