ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-624 of 2021

Date	Order with signature of Judge

1.For hearing of MA No.380/2022
2.For hearing of MA No.381/2022
3.For hearing of main case.

21.08.2023

M/s. Syed Shafqat Ali Shah Masoomi & Syed Shahbaz Ali Shah Masoomi, Advocates for the petitioner.
Mr. Tanveer Aftab, Advocate for the respondent No.1
Mr. Naeem Akhtar Talpur, AAG.
Nikah Registrar Hafiz Syed Ziauddin.
Incharge Nikah, HassanAli Khan, District Municipal Corporation, East, Karachi.
Mst. Maryam Yousufani D/o (Late) Dr. Fazlullah Yousufani, Petitioner.

Nikah Registrar/Qazi, Hafiz Syed Ziauddin along-with Hassan Ali Khan, Incharge Nikah Section/custodian of the record of Nikah/ Marriage Registration are present, who in person have produced the original Nikah Register/Nikahnama before this Court that corresponds with the attested copy of the Nikahnama placed on record, i.e. in the Evidence of the Plaintiff as well as with the Evidence of Nikah Registrar in Family Suit No. 845/2018 available at Page 333-335, which affirms that the Petitioner was married with the Respondent No.1 on 12-06-2003 at Karachi, against the dower of 50 Acres of Agriculture land in Deh Beto and Gunhero, Taluka Mehar, District Dadu, Sindh as reflected in the Column No. 13, 14, 15 and 16 of the registered Nikahnama. However, regarding the payment method of the said dower, wherein, the word “Indul-Talab” has been changed

with the word “Moajjal”, Nikah Registrar/Qazi, Hafiz Syed Ziauddin states that he originally wrote down the payment method of the said dower as “Indul-Talab” but on the insistence of the Father of the Respondent No. 1 and Respondent No.1 who mentioned at that they wish to immediately transfer lands at the very moment, they asked the Nikah Registrar/Qazi to substitute the word “Indul-Talab” with the word “Moajjal”, as reflected in the Column No.14, 15 and 16 of the registered Nikahnama. The case of the Petitioner is for the recovery of Dower (Haq Mehar) of 50 Acres of Agricultural land as dower reflected in the registered Nikahnama as she agitates that such consideration has still not been given to Petitioner by Respondent No.1, as promised to her at the time of marriage, to be handed out to her immediately.

Learned counsel of the Respondent No.1 submitted that the consideration of the marriage was only 15 Tola Gold ornaments as dower, which gold was handed out to the Bride/Petitioner. However, the alleged 15 Tola Gold ornaments are not even mentioned in Column No.13, 14, 15 and 16 of the registered Nikahnama nor any evidence has been produced by the Respondent No.1 in the learned Trial Court, to prove such purchase or onward transfer of these ornaments to the Petitioner, which shows that contentions raised by the learned counsel of the Respondent No.1 lack requisite plausible proof and by just stating that the Petitioner, learned counsel of Petitioner and Nikah Registrar/Qazi are lying would not convince this Court. While concluding his submission, learned counsel for Respondent No.1 submitted that under Article 199 of the Constitution, the High Court has limited scope and cannot vary the findings of learned First Appellate Court. To meet with the said

submission, I may say that this Court under Article 199 of the Constitution has the power to issue such directions, orders or decrees, as may be necessary for doing complete justice and in doing so, the Court is also empowered to look at the just circumstances of the case as it has appeared before it and also to mould relief as is just and proper for meeting the ends of justice[1]. I may further note here that in exercising the jurisdiction to do complete justice and to issue directions, orders or decrees, as may be necessary, this Court is not bound by procedural technicality when a glaring fact is very much established on the record and even stand admitted[2]. Apart from above, the learned trial Court is the final arbitral and fact finding body, it having gone through the record and proceedings as well as testimonies of the litigating parties decreed the suit of the petitioner/plaintiff.

The Appellate Court seemingly as evident on Page 4 of the impugned Judgment dated 15.04.2021 has taken the stance that the petitioner, during her cross examination admitted that the Nikah which had taken place in 2003 but entries regarding dower in land records were made in the Nikahnama after the year 2015, but I wonder how would it strengthen the case of the Respondent No.1. He definitely was aware that certain piece of land was not handed out to the Petitioner as promised to her as well as reflected in the registered Nikahnama. The Appellate Court seemingly was un-

---

[1] Per Gulzar Ahmed C.J. in Martin Dow Marker Ltd, Quetta, v. Asadullah Khan & others (2020 SCMR 2147) and Muhammad Zahid v. Dr. Muhammad Ali (PLD 2014 SC 488), Dossani Travels (Pvt.) Ltd. and others v. Messrs Travels Shop (Pvt.) Ltd. and others [PLD 2014 SC 1]; Mst. Amatul Begum v. Muhammad Ibrahim. Shaikh [2004 SCMR 1934] and Imam Bakhsh and 2 others v. Allah Wasaya and 2 others [2002 SCMR 1985].

[2] Reference in this regard is made to the case of Muhammad Shafi v. Muhammad Hussain [2001 SCMR 827]; Gul Usman and 2 others v. Mst. Ahmero and 11 others [2000 SCMR 866] and S.A.M. Wahidi v. Federation of Pakistan through Secretary Finance and others [1999 SCMR 1904]

necessary swayed relying on the finding that the entry regarding the land in question in the name of the respondent Husband was made long after in the year 2015, which I do not see of having compelling effect. The fact remains that the Respondent No.1 agreed to transfer such land in the name of the Petitioner, may be in the spur of the moment at the time when marriage was being solemnized, but there is no escape from it once such a promise becomes a binding contract in the form of the registered Nikahnama, being consideration of Aijab-o-Qabool.

Section 18 of the Specific Relief Act, 1877 specifically deals with such situation and enables a claimant to seek performance of a promise even if at the time of making of the agreement (which Nikahnama is) the Donor had imperfect title, but subsequently acquires interest in the property. Hence the appellate Court wrongly upset the findings of the trial Court.

I thus do not see any merit in the Appellate Court Judgment dated 15.04.2021 and Decree dated 15.04.2021, which are *set aside*, having been passed on the basis of non-reading of law and mis-reading of facts. This Petition is thus allowed in above terms and learned Trial Court's Judgment dated 07-07-2020 and Decree dated 07.07.2020 is maintained.

JUDGE

Aadil Arab