

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 101 of 2025

[Mst. Najeeban v. Sartaj Ali]

Petitioner by : Mr. Safdar Ali Jogi, Advocate

Respondent by : M/s Shahid Hussain Jogi, Advocate and
Shahryar Imdad Awan, Assistant Advocate
General Sindh

Date of Hearing : 24.08.2026

Date of Announcement : 07.09.2026

ORDER

ARBAB ALI HAKRO, J. – By this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner impugns the judgment and decree dated 11.03.2025, passed by the learned Additional District Judge, Mirwah, in Family Appeal No.48 of 2024, whereby, while maintaining the decree of the trial Court in respect of the maintenance of the minor and the dowry articles but dismissed her claim for dower. She seeks the restoration of the judgment dated 13.05.2024 and the decree dated 18.05.2024, rendered by the learned Civil & Family Judge-II, Mirwah, in Family Suit No.133 of 2020.

2. The factual matrix of the case is that the petitioner was married to the respondent on 24.11.2014, and a daughter, Baby Sobia, was born of the wedlock. Column No.13 of the Nikahnama records the dower as 00-10 ghuntas of agricultural land situated in Deh Dato Dasti, Taluka Mirwah. The respondent, who is serving in the Pakistan Army, divorced the petitioner through a deed on stamp paper on 08.07.2020. Thereafter, she instituted Family Suit No.133 of 2020 on 22.07.2020 for maintenance for herself and the minor, for recovery of the dowry articles, and for enforcement of the dower.

3. In his written statement of 09.11.2020, the respondent admitted the Nikah, the rukhsati and the pronouncement of talaq. In paragraph 4 of the plaint, he asserted that the dower stood fixed at Rs.500/- and had been paid

at the time of Nikah, and that he owned no land when the marriage took place. It needs to be noted at the outset, having examined the record for that purpose, that he nowhere pleaded that the Nikahnama was forged, fabricated or interpolated; he filed no document with his written statement, and it was only on 29.08.2023, in the course of his own evidence, that he produced a Nikahnama of his own (Ex.07) showing dower of Rs.500/-. The plea that the petitioner's Nikahnama is "false, fake and bogus" was taken for the first time in the objections filed in this Court on 24.08.2026.

4. Upon divergence in the pleadings, five issues were settled, of which Issue No.4 alone concerned dower and was framed thus: "*Whether defendant has paid Haq Mahar to plaintiff and such Haq Mahar was fixed 10 ghuntas land from Deh Dato Dasti?*" No issue as to the genuineness of the Nikahnama was struck, nor was any sought. Besides her own Nikahnama, the petitioner produced the Nikahnama of her sister, Mst. Sadori, who was married to the respondent's brother at the same ceremony, before the same Nikah Khawan and the same marriage witnesses, and which carries an identical entry of 00-10 ghuntas at Deh Dato Dasti. Syed Arbab Ali Shah, the licensed Nikah Registrar who solemnized and registered the Nikah, was examined on 03.10.2023 and deposed that the respondent had admitted 10 ghuntas of agricultural land at Deh Dato Dasti in lieu of dower; he denied the suggestions that he had made the entry of his own accord and that the respondent had made no such admission.

5. Learned trial Court decreed the suit, awarding maintenance for the minor at Rs.6,000/- per month with a ten per cent annual increment, iddat maintenance to the petitioner, the return of the specified dowry articles or their depreciated value, and dower in terms of the entry in the Nikahnama. On appeal, the learned Additional District Judge upheld the decree as to maintenance and the dowry articles but dismissed the claim for dower, holding that the petitioner had failed to produce the original Nikahnama and to examine the marriage witnesses; that "without explaining the non-production of primary evidence secondary evidence is not admissible"; and

that the Nikah Registrar had not disclosed the survey number, whereas the respondent had produced an original Nikahnama “which was neither denied by the Nikah Registrar nor rebutted by the respondent”. Hence this petition.

