

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No.203 of 2018  
(PLA filed on 20.06.2018)

1. Syed Iqbal Shah s/o Syed Lal Hussain Shah,
2. Khatoon Begum w/o Syed Iqbal Shah, r/o Domail Sayedan, Tehsil and District Muzaffarabad.

.... APPELLANTS

**VERSUS**

1. Syeda Tahira Bibi d/o Syed Hussain Shah (widow) of Zafar Iqbal r/o Anwar Colony, Khana Pull, Rawalpindi, Pakistan.
2. Patwari Halqa, Domail Sayedan, Tehsil and District Muzaffarabad.
3. Sub-Registrar, Muzaffarabad, having his office at New Secretariat Complex, Bilal "A", Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment and decree of the High Court dated 26.04.2018 in Civil Appeal No.22 of 2017]

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FOR THE APPELLANTS:

Mr. Sajjad Ahmed  
Khan, Advocate.

FOR THE RESPONDENTS:

Raja Muhammad  
Mushtaq, Advocate.

*Date of hearing:* 03.12.2018.

**JUDGMENT:**

*Ghulam Mustafa Mughal, J.*— The captioned appeal by leave of the Court arises out of the judgment and decree dated 26.04.2018, passed by the Azad Jammu & Kashmir High Court in Appeal No.22 of 2017.

2. The facts forming the background of the captioned appeal are that the plaintiff-respondent, herein, filed a suit for declaration-cum-perpetual injunction in the Court of Senior Civil Judge Muzaffarabad on 16.09.2014, alleging therein, that she is widow of Zaffar Iqbal and her marriage was solemnized with Zafar Iqbal on 22.12.2012. It was further alleged that the land comprising survey No.158 min, along with a house consisting of 2 rooms with a kitchen and bath room was given to her by her husband as dower. It was stated that the defendant-appellant No.2, herein, stood surety in the terms that the said land along with the house would

be transferred in favour of the plaintiff soon after the marriage. It was averred that after death of the husband of the plaintiff, the defendant-appellant No.1, herein, executed a gift-deed dated 11.10.2014 whereby the land comprising *khasra* No.158 min along with the house has been transferred to the appellant No.2, herein. A counter suit for perpetual injunction was filed by Mst. Khatoon Bibi against the respondents, herein, in the same Court on 29.11.2014. This suit was contested by Syeda Tahira Bibi, respondent, herein, by filing written statement. The trial Court consolidated both the suits, framed issues in light of the pleadings of the parties and asked them to lead evidence pro and contra. At the conclusion of the proceedings, the learned trial Court through the consolidated judgment and decree dated 26.11.2016, decreed the suit in favour of the plaintiff-respondent, herein, in respect of the suit land along with the house and canceled the gift-deed dated 11.10.2014, whereas, the counter suit filed by

Mst. Khatoon Bibi was dismissed for want of proof. Feeling aggrieved from the judgment and decree passed by the Senior Civil Judge dated 26.11.2016, Syed Iqbal Shah & another, defendant-appellants, herein, filed an appeal before the learned Additional District Judge Muzaffarabad which was also dismissed through the judgment and decree dated 02.02.2017. The judgment and decree dated 02.02.2017 was assailed by way of appeal before the learned High Court on 03.02.2017. The learned High Court after necessary proceedings, through the impugned judgment and decree dated 26.04.2018, has also dismissed the appeal.

3. Mr. Sajjad Ahmed Khan, the learned Advocate appearing for the appellants argued with vehemence that the judgements passed by the Courts below badly suffer from misreading and non-reading of the record as well as evidence and the conclusion reached at is also erroneous, arbitrary and perverse. The learned Advocate

further argued that appellant No.1, herein, stood surety and executed an agreement in favour of respondent No.1, herein, at the time of solemnization of marriage but the land given in dower was abandoned by respondent No.1, herein, with her free consent in lieu of ornaments which were given to her. The learned Advocate further argued that the factum of abandonment of the land was duly proved through cogent evidence but the same has erroneously been discarded by the learned Senior Civil Judge, Additional District Judge and the High Court. The learned Advocate further argued that the judgments and decrees passed by the Courts below were without jurisdiction as the matter involved in the suit pertains to the satisfaction or otherwise of the dower and only the Family Court was competent to decide the issue. The learned Advocate submitted that the Courts below have

not followed the Full Court Judgment of this Court and no reasons have been listed for departure from the view taken by this Court in the case reported as *Shahzad Rauf vs. Shabana Yasmin* [2017 SCR 1522]. The learned Advocate further submitted that the rule of *lis pendens* was also erroneously applied by the Courts below as the execution of the gift-deed was with the consent of respondent No.1, herein.

4. Conversely, Raja Muhammad Mushtaq Khan, the learned Advocate appearing for the other side argued that the suit was rightly filed before the Civil Court because in the present case, the controversy was with the third party namely Mst. Khatoon Bibi who was claiming the ownership of the disputed property on the basis of the gift-deed, hence, in such circumstances jurisdiction of the Civil Court was not barred. The learned Advocate contended that entries

made in the *Nikahnama* regarding the property given in the dower are always accepted and treated akin to *sail*. He added that the gift-deed subsequently executed by Iqbal Hussain Shah has rightly been cancelled by the Service Tribunal as the same was executed during pendency of the suit of respondent No.1, herein, and in presence of the prohibitory order of the Court. The learned Advocate further contended that for coming to the conclusion, the Courts below have followed the dictum laid down by this Court in the case reported as *Zafar alias Mumtaz & another vs. Mst. Sajjad Begum & 7 others* [2014 SCR 1549], therefore, it cannot be said that the conclusion drawn by them was erroneous or illegal. The learned Advocate argued that concurrent findings of fact cannot be disturbed by this Court mere on the ground that re-appraisal of evidence might lead to a different conclusion.

