

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Constitution Petition No.S-12 of 2024

(Mst. Kainat Vs. Suhail Asghar & others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing & Order 27.08.2024

Ms. Mehrun Nisa Mughal, Advocate for the petitioner.

Mr. Kuldeep Sharma, Advocate for the respondent.

Mr. Muhammad Sharif Solangi Assistant A.G., Sindh.

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ORDER

Adnan-ul-Karim Memon, J. The petitioner Mst. Kainat, through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has assailed the Judgment and decree dated 08-09-2020 passed by learned 2nd Additional District Judge/MCAC Mirpurkhas in Family Appeal No.41 of 2019, (*Re- Suhail Asghar Vs. Mst. Kainat*), whereby he modified the Judgment/decree of trial Court passed in Family Suit No.31/2018 and turned down the grant of Gold ornaments to the plaintiff/appellant Mst. Kainat.

2. I have heard learned counsel for the parties present in court and perused the material available on record.

3. The petitioner filed a Family Suit No.31/2018 for dissolution of marriage, recovery of dower amount, dowry articles, and maintenance and succeeded in obtaining a judgment and decree in her favor on 02.08.2019. The appellate court modified the judgment and decree on 08.09.2020 by not allowing the petitioner to recover gold ornaments.

4. The learned counsel for the petitioner argues that she successfully proved her case about the gold ornaments and that the appellate court's modification was unjustified. The learned counsel prayed to set aside the appellate court's judgment to the extent of not allowing the gold ornaments.

5. The learned counsel for the respondents argues that the evidence presented by the petitioner regarding the gold ornaments was insufficient. He further submitted that the appellate court rightly dismissed the petitioner's claim for the gold ornaments and prayed that the petitioner's request to set aside the appellate court's judgment may be dismissed.

6. The learned trial Court was duly empowered to appreciate the evidence and no case has been set forth to apprehend that the same was not done. Just because the view of one party did not prevail does not vitiate the process. The entire matter was open to the appellate Court, however, upon deliberation it found no reason to differ with the judgment rendered by the learned trial Court to the aforesaid extent. When confronted with the legal position of the case, the counsel remained unable to demonstrate any apparent infirmity about the appreciation of evidence by the appellate court and only insisted that the matter may be remanded to the appellate court to decide afresh by considering the matter on merits concerning evidence of gold armaments, this assertion does not merit any consideration by this Court. Even otherwise such an exercise is not amenable for adjudication in writ jurisdiction. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Arif Fareed v. Bibi Sara and others (2023 SCMR 413), Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246) and M. Hamad Hassan vs. Mst. Isma Bukhari & 2 Others (2023 SCMR 1434)

7. The aforesaid judgment of the Supreme Court is squarely applicable to the present facts and circumstances and in view thereof, coupled with the reasoning and authority cited supra, the present petition is found to be misconceived and even otherwise devoid of merit, hence, hereby dismissed along with the pending application(s).

JUDGE