IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.S-242 of 2021

Petitioner:	Dur Muhammad, through Mr. Sohail Ahmed Khoso, Advocate
Respondent No.1:	Mst. Sameena Khatoon, through Mr. Ghulam Murtaza Korai, Advocate
Respondent No.2:	Nemo
Date of hearing:	05.12.2022
Date of decision:	12.12.2022

O R D E R

KHADIM HUSSAIN TUNIO, J.- Through instant petition, the petitioner has impugned the judgment dated 14.09.2021 and decree dated 16.09.2021, passed by the learned District Judge (MCAC), Khairpur in Family Appeal No.50 of 2019, ***(Re-Mst. Sameena Khatoon v/s Dur Muhammad)*** whereby the learned appellate court allowed the appeal filed by the respondent No.1 and set-aside the judgment dated 19.11.2019 and decree dated 21.11.2019, passed by the learned Family Judge, Kingri in Family Suit No.36/2019 ***(Re-Mst. Sameena Khatoon v/s Dur Muhammad),*** and decreed the suit of the respondent No.1 to the extent of dower.

2. Precisely, facts of the instant petition are that the respondent No.1 Mst. Sameena Khatoon had filed a suit for Recovery of Dower Land against her husband petitioner Dur Muhammad with the prayer that the petitioner be directed to pay the dower property i.e one Jireb land, mentioned in column No.16 of the Nikahnama, which was dismissed. Against dismissal of her suit the

respondent No.1 filed appeal No.50/2019 which was allowed by the learned District Judge (MCAC), Khairpur, judgment passed by the family court was set-aside and suit of the respondent No.1 was decreed to the extent of dower, hence present constitutional petition.

3. Learned counsel for the petitioner contended that the impugned judgment and decree passed by the appellate court is much against the law and facts, which has been passed without applying its judicious mind only on presumption and assumption; that the impugned judgment and decree is result of misreading and non-reading of evidence adduced by the parties; that prior to the present suit 36/2019 respondent No.1 had filed a suit No.33/2018 for recovery of dower and maintenance amount which was decreed by way of compromised judgment and decree dated 18.08.2018 and the Haq Mahar amount Rs.15000/- mentioned in column No.13 of the Nikahnama was paid to respondent No.1 as per compromised decree dated 18.08.2018 but such facts has been concealed by the respondent No.1 in the present suit No.36/2019; that the impugned judgment and decree passed by the learned appellate court is liable to be set-aside. He in support of his contentions placed reliance on the cases of *Muhammad Akram v. Mst. Hajra Bibi and 2 others (PLD 2007 Lahore 515), Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 Supreme Court 260) and Dr. Asma Ali v. Masood Sajjad and others (PLD 2011 Supreme Court 221).*

4. On the other hand learned counsel for the respondent No.1 supported the impugned judgment and decree contending that the judgment passed by the appellate court is well reasoned and there is no case of misreading or non-reading of the evidence; that the

impugned judgment is legal and does not require any interference by this Court.

5. I have heard the learned counsel for the respective parties and perused the record available before me.

6. An exhaustive perusal of the orders of the learned two Courts below show that the learned Appellate Court has considered all the relevant aspects of the matter while keeping the rights of an estranged wife in mind. As far as the claim of the petitioner that respondent No.1 is not entitled to claim possession of the 1 jareb land is concerned, despite having come to an agreement through compromise deed, it could not be said that the haq-mehar had been paid off or satisfied in its entirety. In column No. 13 of the Nikahnama, an amount of Rs.15,000/- was fixed which was paid through the compromise decree, however in column No. 16 of the Nikahnama, it was noted that one jareb land was given to the respondent No.1 in lieu of the marriage. At this point, learned counsel for the petitioner cited case law with respect to any conditions set for this in Column No.17 which is distinguishable in this case considering that Colum No.17 was empty and the only general condition was the marriage of the parties. The petitioner even admitted in his cross-examination that *"It is correct that land 1 jireb is written as Haq Mahar, but written in terms and conditions..."*. He further admitted that this was written down in the Nikahnama with his consent. The use of the word "Aiwzo" would require interpretation in terms of the maxim *noscitur a sociis*; a word is known by the company it keeps. The fact that this land was mentioned in Column No.16 which is for *haq mahar* and no pre-condition was attached along with it suggests that this land was given to the wife as Haq Mahar; marriage is a

contract and this land along with Rs.15,000/- was consideration for that marriage. It appears from the intention of the parties inferred from the Nikahnama and the fact that the petitioner had just married a third time that this was also an insurance for the parents of the respondent No.1 in case the petitioner was to oust or mistreat her which happened and as such entitled the respondent No.1 to the possession of the 1 jireb land. Learned Appellate Court has correctly interpreted the meaning of aiwzo and decreed the suit of the respondent No.1. The learned Lahore High Court at its Multan Bench, in a similar case reported as ***Muhammad Nadeem v. Additional District Judge, Multan and others (2018 CLC Note 108)*** had also upheld the judgment and decree of suit in favour of wife for the possession of land noted in Colum No.16 as Haq Mahar.

7. High Court in its extraordinary jurisdiction can neither substitute findings of facts recorded by Courts below, nor give its opinion regarding quality or adequacy of the evidence. The assessment and appraisal of evidence is the function of the Family Court, which is vested with exclusive jurisdiction in this regard. Reliance in this regard is placed upon the case of ***Abdul Rehman Bajwa v. Sultan and 9 others (PLD 1981 SC 522), Perveen Umar and others v. Sardar Hussain and others (2003 YLR 3097), Muhammad Ashiq v. Additional District Judge Okara (2003 CLC 400) and Aqil Zaman v. Mst. Azad Bibi and others (2003 CLC 702)***. Furthermore when a factual controversy had been settled by the courts below, unless and until there were compelling reasons shown for mis-reading and non-reading of evidence in the said order passed by any court below or there was a visible

irregularity while deciding the same, this Court cannot interfere with that finding.

8. For what has been discussed above, instant petition being meritless is dismissed. Office is directed to immediately send back the R & Ps of Family Appeal No.50/2019 to the learned appellate court.

J U D G E