

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-395 of 2023

[Muhammad Shamim Aliv.....Mst. Asma Begum & others]

Date of Hearing : 28.02.2024
Petitioner through : Dr. Rana Khan, Advocate.
Respondents through : M/s. Jamshed A. Shaikh and Gulnaz Kausar, Advocates for respondent No.1

ORDER

Zulfiqar Ahmad Khan, J:- This petition challenges successive judgments in favour of respondent No.1 rendered by learned Family Judge-XXVIII, Karachi East in Family Suit No.2163 of 2021 and Judgment dated 21.03.2023 passed by learned Additional District Judge-VII East Karachi in Family Appeal No.243/2022.

2. The respondent No.1 filed a family suit bearing No.2163/2022 before learned Family Judge East Karachi for maintenance which was decreed by the learned trial Court vide Judgment dated 16.08.2022. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.243/2022 which appeal of the petitioner was dismissed vide Judgment dated 21.03.2023, hence the petitioner is before this Court against the concurrent findings.

3. Learned counsel was confronted with the maintainability hereof as the Apex Court disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument articulated was that the evidence was not appreciated by the respective forums in its proper perspective, hence, the exercise be conducted afresh in

writ jurisdiction since no further provision of appeal was provided in the statute.

4. Learned counsel for the respondents submits that the instant petition challenges the concurrent findings in the family matter which is not maintainable.

5. Section 5 of the West Pakistan Family Court Act 1964, provides that Family Courts have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part-I of the Schedule to the said Act. "Personal property and belongings of a wife" is one of the subjects/items in the Schedule to the said Act over which the Family Court has been given exclusive jurisdiction. All gifts (not limited to bridal gifts) given to a wife during the subsistence of the marriage become her personal property and belongings. Therefore, a suit with respect to personal property and belongings of a wife is to be filed before a Family Court. Reference in this regard may be made to the following case law:-

(i) In the cases of Major Muhammad Khalid Karim v. Mst. Saadia Yaqoob (PLD 2012 SC 66), and Ejaz Naseem v. Fareeha Ahmad (2009 SCMR 484), it has been held inter alia that under section 5 of the WP-FC Act, the Family Court has exclusive jurisdiction to entertain hear and adjudicate all matters which fall within the First Schedule to the said Act.

(ii) In the case of Shamim Akhtar v. District Judge (2016 MLD 242), it has been held that "8. Bridal gifts fall within the ambit of personal property and belongings of a wife i.e. Item No.9 of the Schedule in terms of Section 5 of the Family Courts Act, 1964 which confers exclusive jurisdiction upon the Family Court to hear the claim of such matters. The term "personal property and belongings of a wife" has already been explicated by this Court in the case titled Muhammad Akram v. Hajra Bibi (PLD 2007 Lah. 515) and maintained by the Hon'ble Supreme Court of Pakistan in the case titled Syed

Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 SC 260)."

(iii) In the case of Taimoor Aslam Satti v. Mst. Aalia Bibi (2016 YLR 765), it has been held that a suit for recovery of dower as well as personal property and belongings of a wife came within the domain of a Family Court under Part-I of the Schedule of the WP-FC Act. Furthermore, it was held that property gifted to a wife came within the definition of "personal property and belongings of a wife".

(iv) In the case of Mst. Nomial Zia v. Adnan Riaz (2014 CLC 87), it has been held by this Court that a claim pertaining to recovery of bridal gifts or personal property of a wife fell within the jurisdiction of a Family Court, and that a suit for the recovery of bridal gifts filed by a husband was competent before a Family Court.

6. Sections 2(a) and 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976, are reproduced herein below:-

(a) 'Bridal gift' means any property given as a gift before, at or after the marriage, either directly or indirectly, by the bridegroom or his parents to the bride in connection with the marriage but does not include Mehr;"

"vesting of dowry etc., in the bride.--- All property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in property however derived shall hereafter not be restrictive, conditional or limited."

