

IN THE COURT OF REHMAT ULLAH WAZIR,
SENIOR CIVIL JUDGE/JUDGE FAMILY COURT, ORAKZAI

Family Suit No. 3/3 of 2021

Date of Institution: 21.05.2021

Date of Decision: 27.10.2022

1. **Mst. Madina Bibi W/O Muhammad Javid**
2. **Samina Bibi D/O Muhammad Javid**
3. **Muhammad Ibrahim S/O Muhammad Javid**
4. **Sameera Bibi D/O Muhammad Javid**

All R/O Qoum Mula Khel, Tappa Aziz Khel, Badan, District Orakzai,
 Presently R/O Miyagano Kalay, Kohat..... (Plaintiffs)

VERSUS

1. **Muhammad Javid S/O Hakim Khan**

R/O Qoum Ali Khel, Tappa Sher Khel, Tang, District
 Orakzai..... (Defendants)

**SUIT FOR RECOVERY OF DOWER, DOWRY
 ARTICLES AND MAINTENANCE**

JUDGMENT:

Through this judgment I intend to dispose-of the instant suit,
 instituted on 21.05.2021, through which the plaintiff No. 01
 sought for recovery of dower, dowry articles and maintenance
 for all the plaintiffs.

Brief facts of the case are that the marriage of the parties was
 contracted according to Shariah some twenty (20) years ago.
 That out of the wedlock, the plaintiff No. 02, 03 and 04 have
 born. That the dower of the plaintiff No. 01 was fixed as 05
 Tolas Gold and Rs. 80,000/- cash in which 2 ½ Tolas Gold has

REHMAT ULLAH WAZIR
 Senior Civil Judge/JM,
 Orakzai at Baber Mela

been received while the remaining dower is still unpaid. That the attitude of the defendant was cruel from the beginning and he used to beat up the plaintiff No. 01 and he was not discharging his matrimonial obligations in a good manner. That at last he ousted the plaintiff No. 01 along with plaintiff No. 02 in the month of April, 2020 after beating and since then she along with the plaintiff No. 02 are residing with her brother. That in the month of April 2021, the plaintiff No. 03 & 04 were also handed over to the plaintiff No. 01 after Jirga in the PS Dabori. That the defendant without permission of the plaintiff No. 01 has contracted a second marriage some 10 years ago with the one Mst. Zahida Bibi. That the dower of the plaintiff No. 01 to the tune of 2 ½ Tola Gold and Rs. 80,000/- cash is still unpaid. That the dowry articles of the plaintiff No. 01 as per the list annexed with the plaint is also retained by the defendant. That no maintenance has yet been paid to either of the plaintiffs. That the plaintiff No. 01 & 02 are entitled to the recovery of past maintenance @ Rs. 15,000/month- and Rs. 10,000/month- respectively since the month of April, 2020, and future maintenance while the plaintiff No. 03 & 04 are entitled to the recovery of past maintenance @ Rs. 10,000/month- each since the month of April, 2021, and future maintenance.

REHMAT ULLAH WAZIR
Senior Civil Judge/JIN,
Orakzai at Baber Mela

That the defendant was asked time and again to admit the claims of the plaintiffs but he refused, hence, the present suit.

Defendant was summoned, who appeared before the court and contested the suit, negated the contention of the plaintiffs by submitting his written statement.

Pre-trial reconciliation was conducted but failed.

Thereafter, the divergent pleadings of the parties were reduced into the following issues.

ISSUES:

1. Whether the plaintiffs have got a cause of action?
2. Whether the dower of the plaintiff was fixed as 05 Tola Gold and Rs. 80,000/- cash out of which 2 ½ (Two and half) Tola Gold was paid to the plaintiff while remaining 2 ½ Tola Gold and Rs. 80,000/- are still outstanding against the defendant?
3. Whether the dower of the plaintiff was fixed as Rs. 80,000/- which has been paid to the parents of the plaintiff before marriage?
4. Whether the dowry articles mentioned in the list annexed with the plait were taken by the plaintiff to the house of the defendant at the time of her Rukhsati?
5. Whether defendant failed to pay maintenance to the plaintiff since April 2020, hence, plaintiffs are entitled to receive the past maintenance as well as in future?
6. Whether defendant paid some amount to the plaintiff in lieu of maintenance in pursuant to the decision of Jirga?
7. Whether the plaintiff No. 01 herself refused to reside with the defendant? If so its effect.

