

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-28 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection
For hearing of main case

03.11.2023

Mr. Irfan Ali Khaskheli Advocate for Petitioner.

Mr. Faheem Unar Advocate for Respondent No.2.

This petition challenges concurrent judgments rendered in the family jurisdiction. Family Suit No.292/2021 was filed for maintenance and recovery of dower etc. against the present Petitioner and vide Judgment dated 14.09.2022 it was partly allowed. The Petitioner filed Family Appeal No.29/2022 before the Court of District Judge Jamshoro and vide Judgment dated 08.12.2022 the appeal was dismissed. Learned Counsel contends that since the evidence was not appreciated in its proper perspective, hence, it is incumbent upon this Court to do so as no further provision of appeal is provided.

The Supreme Court has maintained in *Gul Taiz Khan Marwat*¹ that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed. In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard².

At the very outset, learned counsel was queried as to whether there is any jurisdictional defect in the judgments impugned and the response is articulated in the negative. The judgments appear to have rested the respective conclusions upon detailed appreciation of evidence and no infirmity in such regard, meriting interference in writ, could be demonstrated. Learned counsel also remained unable to show that the conclusions drawn by the respective forums could not be rested on the rationale relied upon. The matter has been conclusively determined and per statute, finality is attached to the appellate order referred to supra.

This petition *prima facie* unjustifiably assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; the same has been disapproved by the Supreme Court in *Hamad Hasan*³ and earlier similar views were also expounded in *Arif Fareed*⁴. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed application.

Judge

¹ Per Ijaz ul Ahsan J in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

² *2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415*.

³ Per Ayesha A. Malik J in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as *2023 SCMR 1434*.

⁴ Per Amin ud Din Ahmed J in *Arif Fareed vs. Bibi Sara & Others* reported as *2023 SCMR 413*.