6. Learned counsel for the petitioner submitted that the original Nikahnama had, in fact, been produced before the trial Court through a statement of counsel, to which no objection was raised, a fact recorded by the learned trial Court itself while deciding Issue No.4; that the entry of dower stood proved by its author; and that the respondent’s own admissions were not taken into account.

7. Learned counsel for the respondent supported the impugned judgment, reiterating that the dower was Rs.500/-, and urged that the record of the Nikah is not traceable in the Town Committee.

8. Learned Assistant Advocate General supported the judgment of the trial Court.

9. Heard. The record and proceedings of the suit and the appeal have been examined with the assistance of learned counsel for the parties.

10. The constitutional jurisdiction is neither a substitute for a second appeal nor a forum for the reappraisal of evidence in family causes¹. The legislature having placed a full stop after the appellate stage². Interference is permissible only where the finding rests upon misreading or non-reading of evidence, non-consideration of material evidence, an erroneous assumption of fact, or a patent error of law³. It is within those confines alone that the impugned judgment has been examined; no attempt has been made, nor could any be entertained, to re-weigh the testimony.

11. The first infirmity is fundamental. The dower issue was decided on a case that was never pleaded. The written statement contains no plea of forgery, fabrication or interpolation and an imputation of that nature must be

¹ M. Hamad Hassan v. Mst. Isma Bukhari (2023 SCMR 1434).

² Arif Fareed v. Bibi Sara (2023 SCMR 413).

³ Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani (2023 SCMR 246); see also Hammad Ali Khan v. Mst. Sadia Akbar (2024 MLD 1445).

specifically pleaded and particularised before it can be tried. Parties are bound by their pleadings; evidence adduced in support of a contention not pleaded is to be excluded, and the decision of a case cannot rest upon it⁴; nor may a party set up, on evidence travelling beyond the settled issues, a case altogether different from the one pleaded⁵. Ex.07 was brought on record in 2023 without any amendment to the written statement, and the learned appellate Court preferred it, although the plea it was meant to support did not exist in the pleadings.

12. The second infirmity is a patent error of law. The Nikahnama was rejected under the rule on primary and secondary evidence. That rule had no application. Section 17 of the Family Courts Act, 1964 excludes the Qanun-e-Shahadat, 1984 and the Code of Civil Procedure, 1908 from proceedings before a Family Court⁶ and it has consistently been held that the parameters of evidence prescribed by the Qanun-e-Shahadat do not govern such proceedings⁷. Independently of that, the matter is concluded by the holding that the Nikah Registrar is a public officer and the Nikahnama a public document, so that a certified copy may be produced in evidence and, in the absence of rebuttal, holds the ground⁸; a principle reaffirmed in the recent pronouncement that a presumption of truth attaches to the Nikahnama, which upon registration enjoys the status of a public document, the presumption extending to the entries recorded in it⁹. Here the copy was tendered by the very officer who prepared and registered the document, and he entered the witness box to prove it.

13. Thirdly, the finding that the original Nikahnama was not produced is contrary to the record. The learned trial Court recorded, while deciding Issue No.4, that the original was produced by way of a statement of counsel and that no objection was taken by the other side. That recital was neither examined nor displaced by the learned appellate Court and upon perusal of the R&Ps,

⁴ *Combind Investment (Pvt.) Ltd. v. Wali Bhai* (PLD 2016 SC 730); *Sardar Muhammad Naseem Khan v. Returning Officer*, PP-12 (2015 SCMR 1698).

⁵ *Essa Engineering Company (Pvt.) Ltd. v. Pakistan Telecommunication Company Ltd.* (2014 SCMR 922).

⁶ *Dr. Asma Ali v. Masood Sajjad* (PLD 2011 SC 221).

⁷ *Hammad Ali Khan v. Mst. Sadia Akbar* (2024 MLD 1445).

