

(43)

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

Family Suit No. 2/3 of 2021
Date of Original Institution: 17.02.2021
Date of Transfer In: 19.07.2022
Date of Decision: 19.12.2022

Mst. Masti Khela w/o Khyal Zaman

R/O Qoum Ali Khel, Tappa Jasrat Khel, District Orakzai

..... (Plaintiff)

VERSUS

Khyal Zaman s/o Muhammad Wazir, Presently R/O Zargerri,
District Hangu

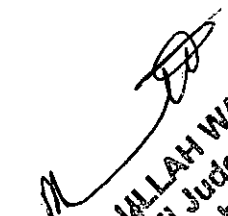
..... (Defendant)

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

JUDGMENT:


Through this judgment I intend to dispose-of the instant suit, instituted on 17.02.2021, through which the plaintiff sought for recovery of dower, dowry articles and maintenance.

Brief facts of the case are that the marriage of the parties was contracted according to Shariat-e-Muhammadi in 2006, some fifteen (15) years ago. That the dower of the plaintiff was fixed as Rs. 50,000/- cash which is still unpaid. That after Nikah, Rukhsati had taken place and the plaintiff was discharging her matrimonial obligations. That out of the wedlock, the plaintiff gave birth to a baby who is in the custody of the defendant. That after rukhsati, the attitude


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of the defendant was pleasant with the plaintiff in the beginning but later on, the same turned hard and he used to beat up the plaintiff, due to which the plaintiff attempted suicide several times. That on 01.01.2017, the defendant ousted her from his home with 03 pairs of clothes and snatched the dowry articles which are still in his possession and use. That for the last 04 years, the plaintiff is residing with her parents and the defendant has neither paid any maintenance to the plaintiff nor fulfilled other liabilities, and all the expenses of the plaintiff are borne by her parents.

That the plaintiff is entitled to the recovery of maintenance @ Rs. 15,000/month- since 01.01.2017 till the subsistence of Nikah between the parties with 10% increase per year, to the dower of Rs. 50,000/- cash and dowry articles as per the list or its market value worth Rs. 50,000/-.


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

Defendant was summoned, who appeared before the court and contested the suit, negated the contention of the plaintiff 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 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 dower worth Rs. 50,000/- and dowry articles as per the list annexed with the plaint or its price worth Rs. 50,000/- in the alternate from the defendant?
4. Whether the plaintiff is entitled to the recovery of an amount of Rs. 15,000/- for month with 10% annual increase since 01.01.2017 till the disposal of the suit from the defendant as maintenance?
5. Whether the plaintiff herself has left the house of the defendant on 01.01.2021 and took away her dowry articles and the marriage between the parties has been dissolved by irrevocable divorce on 25.01.2021, that is why she is not entitled to the recovery of either maintenance or the dowry articles?
6. Whether the plaintiff is entitled to the decree as prayed for?
7. Relief.

Arguments of both the counsel for the parties heard.

My issue wise findings are as under;


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Issue No. 02

The defendant alleged in his written statement that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 03, 04 & 05:

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

The plaintiff alleged in her plaint that the marriage of the parties was contracted according to Shariat-e-Muhammadi in 2006, some fifteen (15) years ago. That the dower of the plaintiff was fixed as Rs. 50,000/- cash which is still unpaid. That after Nikah, Rukhsati had taken place and the plaintiff was discharging her matrimonial obligations. That out of the wedlock, the plaintiff gave birth to a baby who is in the custody of the defendant. That after rukhsati, the attitude of the defendant was pleasant with the plaintiff in the beginning but later on, the same turned hard and he used to beat up the plaintiff, due to which the plaintiff attempted suicide several times. That on 01.01.2017, the defendant ousted her from his home with 03 pairs of clothes and snatched the dowry articles which are still in his possession and use. That for the last 04 years, the plaintiff is residing with her parents and the defendant has neither paid any maintenance to the plaintiff nor fulfilled other liabilities, and all the expenses of the plaintiff are borne by her parents.

