IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.2037-P/2017

Fawad Ishaq and others,
r/o Abdara road University Town,
Peshawar.

Petitioner (s)

VERSUS

Mst. Mahreen Mansoor wife of Mansoor Ishaq,
r/o Service House No.3 Sector E-I, Phase-I,
Hayatabad, Peshawar and others.

Respondents

For Petitioner :- Mr. Khalid Mehmood, Advocate
For Respondent No.1 :- Mr. Imtiaz Ali, Advocate.
For Respondent No.3:- Mr. Muhammad Tariq Afridi, Advocate.

Date of hearing: **17.12.2018**

JUDGMENT

ROOH-UL-AMIN KHAN, J:- My this common judgment, shall decide the instant writ petition, filed by Fawad Ishaq and others (LRs of late Haji Muhammad Ishaq Jan) and connected **Writ Petition No.1865-P/2017,** filed by Mst. Khurshida Ishaq, as both arise out from common judgment dated 15.02.2017, of the learned Additional District Judge-X, Peshawar, whereby he while dismissing appeals of the petitioners, maintained the judgment and decree dated 03.05.2014 of learned Judge Family Court in favour of Mrs. Mahreen Mansoor, plaintiff/respondent No.1.

2. The resume of facts forming the background of the instant writ petitions is that Mst. Khurshida Ishaq is the mother-in-law and late Haji Muhammad Ishaq Jan was the father-in-law ***(to be referred as in laws)*** of respondent No.1, namely, Mehreen Mansoor. The latter filed a suit against her in laws for recovery of dower i.e. a house constructed over a Plot No.28, situated at Abdara road University Town Peshawar, ***(to be referred as house in question)*** or its prevailing market value. It was averred in the plaint that her marriage was solemnized with Mansoor Ishaq in the year 1995 in lieu of dower i.e cash amount of Rs.5,00,000/-,75 tolas gold ornaments and the house in question. Her husband paid respondent No.1 her entire dower except the house in question, as the same being the ownership and in possession of her in laws (defendants). Husband of respondent No.1 showed his inability to satisfy this part of dower of respondent No.1. She asked her in laws to deliver the house in question to her but they refused despite the fact that her father-in-law (late Haji Muhammad Ishaq Jan) had executed pre-marital agreement and had endorsed her Nikah Nama as a guarantor. According to respondent No.1, the defendants/ her in laws have delivered 01 to 02 Kanal houses to the wife of each of their sons, so she also being their daughter-in-law is entitled to the same treatment. She asked her in laws to satisfy her claim, but they refused, hence this suit.

3. When summoned, the petitioners/defendants contested the suit by filing written statements raising therein verity of objections, legal as well as factual. From controversial pleadings of the parties, required issues were framed, in support whereof parties led their respective evidence. On conclusion of trial, the learned trial Court/Judge Family Court, decreed the suit of respondent No.1 vide judgment dated 03.05.2014, against which the defendants/petitioners filed separate appeals before the learned Additional District Judge-X, Peshawar, but the same were dismissed vide judgment dated 15.02.2017, hence, these writ petitions.

4. Arguments of learned counsel for the parties heard and record perused with their able assistance.

5. Besides, arguing the case on merits in light of the evidence available on record, learned counsel for the petitioners attacked at the maintainability of suit on the ground that payment of dower to a wife is the responsibility of a husband, therefore, in a suit for recovery of dower, husband is a necessary party, but in the instant case, plaintiff/respondent No.1 has not arrayed her husband as party/defendant, rather she has filed suit against her in laws/defendants. In this view of the matter, on one hand no effective decree can be passed against the defendants, while on the other hand, the Family Court was lacking

jurisdiction to try the suit, hence, on this score alone the suit of the respondent No.1 was liable to be dismissed.

6. To resolve the legal question, it would be advantageous to have a look over the preamble of the West Pakistan Family Courts Act, 1964 and its sections 2(d) and 5, which for the sake of convenience and ready reference are reproduced below:-

> **Preamble:-** Whereas, it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of disputes **relating to marriage** and **family affairs** and for **matters connected therewith.** (Emphasis supplied).
>
> **S.2(d)** "Party" shall include **any person** whose presence as such is considered necessary for a proper decision of the dispute **and whom the Family Court adds as a party** to such dispute. (Emphasis supplied).
>
> **S.5.Jurisdiction:- (1)** Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in (Part-I of the Schedule)".