REHMAT ULLAH WAZIR
 Senior Civil Judge/JM,
 Orakzai at Baber Mewat

8. Whether the plaintiffs are entitled to the decree as prayed for?
9. Relief.

The parties produced their respective evidence (placed on file) on the above issues, as they wished and after the closing of evidence, post-trial reconciliation has been conducted but failed.

Arguments of both the counsel for the parties heard.

My issue wise findings are as under;

Issues No. 02 and 03:

Both these issues are interlinked, hence, taken for discussion.

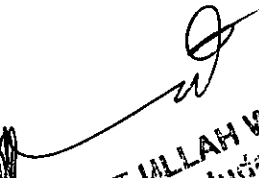
The plaintiff No. 01 alleged in her plaint that the marriage of the parties was contracted according to Shariah some twenty

(20) years ago. That the dower of the plaintiff No. 01 was fixed

as, 05 Tolas Gold and Rs. 80,000/- cash in which 2 ½ Tolas

Gold has been received while the remaining dower is still unpaid.


The burden to prove this issue was on the plaintiff No. 01. She produced witnesses in whom the one Zenat Ullah, a Jirga member, appeared as PW-01, who produced Jirga deed which is Ex.PW-1/1 and he narrated the story of dower as mentioned in the plaint. He has been cross examined but nothing tangible has been extracted out of him during cross examination. Further, Mr. Muhammad Rehman, a witness of the Nikah appeared as


REHMAT MULLAH WAZIR
 Senior Civil Judge/JIS,
 Orakzai at Baber Mela

PW-02, who corroborated the claim of the plaintiff No. 01 w.r.t dower. He has not been contradicted during cross examination. Further, Mr. Akbar Jan, a brother and special attorney of the plaintiff No. 01 appeared as PW-03. He also claimed to have conducted the Nikah Ceremony of the parties. He fully supported the plaint w.r.t the fixation and payment of dower. He has also not been contradicted w.r.t dower during cross examination. Further, Mr. Zaghafraan, another brother of the plaintiff No. 01 appeared as PW-04 and he also supported the plaint w.r.t dower. Nothing tangible has been extracted out of him during cross examination.

In order to counter the claim of the plaintiff No. 01, the defendant produced only one witness, as the defendant himself appeared as DW-01, who narrated the same story as in the written statement. But during cross examination, he admitted that a Jirga was conducted between the parties and the Jirga deed which is Ex.PW-1/1 is bearing my CNIC Number. Further that he did not pay any gold to my wife at the time of marriage.

Thus, in the light of the aforesaid findings, the plaintiff No. 01 established her claim of dower through evidence. Thus,


REHMAT MULLAH WAZIR
 Senior Civil Judge/JM,
 Orakzai at Bate, Mela

issue No. 02 is decided in positive while issue No. 03 is decided in negative.

Issues No.04:

The plaintiff alleged in her plaint that she took dowry articles from the house of her parents to the house of the defendant at the time of Rukhsati as per the list annexed with the plaint but the same are retained by the defendant in his house, therefore, she is entitled to its recovery.

For this, the plaintiff produced witnesses in the shape of PW-01 to PW-04, who all alleged and exhibited the list of dowry articles as Ex.PW-3/2 but no receipt has been produced, which could establish its purchase for the plaintiff No. 01 as dowry.

But the defendant in his cross examination as DW-01 has admitted that the dowry articles of the plaintiff No. 01 in the shape of 01 Charpai, 01 Bistra and 01 Box are still lying in his house. Thus, the plaintiff No. 01 is entitled to the recovery of these admitted dowry articles. Thus, the issue is disposed off accordingly.

Issues No. 05, 06 and 07:

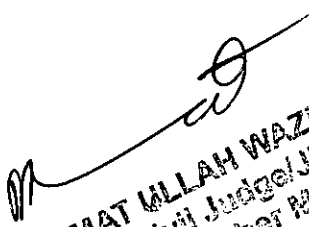
All these issues are interlinked, hence, taken for discussion.

The plaintiff No. 01 alleged in her plaint that the attitude of the defendant was very cruel towards her since the beginning and


REHMAT ALLAH WAZIR
 Senior Civil Judge/JM,
 Orakzai at Baber Helo

he used to beat her. That finally in the month of April, 2020, he beat up her and ousted her along with the plaintiff No. 02 and since then she is residing in the house of her brother and maintained by him. That in the month of April, 2021, a Jirga was conducted in PS Dabori, whereby the plaintiff No. 03 and 04 were also handed over to her. That all of the plaintiff since the aforesaid time are maintained by her brother, that is why they are entitled to the recovery of past maintenance at the rates mentioned in the head note of the plaint and future maintenance.


