

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P-S No.197 of 2022
[Sajjad Hussain Bhatti v. Mst. Quratulain Zehra Memon and 2 others]

Date	Order With Signature Of Judge
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- 1.For order on CMA No.7638/24
- 2.For order on CMA No.7639/24
- 3.For hg of CMA No.1287/22
- 4.For hg of main case

28.08.2024.

Mr. G.M. Dars, advocate for the petitioner.
M/s. Abdullah Narejo and Abdul Nabi Joyo, advocates
for respondent No. 1.

MUHAMMAD IQBAL KALHORO, J:- Respondent No. 1 filed a family suit for dissolution of marriage and recovery of dowry articles against petitioner. The petitioner after being summoned filed a written reply denying the claim of respondent No. 1 in respect of dowry articles. He stated that the marriage took place in Pir Jo Goth, District Khairpur Mirs where the parties originally reside, and that they lived there only for 4/5 days after marriage, thereafter since the petitioner was posted in Islamabad, they went to Islamabad and hence, no dowry articles were shifted to the house of petitioner situated in Pir Jo Goth in expectation that after having been permanently settled in Islamabad, the same, if any, would be shifted there.

2. In support of her case, the plaintiff/respondent No. 1 examined herself, her mother and brother, who supported her claim that after the marriage all dowry articles including gold ornaments were shifted to the house of the petitioner in Pir Jo Goth and respondent No. 1, since had been working as a Women Medical Officer in Karachi, had gone to

Islamabad for a short period until her earned leave expired. In the evidence, all the witnesses supported her claim that dowry articles are in possession of petitioner having been shifted to his house at the time of marriage.

3. Whereas, from the side of petitioner, he examined himself and his two brothers in support of his case viz. the dowry articles were not shifted to his house in Pir Jo Goth, as the parties had gone there only for holding marriage ceremony.

4. The learned trial Court after appreciating the evidence, decreed the suit in favour of respondent No. 1 dissolving her marriage and directing the petitioner to return the dowry articles , the receipts of which, she had produced in the evidence. The petitioner challenged the same in Family Appeal No.251/2021 in the Court of VIIIth Additional District Judge, Karachi-East, who has decided the appeal through impugned judgment dated 15.02.2022 dismissing the case of petitioner about his denial regarding shifting of dowry articles in his house in Pir Jo Goth. Hence, this petition.

5. Learned counsel for the petitioner has contended that both the judgments are based on presumptions and hypothesis. Respondent No. 1 has failed to produce any cogent evidence to prove that dowry articles were shifted in the house of the petitioner in Pir Jo Goth. The parties had resided in Pir Jo Goth only for four days and thereafter had gone to Islamabad, the place of posting of petitioner, where respondent No. 1 resided only for one week and returned to Karachi and filed the suit. Since the parties had gone to Pir Jo Goth only for marriage ceremony, the dowry articles, if any, were not shifted to his house there.

6. On the other hand, learned counsel for respondent No. 1 has supported the impugned judgment.

7. I have heard the learned counsel for the parties and perused the material available on record. There are concurrent findings of facts

against the petitioner given by both the forums below. No doubt, such findings are not sacrosanct and can be set aside when the material and record show that the concurrent findings are a result of mis-appreciation or non-appreciation of evidence. However, in the present case, learned counsel for the petitioner has failed to point out any illegality committed by the Courts below in appreciating the evidence led by the plaintiff. His argument, that since the parties went to Pir Jo Goth for holding only marriage ceremony, the dowry articles were not shifted there, is itself based on hypothesis as no tenable evidence in this regard has been adduced by him. In addition, such argument even does not appeal to the common sense because the dowry articles are traditionally shifted to the house of bridegroom before the actual ceremony of marriage.

8. It is an admitted position that respondent No. 1 was a Women Medical Officer and was posted in Karachi. In that context, the argument of learned counsel for the petitioner that the dowry articles, if any, were supposed to be shifted to Islamabad appears to be baseless. As in that situation, respondent No. 1 cannot be understood to have any plan of shifting to Islamabad. The residence of the parties at Pir Jo Goth was permanent, and shifting of dowry articles there without any reason showing contrary proposition is but a foregone conclusion.

9. Further, I have perused the judgments of both the forums below, they have discussed the entire evidence led by the parties in proper context and have come to a conclusion thereby dismissing the case of the petitioner that he did not have any dowry articles of the plaintiff/respondent No.1 in his possession. In Constitution jurisdiction, reappraisal of evidence just because another view is possible, is not permissible. When it has not been indicated that there is any apparent illegality in appreciating the evidence by both the Courts below, the High Court will not rush to substitute its view for the findings recorded by the courts

below, unless it is shown from the record that some ostensible illegality has been committed. Since in the present case, the petitioner has failed to point out any illegality in the findings of both Courts below, I do not find any merit in this Constitution Petition, which is accordingly dismissed along with pending applications.

The petition is accordingly disposed of.

J U D G E

HANIF