JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.132 of 2016
Mst. Shakila Rafique
Versus
Naveed Butt and others

Date of Hearing:	20.06.2017
Petitioner by:	Mr. Shafqat Mehmood Butt, Advocate.
Respondents by:	Mr. Muhammad Mohsin Bhatti, Advocate for respondents No.1 to 4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Mst. Shakila Rafique, impugns the judgment dated 29.02.2016, passed by the Court of the learned Additional District Judge, Islamabad (West), whereby respondent No.1's appeal against the judgment and decree dated 17.04.2015, passed by the Court of the learned Civil Judge, Islamabad, was allowed. Vide the said judgment and decree dated 17.04.2015, the learned civil Court had decreed the petitioner's suit for the transfer of a house located in Khasra No.650, Shams Colony, Golra Morr, Islamabad, on account of the fact that the suit property was incorporated in column No.16 of the *Nikahnama* dated 14.03.1999.

2. Learned counsel for the petitioner submitted that on 14.03.1999, the petitioner and respondent No.1 (Naveed Butt) got married; that as per the *Nikahnama,* Rs.30,000/- and 05 *tolas* of gold jewelry were fixed as dower; that as per column No.16 of the *Nikahnama*, respondent No.1 was supposed to give a house in Shams Colony, Golra Morr, Islamabad to the petitioner as part of the dower; that on 13.03.1999, an *Iqrarnama* was executed by respondent No.3 to the effect that a house situated at Shams Colony, will be given to the petitioner; that after the marriage, possession of the suit house was given to the petitioner by all the members of respondent No.1's family; that ever since then the petitioner has been living in the suit house; that the suit house has not been formally transferred in the petitioner's name; that

the refusal on the part of the private respondents to transfer the suit house in the petitioner's name caused the petitioner to institute a suit for declaration, permanent and mandatory injunction against the respondents before the Court of the learned Civil Judge, Islamabad; that the said suit was contested by the private respondents; after the framing of issues and recording of evidence, the learned civil Court decreed the suit on 17.04.2015; and that the private respondents' appeal against the said decree has been allowed by the Court of Additional District Judge, Islamabad.

3. Learned counsel for the petitioner further submitted that the impugned judgment and decree passed by the learned appellate Court suffered from misreading and non-reading of evidence; that the learned appellate Court erred by holding that the entry in column No.16 of the *Nikahnama* regarding the suit house is vague; that the learned appellate Court erred by not appreciating that in the *Nikahnama* as well as the *Iqrarnama,* it was clearly mentioned that the suit house would be transferred to the petitioner in the shape of dower; and that the learned appellate Court erred by not appreciating the DW-1 (Fayyaz Butt) had admitted that the suit house was to be given to the petitioner. Learned counsel for the petitioner prayed for the impugned judgment and decree dated 29.02.2016, passed by the learned appellate Court to be set aside, and for the judgment and decree dated 17.04.2015, passed by the learned civil Court, to be restored.

4. On the other hand, learned counsel for respondents No.1 to 4 submitted that in the proceedings before the learned civil Court, the said respondents were proceeded against *ex-parte* on 13.03.2010; that the description of the suit house has not been specifically mentioned in column No.16 of the *Nikahnama*; and that at no stage has the suit house been mutated in the name of the said respondents. Furthermore, it was contended that at the time of the *Nikah,* respondent No.1 was not the owner of the suit property, and that at that time respondents No.1 to 3's father was the owner. The submissions of the learned counsel for the

said respondents were as short as their written statement before the learned civil Court and their appeal before the learned appellate Court. Learned counsel for the said respondents prayed for the revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

6. The record shows that the petitioner and respondent No.1 got married on 14.03.1999. Subsequently the relations between the couple turned sour resulting in the dissolution of their marriage. As per column No.13 of the *Nikahnama* (Ex.P-2), the dower amount was Rs.30,000/-. The entry at column No.16 reads as follows:-

"ایک مکان واقع شمس کالونی گولڑہ موڑ راولپنڈی زوجہ بی بی کو دیا جائیگا"

The entry in column No.16 is required to be made if any property is given to a wife in lieu of the dower or a part thereof. The description of such property and its value as agreed between the parties has to be entered in the said column.

7. A day prior to the *Nikah,* Muhammad Ilyas (respondent No.3) executed an *Iqrarnama,* wherein it has been mentioned that one house located at Shams Colony, Golra Morr, Rawalpindi would be given to the petitioner. This *Iqrarnama* has been witnessed by Abid Mehmood and Mirza Muhammad Aslam.