Perusal of the preamble reveals that West Pakistan Family Courts Act, 1964 is a special statue and has been enacted with a specific purpose to ensure expeditious settlement and disposal of disputes relating to marriage and family affairs and as well as matters connected therewith. Section 5 of the Act (ibid) provides that subject to the provisions of the Muslim Family Laws Ordinance, 1961 and the Conciliation Courts Ordinance, 1961, the Family Courts

shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the schedule i.e. (1) Dissolution of marriage (2) dower (3) maintenance (4) Restitution of Conjugal rights (5) custody of children (6) Guardianship (7) Jactitation of marriage (8) Dowry and (9) personal property and belongings of a wife. Plain reading of section 5 shows that jurisdiction vested in the Family Court is to be determined on the basis of subject-matter and not on the basis of persons, permitted or entitled to invoke such jurisdiction. There is no provision in the Act (ibid), which classifies or in any way limits the category of persons entitled to be a party to the proceedings before the Family Courts. The word "Party" as defined under section 2(d) of the Act (ibid) has been defined to include **"any person"** whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute. This definition is not confined only to the spouses but its meanings are wider in sense. A thorough perusal of section 2(d) of the Act (ibid) would reveal that it has two parts i.e. (a) any person whose presence as such is considered necessary for the proper decision of the dispute and (b) any person whom Family Court adds as party to such dispute. Nature of the family disputes and jurisdiction of the Family Court is special as well as peculiar. It is in

this perspective that definition of term "Party" is specifically codified in section 2(d) in the Act.

In case titled, **"Muhammad Arif and others Vs District and Sessions Judge, Sailkot and others" (2011 SCMR),** the Hon'ble Supreme Court while dilating upon the word **"Party"** employed in section 2(d) of West Pakistan Family Courts Act, 1964 has ruled that:-

> "The definition of the "party" in the Act is absolutely clear that a family suit cannot be restricted inter-se the spouses only i.e. one plaintiff against one defendant when others are considered necessary for proper decision of the dispute or require addition to such dispute. A family suit is not a sparring match in a wrestling ring where one wins and the other loses or gives up on injury. The Act does not relegate a family suit to a merciless war to bring defeat on one and victory on the other in the judicial battle field. The Act instead visualizes attainment of a social and family harmony by sparing the spouses humility of an outright defeat or loss and the lifelong acrimony between them for generations".

In case titled, **"Mst. Shehnaz Akhtar Vs Fida Hussain and 02 others" (2007 CLC 1517),** the august Lahore High Court has ruled that:-

> "In the schedule and in Part-I at Serial No.2 is "dower". There is no barring provision that while claiming dower from the husband only bridegroom/husband can be impleaded in the suit for recovery of dower and none else, even if the other had stood surety or had guaranteed the payment of

> dower. The person can lawfully be impleaded in the suit for recovery of dower, who had undertaken or promised to pay the dower to the bride at the time of performance of marriage, before or after the solemnization of marriage in connection with the marriage".

Same view has been reiterated by the august Lahore High Court in case titled, **"Mst. Musarrat Andleeb vs Additional District Judge Alipur District Muzafargarh and 03 others" (2011 CLC 1989)** in the following words:-

> "Word "party" had a very wide meaning and was not necessarily confined to spouses and it included "any person" which in the "consideration" of family Court was "necessary" for "proper decision" of the "dispute" and whom the Family Court might add as a party to dispute. Any suit of a subject-matter covered by the Schedule to West Pakistan Family Courts Act, 1964 could be instituted before Family Court."

