

2011 SCMR 972

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Nasir-ul-Mulk and Tariq Pervez, JJ

RAB NAWAZ AHMED---Petitioner

Versus

Mst. HASINA IQBAL and another---Respondents

Civil Petition No. 1024 of 2010, decided on 1st July, 2010.

(On appeal from the judgment of the Peshawar High Court, Abbottabad Bench dated 21-4-2010 passed in W.P. No. 4 of 2009).

West Pakistan Family Courts Act (XXXV of 1964)---

---S. 5, Sched. & S.14---Constitution of Pakistan, Art.185(3)---Suit for recovery of amount of dower-Family Court decreed the suit filed by the plaintiff (wife) but Appellate Court set aside judgment and decree of the Family Court, holding that plaintiff was not entitled to recover amount of dower as defendant (husband) had alienated half of the share of his property in favour of the plaintiff---High Court, exercising its constitutional jurisdiction set aside finding of the Appellate Court---Validity---Defendant had failed to establish that 1/2 share of his house, which originally belonged to his father and which he had agreed to transfer in the name of the plaintiff in lieu of dower amount, had been transferred by him in favour of the plaintiff---Defendant could not produce on record any document in support of his claim---No case having been made out for grant of leave petition was dismissed.

Khalid Rehman Qureshi, Advocate Supreme Court along with Asif Mehmood, cousin of Petitioner for Petitioner.

Nemo for Respondents.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.---This petition calls in question the judgment of the Peshawar High Court dated 21-4-2010. Precisely stated the facts of the case are that the respondent, Mst. Hasina Iqbal, wife of the petitioner, Rab Nawaz Ahmed, brought a suit, inter alia, for recovery of Rs. 5,00,000 as an amount of dower. The learned Family Court, Mansehra, decreed the suit on 14-3-2008. In appeal, the learned District Judge opined that as one half of the share of the property has been alienated in favour of respondent, she is not entitled to recovery of Rs. 5,00,000. However, the learned High Court, in exercise of writ jurisdiction set aside the

finding of the Appellate Court and vide impugned judgment concluded that as no documentary proof of transfer of the property was brought on record and the house was still in occupation of the petitioner family therefore neither the dower has been paid nor the(sic.) court dated 14-3-2008 was restored. It is to be noted that the petitioner/defendant was unable to produce any documentary evidence to show the transfer of 1/2 share of the house in his favour by his father or any other document of his ownership of one part of the house. The learned counsel stated that the petitioner got transferred of 1/2 share in the house in the name of the respondent on 8-8-2005 before the date of Nikahnama dated 14-8-2005. Therefore, according to him claim of the respondent stands satisfied and under the circumstances the High Court could not issue writ in favour of the respondent.

2. We have heard the learned counsel and have gone through the judgment of the Judge Family Court dated 14-3-2008, perusal whereof makes it clear that the petitioner failed to establish that 1/2 share of the house which originally belonged to his father and which he had agreed to transfer in the name of the respondent in lieu of dower of Rs. 5,00,000 has been transferred, inasmuch as no document in support thereof was brought on record. Same was the position before the High Court. It is to be noted that the petitioner also failed to produce copy of any such document before us in order to satisfy us that the findings regarding trial Court maintained by the High Court in its judgment dated 21-4-2010 needs to be interfered with. During the hearing the learned counsel, upon inquiring from one Asif Melnood, present in Court, who claims to be the cousin of the petitioner, it was disclosed that the petitioner is now living in Italy, whereas his brother, who have share in the house, is residing in Ireland. He further stated that the original registered deed of ownership of the house is with the learned counsel previously engaged, who have not filed the same. We do not accept this(sic.).

3. Under the circumstances, we are of the opinion that no case is made out for grant of leave as such the petition is dismissed. The executing court dealing with the matter, the execution application, if filed for recovery of Rs.5,00,000, is directed to expedite the proceedings and conclude the same within a period of 6 weeks and submit report to the Registrar of this Court for our perusal.

H.B.T./R-8/SC

Petition dismissed.