

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

FAMILY COURT APPEAL NO. : 1/FCA OF 2022  
DATE OF INSTITUTION : 26.09.2022  
DATE OF DECISION : 17.10.2022

NEK BADSHAH S/O ABDUL SATTAR SHAH, R/O SRA GARHI  
CASTE RABIA KHEL, ISMAILZAI, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

MST. ZAINAB BIBI D/O SAID KHAN, R/O MOUZA TAPI, DISTRICT  
KOHAT

..... (RESPONDENT)

**Present:** Khalid Mehmood Advocate for appellant.

**JUDGEMENT**  
**17.10.2022**

Impugned herein is the order dated 19.09.2022 of the learned Senior Civil Judge/Judge Family Court, Orakzai vide which suit of the appellant/plaintiff has been dismissed being non-maintainable.

- (2). The appellant/plaintiff before the court of learned SCJ/Judge Family court, Orakzai brought a suit for restitution of conjugal rights against the respondent/defendant (the wife of appellant/plaintiff) contending therein that the marriage of the parties was solemnized in lieu of a dower in the shape of golden ornaments weighing 04 masha, 04 numbers of clothes, 04 pairs of shoes and a veil besides having paid rupees 02 lacs as head money to the parents of respondent/defendant by the appellant/plaintiff. Initially, the matrimonial life of the parties was going well; however, later on

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respondent/defendant turned violent and disobedient, leaving the house of appellant plaintiff, taking with her household items, rupees 02 lacs, golden ornaments weighing 03 tolas of her sister-in-law and wristwatches. That the respondent/defendant being residing at the house of her parents refused to perform her conjugal obligation. Hence, the suit. The learned Judge Family Court, after receipt of case file, heard preliminary arguments and dismissed the same being non-maintainable as per Rule 06 of the West Pakistan Family court Rule, 1965.

The appellant/plaintiff, being aggrieved of the impugned order, filed the present appeal. The respondent/defendant was summoned through register AD letter but the same was returned being refused to be received by respondent/defendant; hence, placed and proceeded ex-

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Arguments heard and record perused.

As per contents of plaint, appellant/plaintiff is the resident of District, Orakzai permanently residing at Village Sara Ghari, Caste Rabia Khel while the respondent/defendant at present being residing with her parents, is the resident of District Kohat. The Jurisdiction regarding the subject matter is governed under Section 5 read with part first of the schedule to the West Pakistan Family Court Act, 1964, wherein in respect of restitution of

conjugal rights the Family Court has got exclusive jurisdiction to adjudicate upon the matter. With respect to territorial jurisdiction Rule 06 of the West Pakistan Family court, 1965 governed the subject, which is produced as below;

*“The Court which shall have jurisdiction to try a suit will be that within the local limits of which:*

- (a) The cause of action wholly or in part has arisen; or*
- (b) Where the parties resided together:*

*Provided that in suits for desolation of marriage or dower, the Court within the local limits’ of which the wife ordinarily resides shall also have jurisdiction.”*

In the instant case as per contention of the appellant/plaintiff the respondent/defendant has left the house of appellant/plaintiff which is situated at village Sara Ghari District, Orakzai and a cause of action has arisen to the appellant/plaintiff within the territorial limits of Family Court District, Orakzai. Similarly, as per contention of the appellant/plaintiff the parties have last resided together at village Sara Ghari District, Orakzai which falls within the territorial limits of Family Court of District, Orakzai. So far, the jurisdiction of the court within the local limits of which the wife of the appellant/plaintiff resides, is concerned, this is a proviso to the ibid section of law which is restricted only to the suits for dissolution of marriage or recovery of

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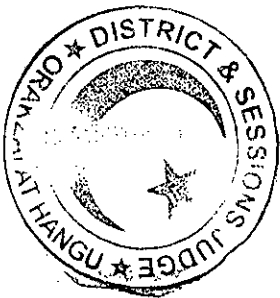
dower and the same does not apply to the suit for restitution of conjugal rights.

(3). Hence, in view of what is discussed above, it is held that as per provision of the Rule 06 (a) and 6 (b) of the West Pakistan Family Rules, 1965, the Family Court at District Orakzai has got jurisdiction to adjudicate upon the matter of restitution of conjugal rights; therefore, the learned trial Court has fallen into error while interpreting the law on the point; hence, on acceptance of the instant appeal the impugned order dated 19.09.2022 of learned Senior Civil Judge/Judge Family Court, Orakzai is set aside. The case is remanded back to the learned trial court with the direction to decide the same on the basis of merits, after summoning the respondent/defendant and recording of evidence. File of this court be consigned. Copy of this order/judgment be placed on record. Appellant/plaintiff is directed to appear before the court of learned SCJ/Judge Family Court on 24.10.2022.

**Pronounced**  
17.10.2022



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at Baber Mela



**CERTIFICATE**

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 17.10.2022



**(SHAUKAT AHMAD KHAN)**  
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