5. We have heard the learned counsel for the parties and have gone through the record of the case. The plaintiff/respondent No.1, herein, filed a suit before the Senior Civil Judge Muzaffarabad, alleging therein, that she was married to Zaffar Iqbal s/o Syed Iqbal Shah, defendant/appellant No.1, herein, on 22.12.2012. It was stated that in lieu of the dower, the land comprising *khasra* No.158 min, measuring, 3 *kanal*, along with a house consisting on 2 rooms, a kitchen and a bathroom was given to the plaintiff and appellant No.1, herein, stood surety for transfer of the same. It was further stated that her husband namely Syed Zafar Iqbal died and thereafter defendant/appellant No.1, herein, occupied the land and transferred the same to his wife through gift-deed dated 11.10.2014. The suit was contested by the other side by filing written statement, wherein, it was claimed by Syed Iqbal



Shah that in lieu of land entered in the *Nikahnama* and *Iqrarnama*, jewelry of the same value was given to the plaintiff with her consent, hence, now she cannot claim for transfer of the land. The learned trial Court framed issues in light of the pleadings of the parties and directed them to lead evidence in support of their respective stand. At the conclusion of the proceedings, the learned trial Court vide consolidated judgment and decree dated 26.11.2016, granted the decree in favour of Syeda Tahira Bibi in respect of the suit land, whereas, dismissed the counter suit filed by Mst. Khatoon Bibi. Syed Iqbal Shah and Mst. Khatoon Bibi felt aggrieved from the judgment and decree of the trial Court and challenged the same through appeal before the learned Additional District Judge Muzaffarabad on 30.11.2016. The learned Additional District Judge Muzaffarabad, after

necessary proceedings, vide judgment and decree dated 02.02.2017, dismissed the appeal. The second appeal before the High Court met the same fate and was dismissed through the impugned judgment and decree dated 26.04.2018. The contention of Mr. Sajjad Ahmed Khan, the learned Advocate for the appellants that the Courts below have not appreciated the evidence in its true perspective and their conclusion is based on misreading and non-reading of the evidence as well as the record, is devoid of any force. The learned trial Court discussed the evidence while deciding the issues and appreciated the same in accordance with the principles approved by the superior Courts. It has rightly been observed by the learned trial Court as well as 1<sup>st</sup> and 2<sup>nd</sup> appellate Courts that the entries of the *Nikahnama* carries presumption of truth vis-à-vis oral evidence. The stance taken by

the appellants, herein, cannot be accepted in presence of the documentary evidence. It is also established that the land given in dower was not abandoned by Mst. Tahira Bibi. It is also not proved that she has given consent in present of any person for taking jewelry as alternate dower. The contention of the learned Advocate for the respondents that the gift-deed was void as the same has been executed during pendency of the suit file by Syeda Tahira Bibi, respondent No.1, herein, is proved from the record. Not only, the gift-deed was executed during the pendency of the suit but also during the status quo order issued by the Court which was duly served upon the defendant/appellants, herein. The contention of Mr. Sajjad Ahmed Khan, the learned Advocate for the appellants that the Civil Court has got no jurisdiction in respect of the matters enumerated in the Schedule of Family Court Act, 1993, is

also not attracted to the facts of the case in hand. We have clarified the position in *Shahzad Rauf's* case [2017 SCR 1522], wherein, at page 1540 of the report it is observed by this Court that if the dispute regarding payment of the dower is between husband and the wife, then no other Court except Family Court can entertain the suit and even on the basis of entries made in the *Nikannama*, the decree of possession can be awarded by the Family Court. In this regard, reliance was placed on the cases reported as *Liaquat Ali vs. Additional District Judge, Narowal & 2 others* [1997 SCMR 1122] and *Muhammad Arif & others vs. District and Sessions Judge, Sialkot & others* [2011 SCMR 1591]. However, we also held that if the controversy regarding payment of the dower in respect of any property arises between spouse and the third party, then Civil Court is an

appropriate forum for determination of the matter. The relevant observation of the Court is reproduced as under:-

“In view of the aforesaid settled position of law, it can safely be concluded that the dower once fixed between the spouses remains dower and even after its payment, if any dispute arises or the same is snatched by the husband, the Family Court alone has got jurisdiction to entertain and decide the matter. The suit before the Family Court for recovery of the dower will also be competent against any person, who stood as a guarantor for the payment of the dower, however, we may clarify that if any dispute arises in respect of the property given in lieu of the dower, with any person other than the husband or the guarantor, then, of course, the case would be decided by the civil Court....”

In the present case, the counter suit in respect of the suit property was filed by Mst. Khatoon Bibi who was neither guarantor nor had any other concern with the plaintiff, as far as dower is concerned, therefore, the jurisdiction of the Family Court was rightly invoked. As both the

Courts below have awarded the decree in favour of respondent No.1, herein, therefore, we are not inclined to disturb the same. There is no any misreading or non-reading of the evidence as well as record in the judgments recorded by the Courts below.

In view of the above, finding no force in this appeal, the same is hereby dismissed. No order as to costs.

Muzaffarabad.  
05.12.2018

**JUDGE**

JII

**JUDGE**

JII