

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 137 of 2019
(PLA Filed on 18.6.2019)

Humaira Tabassum d/o Pervez Iqal r/o Sanghoi,
Tehsil and District Jhelum (Pakistan).

.... APPELLANT

VERSUS

Muhammad Imran s/o Hakam Din r/o Kachi
Abadi, House No. 440 Sector F/2 Mirpur, AK.

..... RESPONDENT

(On appeal from the judgment of the Shariat Appellate
Bench of the High Court dated 19.4.2019 in Family
Appeal No. 98 of 2018)

FOR THE APPELLANT: Syed Gohar Abbas,
Advocate.

FOR THE RESPONDENTS: Hafiz Fazal-ul-Rehman Dar,
Advocate.

Date of hearing: 22.1.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 19.4.2019 passed by the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court in civil appeal No. 98 of 2018.

2. The brief facts forming the background of the captioned appeal are that Humaira Tabassum, appellant, herein, filed three suits; one for recovery of dowry articles; second for payment of maintenance allowance and third one for payment of dower against the respondent, herein, in the Court of Additional District Judge/Judge Family Court Mirpur. It was alleged that the plaintiff was married to defendant on 22.1.2012 in lieu of dower in shape of gold ornaments weighing 4 tota and 5 marla plot, situated at Mirpur. It was further alleged that as per condition of *Nikahnama*, the defendant was duty bound to pay Rs.3,00,000/- in case of divorce. It was averred that after *Nikah*, the defendant snatched the gold

ornaments given to the plaintiff at the time of Nikah and also did not transfer the plot measuring 5 marla in the name of the plaintiff. The suit was contested by the defendant by filing written statement, whereby the claim of the plaintiff was refuted. The learned trial Court consolidated all the suits, framed issues in light of the pleadings of the parties and at the conclusion of the proceedings decreed the suit filed for payment of dower to the extent of plot measuring 5 marla and Rs.3,00,000/- and dismissed the same to the extent of prompt dower vide judgment and decree dated 24.9.2018. Feeling dissatisfied from the said judgment and decree, the respondent, herein, filed an appeal before the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court on 23.10.2018, which was accepted vide impugned judgment and decree dated 19.4.2019.

3. Syed Gohar Abbas, the learned Advocate appearing for the appellant argued

with vehemence that the appellant, herein, filed a suit for recovery of dower before the Family Judge. After necessary proceedings the learned Family Judge granted the required decree. He submitted that the respondent, herein, filed an appeal before the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court, which was accepted and the suit filed for payment of dower was erroneously dismissed. The learned Advocate further argued that at the time of Nikah it was agreed between the spouses that besides gold ornaments the respondent shall also give 5 marla plot to the plaintiff, which has not been given by him. The learned Advocate next argued that entry to this effect was also incorporated in the Nikah Nama, which was rightly believed by the learned Family Judge as presumption of truth is attached to such an entry. The learned Advocate further argued that reasons assigned by the learned Judge of the Shariat Appellate Bench of the High Court are contrary to law and not reasonable.

4. Hafiz Fazal-ur-Rehmand Dar, the learned Advocate appearing for the respondent argued with vehemence that at the time of Nikah only dower was fixed to the tune of 4 tola gold ornaments, which were paid in the *Majlis* and entry to this effect is incorporated in the Nikah Nama. He submitted that condition of giving plot to the appellant, herein, was incorporated subsequently by tempering the Nikah and no such condition was listed. The learned Advocate lastly argued that the impugned judgment passed by the learned Family Court was against the record and erroneous, hence, has rightly been recalled by the learned Judge of the Shariat Appellate Bench of the High Court.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record reveals that dower was fixed in shape of 4 tola gold ornaments. It is also entered in the Nikah Nama Exh. "PJ" and the same was paid at the

time of Nikah. So far as the condition of plot is concerned, although that is mentioned but as the defendant was not in possession of any plot, therefore, the learned Shariat Appellate Bench of the High Court for genuine reasons has come to the conclusion that this condition is an afterthought and was not the part of the contract. As per record it is not mentioned that the plot was given in lieu of dower, hence, it was not proper for the learned Family Judge to declare the appellant, herein, entitled to have the plot from the respondent. The reasons listed in support of the impugned judgment by the learned Shariat Appellate Bench of the High Court are unexceptionable and hardly require any interference by this Court.

The result of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE.

Mirpur.
23.1.2020.