7. As stated earlier, respondent No.1 is the daughter-in-law of defendants. Her Nikah-nama (Exh.PW.1/1) has been signed by late Haji Muhammad Ishaq Jan, her father-in-law, wherein he as a guarantor has consented that the house in question shall be given to respondent No.1 in lieu of dower. Similarly, the house in question is the ownership of defendant No.2 i.e. mother in law of respondent No.1. Dower in the shape of cash amount and gold ornaments has already been paid to respondent No.1 by her husband. Remaining part of her dower has concern with defendants/in laws of respondent

No.1, therefore, in light of the judgments (supra), she has rightly filed suit against them for recovery of dower. Dower is available at S.No.2 of the Schedule, therefore, the Family Court had the jurisdiction to try and adjudicate upon the suit filed by respondent No.1.

8. Coming to merits of the case, it would not be out of context to mention here that proceedings under Article 199 of the Constitution are not substitute of appeal. Such jurisdiction is completely discretionary in nature and a High Court while exercising the same has to see whether the tribunal or Court has acted without jurisdiction or in violation of any relevant statute or law. The High Court in its constitutional jurisdiction under Article 199 cannot embark upon reappraisal of evidence because same is the sole job of the Appellate Court. Reliance placed on case titled, **"Zulfiqar Khan Awan Vs Secretary Industries and Mineral Development Government of Punjab Lahore and 08 others (PLD 1973 SC 530), case titled, "Muhammd Hussain Munir Vs Sikandar (PLD 1974 SC 139).**

9. It appears from record that dower of respondent No.1 in the shape of Rs.5,00,000/- in cash and 75 tolas gold ornament had already been paid to respondent No.1 by her husband. Her only outstanding dower is the house in question. Admittedly, the house in question is the ownership of defendant No.2 i.e. mother-in-law of

respondent No.1. Defendant No.2 being wife of defendant No.1 cannot exonerate herself from payment of dower on the ground that she was not aware that the house in question had been given to respondent No.1 in Nikah nama as it does not appeal to a prudent mind that defendant No.1 being her husband would not have appraised her about the dower of her daughter-in-Law. Late defendant No.1 is signatory of Nikah Nama of respondent No.1. From the Nikah nama it is manifest that the house in question was given to respondent No.1 in lieu of her dower. Sufficient material is available on file to show that dower of respondent No.1 was settled by the defendants and that at the time of Nikah of respondent No.1, both the defendants, being her in law, were present. Photographs of Nikah ceremony of respondent No.1, exhibited during evidence substantiate the factum of determination of dower. Besides, signing of Nikah nama by defendant No.1 as a guarantor is sufficient proof that defendant No.2 was well in the know of the house in question to have been given to respondent No.1 in dower. No doubt, defendant No.2 has not signed the Nikah nama of respondent No.1, but she has never question Nikah Nama of respondent No.1 before filing of the instant suit. The factum of giving the house in question in dower to respondent No.1 can also be gathered from the fact that defendants have given a portion of 2 kanal each to the wives of their other sons from the same

houses. The statement of Mst Khurshida (DW.3) would depict that 2 kanal are from the said house in lieu of dower to her other daughters-in-law was given by her husband (Late Haji Muhammad Ishaq), however she has urged that the houses in dower to other daughter in law was with her consent, whereas in case of respondent No.1, her consent was not obtained. Confessedly, the marriage of respondent No.1 had been solemnized in the year 1995, whereas the parties are closely related to each other. They have lived together for sufficient long time, but after filing suit by respondent No.1, her mother-in-Law realized that the house to the extent of one kanal has been transferred to respondent No.1 in lieu of her dower without her consent. Since 1995, she has not objected the contents of Nikah Nama, much less, the endorsement of note over Exh. PW.4/3-A, despite the fact, that as per evidence, one copy of Nikah Nama had been retained by the in Laws at the time of marriage.

10. The impugned judgments of the two Courts below are well reasoned and based on proper appreciation of evidence and law on the subject. Learned counsel for the petitioners failed to point out any jurisdictional defect or violation of any law in the impugned judgment which may warrant interference by this Court in its constitutional jurisdiction.

11. Resultantly, both the writ petitions being meritless are hereby dismissed.

Announced:
17.12.2018
Siraj Afridi P.S.

JUDGE

Approved for Reporting.

SB of Hon'ble Mr. Justice Rooh-ul-Amin Khan.