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That the plaintiff is entitled to the recovery of maintenance @ Rs. 15,000/month- since 01.01.2017 till the subsistence of Nikah between the parties with 10% increase per year, to the dower of Rs. 50,000/- cash and dowry articles as per the list or its market value worth Rs. 50,000/-.

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

In order to prove her stance, the plaintiff produced witnesses in whom the one Akhtar Gul, the brother and special attorney of the plaintiff appeared as PW-01, who narrated the same story as in the plaint. Further, Mr. Lobat Khan, a relative of the plaintiff appeared as PW-02, and who also supported the stance of the plaintiff by narrating the same story as in the plaint. But during cross examination, he admitted that it is correct that the defendant have divorced the plaintiff

but he does not know the exact date of divorce. Further, Mr. Noor a relative of the plaintiff appeared as PW-03, who fully narrated the same story as in the plaint. All these witnesses have been cross examined but nothing tangible against the plaint has been extracted out of them during cross examination.

In order to counter the claim of the plaintiff, the defendant produced evidence, as the defendant himself appeared as DW-01, who narrated the same story as in the written statement but with one

addition that he has divorced the plaintiff on 25.01.2021. But during cross examination, he admitted that he has no witness regarding the fact of payment of dower by him to the plaintiff and that he has no proof regarding the mental disease of the plaintiff. Further, admitted that the parents of the plaintiff gave dowry articles to the plaintiff at the time of marriage. That she has taken away all the dowry articles with herself at the time of vacating my house but he has no proof regarding this fact.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that **firstly**, so far as the dower of the Plaintiff is concerned, it is an established fact that there can be no marriage without dower. The claim of the Plaintiff that it was Rs. 50,000/- cash

while the claim of the defendant is that it was Rs. 5000/- cash but the same has been paid but he has no proof in this respect. Rs. 50,000/-

cash is not an exorbitant amount rather a meager amount and can only

hardly be sufficient for the lawfulness of Nikah. Thus, the plaintiff established her claim that the dower was fixed as Rs. 50,000/- cash and the same is still unpaid. **Secondly**, so far as the entitlement of the plaintiff to the recovery of Rs. 15,000/month as maintenance since 01.01.2017 is concerned, she established that she was ousted from the house by the defendant on the said date and it is established by the

conduct of the defendant that he has not paid even a single penny till date to her as maintenance, though legally he was bound to maintain her till the subsistence of the valid Nikah. Thus, it is established that she has not left the house of the defendant at her own free will rather she was ousted by the defendant and therefore, she is entitled to the recovery of Rs. 15000/month as maintenance from the defendant since 01.01.2017 till her divorce on 25.01.2021 and afterwards for 03 months period as Iddat with 10% annual increase. **Thirdly**, so far as the recovery of dowry articles or its market value is concerned, the defendant has admitted that she was given dowry articles by her parents at the time of marriage but he has not produced any piece of evidence regarding the fact that the same were taken away by her at the time of leaving the house. Thus, she established her claim

regarding the recovery of dowry articles and thus, she is entitled to its recovery or recovery of its market price worth Rs. 50,000/-.

Thus, in the light of the aforesaid findings, all these issues are decided accordingly.

Issues No. 01 & 06:

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

As sequel to my above issue-wise findings, the plaintiff has got a cause of action and therefore, entitled to the decree as prayed for.

Both these issues are decided accordingly.

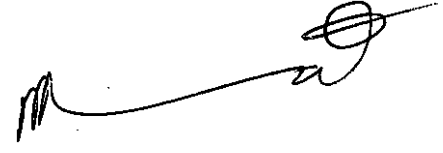
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Relief:

As sequel to my findings on the above discussed issues, the suit of the plaintiff is hereby decreed as the plaintiff is entitled to the dower of Rs. 50,000/- cash, dowry articles or its market value worth Rs. 50,000/- and maintenance of Rs. 15,000/- per month since 01.01.2017 till 25.01.2021 and afterward for 03 months period as Iddat with 10% annual increase.

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

Announced
19.12.2022


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

CERTIFICATE

Certified that this judgment of mine consists of eight (08) pages, each has been checked and corrected where necessary and signed by me.


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