7. The conjoint reading of the said Sections show that presents and gifts given to the bride at or after marriage by the bridegroom or his parents vest absolutely in bride. On the basis of the said provisions of the Dowry and Bridal Gifts (Restriction) Act, 1976, the Superior Courts have consistently held that bridal gifts given by a husband are the absolute property of a wife and cannot be taken away from her. A bride can always recover the articles of bridal gifts, "WARI" and presents given to her by a bridegroom or his family at the time of the marriage. Reference in this regard may be made to the following recent cases:-

(i) In the case of Dawlance United Refrigeration Industries Private Ltd. v. Muhammad Asim Chaudhry (PLD 2016 Lahore 425), it has been held that in view of Section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976, it is the bride who is to be considered as an absolute owner of the items of dowry and bridal gifts.

(ii) In the case of Abdul Sattar v. Chairman Railways (2011 YLR 1033), the Hon'ble Peshawar High Court has held that a woman was absolute owner of all the property given to her as dowry or bridal gifts to the exclusion of her husband under section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976.

(iii) In the case of Gul Sher v. Maryam Sultana (2011 YLR 1000), it has been held that section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976 provides that all property given as dowry or bridal gifts to a bride shall vest absolutely in her and that her interest in the said property, however derived shall not be restrictive, conditional or limited. In the said section, there is no limitation of Rs.5,000 either for dowry or for wari. On the other hand, it has been provided therein that such property shall be owned by her absolutely and to the exclusion of the bridegroom without caring for the source through which it has come and without limitation of any amount. Therefore, it is quite clear that in spite of the restriction imposed in section 3, a bride is the owner of the dowry and wari articles irrespective of their value and she is entitled to retain it forever and to claim its return or the value thereof, if the same is kept back by her husband or any other person. In this regard I rely upon 'Masud Sarwar v. Mst. Farah Deeba' 1988 CLC 1546 (Lahore)."

(iv) In the case of Tariq Mehmood v. Farah Shaheen (2010 YLR 349), it has been held that gold ornaments mentioned in column No.16 fell within the ambit of gifts which, under the injunctions of Islam, are not to be returned as gifts become the property of the donee.

(v) In the case of Muhammad Nawaz v. Mst. Abida Bibi (2010 MLD 352), it has been held that gifts did not fall within the ambit of Zar-e-khula, and were not something that could be recovered under the injunctions of Islam. Furthermore, it was held that once the bridegroom acknowledged that gold jewelry was given as gifts, he could not claim the recovery of the same especially if they find no

mention in the Nikahnama. In paragraph-10 of the said report, it has been held that once the petitioner acknowledges that the 4 tolas of gold jewellery he wants back from respondent No.1 were gifts he cannot claim the recovery of the same. Hiba (gift) cannot be consideration of the contract of marriage in this particular case as under the Muhammadan Law Chapter XI section 138 it is categorically stated "Hiba means transfer of property in substance by one person to the other "without" consideration which is a condition to be fulfilled in order to make a valid gift". Under section 148 it is mandatory that the donor relinquish all rights and dominion over the gift. He has to divest himself totally of all ownership over the subject of the gift. No condition can be attached to the gift. Condition in this particular case would also cover return of the same in case of Khula, whether implied or implicit, because a condition would derogate from the completeness of the grant. Under section 167 the issue of revocation of gift is addressed. A gift can be revoked before delivery of the same to the donee. However, the second proviso of this section clearly enunciates that a gift given by a husband to his wife and vice versa can be revoked after delivery only under the decree of a Court of competent jurisdiction. In present matter the gift is not falling in the ambit of hiba bill awaz either because there is no mention of it in the Nikahnama. So the upshot would be that only a gift given in lieu of dower amount would be recoverable through a decree of the Court."

8. Since there are plenty of case law in support of the proposition that the gifts or benefits given to a wife at the time of the marriage or during the subsistence of the marriage become her personal property and belongings and that the learned trial Court had rightly allowed the prayer of the respondent No.1 and decreed the suit filed by the respondent No.1.

9. Apart from this, it is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is

provided¹, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments appear to be well-reasoned and no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

10. The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*³ and has deprecated such a tendency in no uncertain words. It has inter alia been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in *Arif Fareed*⁴.

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

² Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323

³ Per *Ayesha A. Malik J in M. Hamad Hassan v. 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.

11. 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 regard⁵.

12. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 28.02.2024.

JUDGE

Aadil Arab.

⁵ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.