It is not a denied fact that the plaintiff No. 01 is still in the valid Nikah of the defendant and the rest of the plaintiffs are the children of the parties. It is also an admitted fact as per the cross examination of the defendant that the plaintiff No. 02 to 04 are residing with her mother and maintained by their maternal uncle for the period mentioned in the plaint and all are minors. Thus, Legally father is bound to maintain his children, where ever they may be, therefore, keeping in view the current day dearness and expenses of life and also keeping in view the financial status of the defendant, who has no known source of income, the maintenance of the plaintiff No. 02 to 04 is fixed as Rs. 5000/month- for each of these plaintiffs with 10% annual


FEHMAT ULLAH WAZIR
 Senior Civil Judge/JM,
 Orakzai at Baber Mela

increase from the dates mentioned in the plaint with further explanation that the plaintiff No. 03 would receive the same till the age of majority while the plaintiff No. 02 & 04 would receive the same till their marriage.

So far as the maintenance of the plaintiff No. 01 is concerned, it is established that the defendant has contracted a second marriage with the one Mst. Zahid Bibi some 10 years ago and the same without the permission of the plaintiff No. 01. Further, he has admitted that he has not seen either of the plaintiffs since their residence with the brother of the plaintiff No. 01, which shows his indifferent attitude towards his spouse and kids. He

has also admitted that all the expenses incurred upon the maintenance of the plaintiffs are borne by the brother of his wife and he has only paid Rs. 40,000/- some 4/5 months ago as maintenance to the plaintiffs, which also shows his negligence and stubborn attitude. Further, during post reconciliation, it was observed that the plaintiff no. 01 was ready to rehabilitate with the defendant but he was not ready to discharge his matrimonial obligations in a right way. Thus, in the light of the aforesaid findings, the plaintiff No. 01 being mother of the kids and have maintain his life as well as the look after of the other plaintiffs is entitled to the past maintenance @ of Rs. 8000/month with


BEHMAT ULLAH WAZIR
 Senior Civil Judge
 Orakzai at Esber Mela

10% annual increase along with future maintenance at the same rate till subsistence of Nikah between the parties.

One thing which is left to be discussed is the payment of Rs. 40,000/- as maintenance by the defendant, the same is established through evidence as DW-01. Thus, the same would be deducted from the total calculation of the past maintenance of the plaintiffs. Therefore, all these issues are decided accordingly.

Issues No. 01 & 08:

Both these issues are interlinked, hence, taken for discussion.

As sequel to my above issue-wise findings, the plaintiffs have got a cause of action and therefore entitled to the decree, the details of which are mentioned in the findings of different issues. Both these issues are decided accordingly.

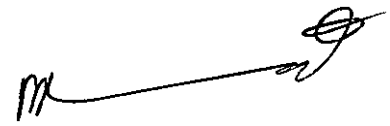
Relief:

As sequel to my findings on the above discussed issues, the suit of the plaintiff hereby decreed as the plaintiff no. 01 is entitled to 2 ½ Tola Gold or its market value, dowry articles in the shape of 01 Charpai, 01 Bistra and 01 Box and past maintenance @ Rs. 8000/month with future maintenance at the same rate till the subsistence of Nikah between the parties. The rest of the plaintiffs are entitled to the recovery of past

maintenance @ Rs. 5000/month each of the plaintiffs and future maintenance at the same rate with 10% annual increase with further explanation that the plaintiff No. 02 and 04 would be entitled to the said maintenance till their marriage while the plaintiff No. 03 would be entitled to the said maintenance till the age of his majority. An amount of Rs. 40,000/- paid earlier by the defendant to the plaintiffs would be deducted from the total amount of their past maintenance.

- 10. File be consigned to record room after its necessary completion and compilation.

Announced
28/10/2022



(Rehmat Ullah Wazir)
SCJ/JFC,
Orakzai (at Babe Mela).

CERTIFICATE

Certified that this judgment of mine consists of Ten (10) pages, each has been checked and corrected where necessary and signed by me.



(Rehmat Ullah Wazir)
SCJ/JFC,
Orakzai (at Babe Mela).