

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD
C.P. No. S-1374 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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Hearing / Priority case.

1. For hearing of MA No. 5842 of 2021.
2. For hearing of Main case.

Date of hearing: 06th November, 2023.

Date of order: 06th February, 2024.

Mr. Mamoon A.K. Shirwany, Advocate for the petitioner.

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KAUSAR SULTANA HUSSAIN, J:- This petition assails the concurrent findings of the learned trial Court dated 21.10.2011 as well as first appellate Court dated 15.03.2010.

2. Precisely the facts necessary for the adjudication of instant petition are that the respondent No.1 / plaintiff filed a suit No. 1518 of 2008 for recovery of dowry articles against the petitioner / defendant before the learned Family Court No. XIIIth, East Karachi/respondent No.2. The petitioner, being the defendant had filed his written statement, both parties after unsuccessful pre-trial proceedings led their respective evidence through filing their affidavit in evidence then they were duly cross-examined by the learned counsel for the parties. The respondent No.1 / plaintiff had also produced her mother as witness. The learned trial Court after hearing arguments of both the side had decreed the suit of the respondent No.1 / plaintiff to the extent of those items of jewelry which purchasing receipts were produced before the learned trial Court by the respondent No.1 / plaintiff, while leading her evidence. The learned first appellate Court did not interfere in the findings of the learned trial Court and upheld its judgment and decree, hence the instant petition. Per plaint parties marriage was solemnized on 15.06.2007 against dower amount of Rs. 2000/- which was paid by the petitioner/defendant to the respondent No.1 / plaintiff. At

the time of rukhsati the respondent No.1's / plaintiff's parents gave her gold ornaments and costly dowry articles worth of Rs. 13,50,000/- which were received by the petitioner / defendant and his parents and the same are lying under the custody of the petitioner / defendant. Out of said wedlock no issue was born. On 14.08.2008 the respondent No.1 / plaintiff received Divorce Deed dated 11.08.2008.

3. Against the respondent No.1's / plaintiff's pleas the petitioner / defendant in his written statement had denied all allegations and submitted that after rukhsati on 31.08.2007, in second week of September 2007 the parties had to proceed to U.K. for higher education and on next day of rukhsati the respondent No.1 / plaintiff with permission of petitioner's / defendant's mother went to her parents' house and packed all of her belongings including the precious clothes 21 pairs, two gold sets, four rings, other gifts and gold articles which were given to the respondent No.1 / plaintiff by his parents, brothers and sister in laws in 'Salami' and she also packed petitioner's / defendant's marriage dress in her luggage. The petitioner / defendant further submitted in his written statement that no dowry articles except one iron bed, dressing table, glass table and one dust bin were given to the respondent / plaintiff at the time of rukhsati.

4. I have heard the learned counsel for the petitioner / defendant, while none was present from respondent's side. Since the instant petition is pertaining to the year of 2011, therefore, the learned counsel for the petitioner was directed to argue the matter. I have also examined the available record.

5. The learned counsel for the petitioner / defendant submitted that the learned trial Court while deciding the suit of the respondent / plaintiff did not consider that the list of dowry articles produced by the respondent / plaintiff before the Court is unsigned and on the basis of such unsigned list of dowry articles the suit of the respondent / plaintiff was decreed and the learned first appellate Court had also not considered factual and legal controversy involved in the matter and in a summary manner had dismissed the appeal of the petitioner

/ defendant. He further argued that impugned judgments and decrees are based on misreading and non-reading of evidence, hence is miscarriage of justice. He prayed for setting aside the impugned judgments and decrees of both the Courts below.

6. After hearing arguments and perusal of record, I am of the view that the issue before this Court pertains to the findings of the trial Court in the suit of the respondent / plaintiff for recovery of her dowry articles and after decree of the suit the findings of the appellate Court on the judgment of appeal. In Muhammad Lehrasab Khan v/s Mst. Aqeel-un-Nisa, case (2001 SCMR 338), High Courts constitutional scope is explained, allowing it to interfere when the factual findings are based on non-reading or misreading of evidence, erroneous assumptions, misapplication of law, excess or abuse of jurisdiction, and arbitrary exercise of powers. However, in Shajar Islam v/s Muhammad Siddique case (PLD 2007 SC 45), this view was revised, stating that the High Court could not interfere in findings on facts unless there was a misreading or non-reading of evidence, or if the findings are based on no evidence resulting in a miscarriage of justice and that the constitutional jurisdiction of the High Court could not replace a revision or an appeal. The Hon'ble Supreme Court has observed in its judgment reported in Arif Fareed v. Bibi Sara and others (2023 SCMR 413|) that :-

The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts' routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts prioritise the disposal of family cases by constituting special family benches for this purpose."

7. In instant matter the respondent / plaintiff had filed a suit for recovery of her dowry articles particularly gold ornaments given to her by her parents at the time of marriage. The respondent / plaintiff in support of her claim produced list of dowry articles and receipts of gold ornaments. The learned trial Court allowed the suit of the respondent / plaintiff to that extent only. Besides that the petitioner / defendant had also admitted claim of the respondent / plaintiff to the extent of gold ornaments though he claimed that these gold ornaments were given to the respondent / plaintiff by his sides as gifts while her parents had given nothing. The all property given as dowry or bridal gifts to a bride are vest absolutely in her. This Court in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by two Courts below. The role of this Court is limited to correcting jurisdiction and errors and procedural improprieties, ensuring the proper administration of justice. Once a matter has been adjudicated upon on facts by the trial Court and the appellate Court, constitutional Courts should not exceed their powers by reevaluating the facts or substituting the appellate Court's opinion with their own. Perusal of both judgments of Court below I do not find any illegality, infirmity, irregularity, perversity or impropriety therein, the instant petition is therefore, dismissed with no order as to cost.

J U D G E