⁸ *Zubaida Bibi v. Majidan* (1994 SCMR 1978); *Amjad Hussain v. Shagufta* (PLD 1996 Peshawar 64).

⁹ *Mst. Fakhra Jabeen v. Wasif Ali* (PLD 2026 SC 20); *Ashiq Ali v. Mst. Zamir Fatima* (PLD 2004 SC 10).

I find it borne out. The further observation that the respondent's Nikahnama was "neither denied by the Nikah Registrar nor rebutted by the respondent" sits ill with the deposition of the Nikah Registrar and with the cross-examination of the petitioner, in which the suggestion of forgery was denied.

14. Fourthly, material evidence has gone unnoticed. The pleaded defence was that the respondent owned no land. In cross-examination, he admitted: "It is correct to suggest that the agricultural land in my khata registered in the year 2018... It is correct to suggest that survey Number 504 is in my khata." He further admitted that his salary is Rs.45,000/- per month, although his written statement put it at Rs.20,000/-; that he holds no receipt and cited no witness for the return of the dowry articles; and that he was unable to say whether his own Ex.07 bore the signature of the Nikah Khawan or any serial of registration. An admitted fact requires no proof¹⁰ and a party may not resile from his own admission without cogent justification¹¹. Neither these admissions nor the identical entry in the Nikahnama of the petitioner's sister find mention in the impugned judgment.

15. Fifthly, the absence of the survey number in Column No.13 provided no ground for dismissal. In a case where the dower land was not identifiable at all from the Nikahnama, the Supreme Court declined to reject the claim and instead evolved a mechanism, directing that a member of the revenue hierarchy determine the average price of land in the village concerned, with the wife being held entitled to receive the land or the value so determined¹². The difficulty is lesser here, for the deh is named in the document, and the respondent himself has admitted that Survey No.504 of that very deh stands in his khata.

16. Once the registered Nikahnama was produced and its author examined, the burden lay upon the respondent. He who contends that the entries are incorrect must rebut them with strong evidence, failing which the

¹⁰ Muhammad Akram v. Altaf Ahmad (PLD 2003 SC 688).

¹¹ Muhammad Iqbal v. Shamim (2016 SCMR 2062).

¹² Dr. Asma Ali v. Masood Sajjad (PLD 2011 SC 221).

Court is bound to affirm them¹³. He could have proved interpolation by producing the certified copy from the office of the local council¹⁴; he could have moved the controlling authority to have the register corrected¹⁵; he could have confronted the Nikah Registrar with a specific case¹⁶. He did none of these. Bare oral assertion cannot prevail over unrebutted documentary evidence.

17. Learned counsel for the respondent relied on the rule that the presumption of truth is rebuttable and does not attach where a Nikahnama was never registered in accordance with law¹⁷ and pressed into service the deposition of the Focal Person of the Town Committee that the record is not traceable. The submission has been anxiously considered, but it does not avail him. In the case relied upon, it was proved that the document had never been lawfully registered. Here the Nikah Registrar deposed on oath that he registered the Nikah on 25.11.2014; the respondent's own Ex.07 carries an endorsement of that very date, and both copies bear the signature and seal of the Registrar. The Nikahnama is prepared in four copies, one retained by the Registrar, one transmitted to the local council and one delivered to each of the spouses¹⁸. The non-availability of the council's copy is an official lapse for which the Registrar and the council must answer; it cannot be visited upon the bride so as to divest a registered Nikahnama of the presumption which the law attaches to it, the more so when the remedy against a defective register lay with the respondent and was never invoked.

18. Dower is the exclusive wife's right, and an unconditional declaration of dower in the form of immovable property vests her ownership upon the execution of the Nikahnama¹⁹. Property so recorded requires no separate deed and is not compulsorily registrable²⁰. The findings of the learned trial

¹³ Muhammad Aslam v. Suraya (PLD 2000 Lahore 355).

¹⁴ Mst. Maryam Haseena v. Syed Ejaz Hussain Shah (2011 MLD 176).

