

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

FAMILY COURT APPEAL NO. : 1/FCA OF 2023
DATE OF INSTITUTION : 13.01.2023
DATE OF DECISION : 30.01.2023

LAL JAUHAR S/O MAJEED KHAN, R/O DISTRICT ORAKZAI,
PRESENTLY RESIDING AT KATA KANRE DISTRICT HANGU

.....(APPELLANT)

-VERSUS-

MST. BIBI ASMA D/O KHAN TEHSIL, R/O DISTRICT ORAKZAI,
PRESENTLY RESIDING AT KATA KANRE DISTRICT HANGU

.....(RESPONDENT)

Present: Fazal Malik Kakakhel Advocate for appellant.
: Insaf Ali Advocate for respondent

JUDGEMENT
30.01.2023

Impugned herein is the judgment and decree dated 20.12.2022 of learned Senior Civil Judge/Judge Family Court, Orakzai vide which a decree for recovery of dowery articles or its value in the sum of Rs. 386,200/- has been passed against the appellant being defendant.

- (2). In a suit before the learned trial court, the respondent being plaintiff sought recovery of 05 tolas of golden ornaments or its market value and cash amount of 100,000/- as dower, maintenance allowance at the rate of Rs. 10,000/- from November, 2018 till the subsistence of Nikah, recovery of dowery articles or their market value in the sum of Rs. 386,200/- and recovery of Rs. 50,000/- as medical expenses. It was alleged in the plaint that the plaintiff/respondent contracted a marriage with defendant/appellant on 25.07.2017 against the

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

20/01/23

aforementioned dower. The plaintiff/respondent tried her best to prove as obedient wife but the defendant/appellant used to treat her cruelly from the very initial days of marriage and at last expelled her from the house in 2018 and since then she is residing at the house of her parents. The defendant/appellant contested the suit through written statement objecting to the claim of plaintiff/respondent on various legal and factual grounds. He contended that the dower of the plaintiff/respondent was fixed as 02 tolas of golden ornaments and cash mount of Rs. 100,000/- which has already been paid. That besides dower the defendant/appellant had also paid Rs. 100,000/- to the father of plaintiff/respondent for purchase of dowery articles and that plaintiff/respondent is a self-deserted wife.

(3). Pleadings of the parties were culminated by the learned trial court to the following issues;

1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the plaintiff is entitled to the recovery of 05 tola gold or its market value and 01 lac cash as dower from the defendant?
4. Whether the plaintiff is entitled to the recovery of Rs. 10,000/- as maintenance since November, 2018 till the subsistence of a valid Nikah between the parties on the ground of her ouster from the house by the defendant?
5. Whether the plaintiff is entitled to the recovery of dowery articles as per the list annexed with the plaint or its market value of Rs. 386,000/- from the defendants?
6. Whether the plaintiff is entitled to the recovery of Rs. 50,000/- incurred upon her treatment from the defendant?

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
20/01/23

7. Whether the plaintiff is a self-deserter and the defendant is entitled to the restitution of conjugal rights?
 8. Whether the plaintiff is entitled to the decree as prayed for?
 9. Relief.
- (4). Parties were given opportunity to produce pro and contra evidence in support of their respective contentions.


(5). Accordingly, plaintiff/respondent appeared in the witness box as PW-1. She also produced Ummat Khan and Aman Ullah as PW-2 & PW-3 respectively. On the other hand, defendant/appellant himself appeared in the witness box and remained contented with his sole statement. After having heard the arguments, the learned trial court turned down the suit of plaintiff/respondent to the extent of recovery of dower, maintenance allowance and medical expenses; however, passed a decree to the extent of recovery of dowry articles or their market value.

(6). Arguments heard and record perused.

(7). Perusal of case file show that as discussed above, suit of the plaintiff/respondent has been dismissed to the extent of recovery of dower, maintenance allowance and medical expenses, and so far, neither any appeal nor any cross objection has been filed by her. The defendant/appellant through the instant appeal has questioned the decree to the extent of recovery of dowry articles and their market value in the sum of Rs. 386,000/- . In this respect, the claim of the plaintiff/respondent as per para

Shaukat Ahmad Khan
District & Sessions Judge,
Sikotai Bahaz Mela
20/01/23


no. 04 of the plaint is, that at the time of Rukhsati her parents had purchased the dowry articles worth Rs. 386,000/- as per list annexed with the plaint which are still in possession of defendant/appellant. The defendant/appellant in his written statement contended that he had paid Rs. 100,000/- to the father of plaintiff/respondent for purchase of dowry articles. The plaintiff/respondent in order to prove her contention has appeared in the witness box as PW-1 wherein in her examination-in-chief, she has reiterated her contention; however, in her cross examination she was found unaware of the list annexed with the plaint or its contents. She also made admission in respect of receipt of 100,000/- by her father for purchase of the dowry articles. The other two witnesses of the plaintiff/respondent have not spoken a single word regarding the dowry articles. Besides, the statement of plaintiff/respondent, who too has made admission in her cross examination, not an iota of evidence has been brought on record in the form of any receipt of purchase of dowry articles or the statement of shopkeepers from whom the dowry articles would have been purchased, even none from the parents of the plaintiff/respondent has bothered to appear in the witness box in support of contention of plaintiff/respondent.


Shaukat Ahmad Khan
District & Sessions Judge,
Guzrat, Gujarat

- (8). Hence, in view of what is discussed above, it is held that the plaintiff/respondent has failed to discharge her burden to prove her contention regarding the dowry articles; therefore, she is not entitled for recovery of dowry articles or their market

value. The findings of learned trial court in this respect is based on assumption and not tenable in the eyes of law. Hence, the impugned judgment/decreed dated 20.12.2022 of Senior Civil Judge, Orakzai is set aside and acceptance of instant appeal filed by defendant/appellant is accepted and suit of the plaintiff/respondent is also dismissed to the extent of recovery of dowry articles or their market value in the sum of Rs. 386,000/-. File of this court be consigned to record room. Copy of the judgment be forwarded to learned trial court for information.


Pronounced
30.01.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.01.2023


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