8. Initially when the civil suit was filed by the petitioner, she had prayed for *inter alia* the recovery of dower in the shape of the suit house. On 13.01.2010, a statement of the learned counsel for the petitioner/plaintiff was recorded by the learned civil Court. This statement was to the effect that the suit instituted by the petitioner was in the nature of a family suit as well as a civil suit; that the petitioner wanted to pursue the suit as a civil suit; and that the same should be entertained as a civil suit, and not treated as a family suit. Thereafter, the suit proceeded as a civil suit and not as a family suit.

9. The written statement filed on behalf of respondents No.1 to 4 is replete with evasive denials, save the pleadings to the effect that the suit house had been transferred to respondent

No.2 by respondent No.1 and the legal heirs of Muhammad Iqbal Butt through mutation No.5660.

10. Apparently, the transfer of the suit house in favour of respondent No.2 was made during the subsistence of an injunctive order issued by a civil Court at Rawalpindi. Vide order dated 28.06.2010, passed by the learned civil Court at Islamabad, the application for interim injunction filed by the petitioner was accepted. In the said order, it has been observed that the petitioner's possession over the suit property had not been denied. The petitioner (PW-1) in her examination-in-chief deposed that after the *Nikah,* possession of the suit house was delivered to the petitioner, and that she is still in possession of the suit house. This testimony was not shaken in the cross-examination. Muhammad Asghar (PW-2) who is the petitioner's father had also deposed that possession of the suit house had been given to the petitioner.

11. Muhammad Fayyaz/respondent No.2 (DW-1) was the special attorney of respondent No.1, 3 and 4. In his examination-in-chief, DW-1 deposed *inter-alia* that the petitioner and respondent No.1 got married on 14.03.1999; that Rs.30,000/- was fixed as dower; that one house was written as dower; and that the boundaries and the measurement of the house at Shams Colony, Golra Morr, Islamabad were not mentioned. He has also deposed that the suit house has been transferred in his name after his father's death on 29.06.2009.

12. The *fard* of the suit house dated 06.01.2010, shows that respondents No.1 to 4 were owners of the suit house. But the *fard* dated 27.04.2010, shows respondent No.2 as the owner of the suit house. Vide registered sale deed dated 26.06.2009, the suit house was transferred to respondent No.2.

13. The learned appellate Court non-suited the petitioner primarily on the ground that the entry in column No.14 of the *Nikahnama* shows that 05 *tolas* of gold jewelry were Rs.30,000/- had been given to the petitioner. Furthermore, the entry in column No.16 was held to be vague as no description of the house had been given.

14. The mere fact that the total measurement or the boundaries of the suit house are not mentioned in the *Nikahnama* or the *Iqrarnama* would not by itself disentitle the petitioner from the relief given to her by the learned civil Court. The learned appellate Court erred by not appreciating that after the execution of the said *Iqrarnama* and *Nikahnama*, possession of the suit house had been delivered to the petitioner. The fact that the petitioner was given possession of the suit house is clear from the evidence available on the record as well as the order dated 28.06.2010, referred to herein above. The entry of the property mentioned in the *Iqrarnama* and the *Nikahnama* is relatable to the factum of the petitioner being given possession of the suit house. Therefore, there is no element of vagueness in the property referred to in the said *Iqrarnama* and the *Nikahnama*. I also do not agree with the finding of the learned appellate Court that given the entry in column No.14 as to the payment of dower in the form of jewelry, the property entered in column No.16 could not be decreed in the petitioner's favour. The entries in column No.16 were consciously made and this was done in fulfillment of the statement mentioned in the *Iqrarnama* to the effect that the suit property would be given to the petitioner. The learned appellate Court could not attribute redundancy or surplusage to the entries in the *Nikahnama*.

15. The employment of the words "شکیلہ بی بی کو حوالے کیا جائے گا" in column No.16 shows that the said entry was a promise to the petitioner, which is enforceable through the Court of plenary jurisdiction, by filing a suit for declaration etc. It is pertinent to bear in mind that respondents No.1 to 4 in their appeal before the learned appellate Court did not raise any objection to the jurisdiction of the learned civil Court to adjudicate upon the matter. Perusal of the impugned appellate order dated 29.02.2016 also shows that respondents No.1 to 4 had not raised any objection to the jurisdiction of the learned civil Court. This is so even regarding respondents No.1 to 4's written statement before the learned civil Court. After the statement of the learned counsel for the petitioner that the suit would not proceed as a

family suit, the said respondents accepted the position by not raising any objection to the jurisdiction of the learned civil Court. In the case at hand, the fact that the suit house would be transferred to the petitioner finds mentioned not just in the *Nikahnama* dated 14.03.1999, but also the *Iqrarnama* dated 13.03.1999.

16. In view of the above, the instant revision petition is allowed. The impugned judgment and decree dated 29.02.2016, passed by the learned appellate Court is set aside, and the judgment and decree dated 17.04.2015, passed by the learned civil Court is restored. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 12/09 **/2017**

(JUDGE)

Ahtesham