¹⁵ Mst. Nabeela Shaheen v. Zia Wazeer Bhatti (PLD 2015 Lahore 88).

¹⁶ Asif Shehzad v. Additional District Judge, Muzaffargarh (2018 YLR 1682).

¹⁷ Jawad Ali Shah v. Mst. Sarwat Fatima (2025 MLD 1102).

¹⁸ Muhammad Aslam v. Suraya (PLD 2000 Lahore 355); Mst. Nabeela Shaheen v. Zia Wazeer Bhatti (PLD 2015 Lahore 88).

¹⁹ Mst. Fakhra Jabeen v. Wasif Ali (PLD 2026 SC 20); Faqraz Bibi v. Elahi Bakhsh (1994 SCMR 686). Where the mode of payment is not specified, the whole of the dower is presumed prompt and payable on demand: Mariam v. Muhammad Imran Yaseen (2026 CLC 541).

²⁰ Hussana v. Ghufra (2003 YLR 250); Amjad Hussain v. Shagufta (PLD 1996 Peshawar 64).

Court on Issue No.4 rested upon the Nikahnama, upon its author, upon a contemporaneous Nikahnama of the same ceremony and upon the respondent's own admissions and were not open to reversal on the grounds assigned. The infirmities noticed above are of the character that alone attracts the constitutional jurisdiction, and it is on that limited footing and no wider that this Court interferes.

19. The findings on the maintenance of the minor and on the dowry articles are concurrent and were not assailed by the respondent, who has filed neither a petition nor cross-objections; relief cannot be granted to him on his objections alone²¹. Nor is there any occasion to interfere. Rs.6,000/- per month for a single child, against an admitted salary of Rs.45,000/-, with a ten per cent annual increment, is moderate, with the welfare of the child as the governing consideration²². The respondent, having admitted that dowry articles were given, produced neither receipt nor witness to their return, so that the onus resting upon him remained undischarged²³. It is clarified that the observation of the learned appellate Court that the petitioner is not entitled to future maintenance does not disturb the maintenance for the period of iddat awarded by the learned trial Court and maintained on appeal. As the decree dated 18.05.2024 omitted that item, the learned trial Court shall bring the decree into conformity with its judgment. The petitioner's subsequent marriage and the pendency of Guardian & Wards Application No.15 of 2026 have no bearing upon dower, upon dowry articles, or upon a father's obligation to maintain his child.

20. For the foregoing reasons, this petition is **allowed**. The judgment and decree dated 11.03.2025 passed in Family Appeal No.48 of 2024 are set aside to the extent of dower, and the judgment dated 13.05.2024 and the decree dated 18.05.2024 passed in Family Suit No.133 of 2020 are restored to that extent. For clarification, without enlarging the relief granted by the learned trial Court, the decree for dower shall be worked out as follows: the

²¹ Mateen Haider v. Additional District Judge, Lahore (2005 SCMR 1683).

²² Malik Mahmood Ahmed Khan v. Malik Moazam Mahmood Khan (PLD 2025 SC 247).

²³ Muhammad Habib v. Mst. Safia (2008 SCMR 1584); Muhammad Iqbal v. Mst. Zahida (2013 MLD 800).

learned Family Court shall requisition the revenue record and, if the respondent holds agricultural land in Deh Dato Dasti, Taluka Mirwah, shall direct the concerned revenue authority to transfer 00-10 ghuntas thereof in the name of the petitioner; failing which, it shall cause the average market value per ghunta of agricultural land in that deh to be determined through an officer of the revenue hierarchy not below the rank of Mukhtiarkar, and shall recover the value of 00-10 ghuntas as arrears of land revenue. The decree in respect of the maintenance of the minor and of the dowry articles is maintained. As the suit was instituted in July 2020, execution shall be taken up and concluded without further delay. There shall be no order as to costs.

J U D G E

Abdul Basit