

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashefa Hussain

Civil Revision No. 1435 of 2019

Md. Raju Mia

.....petitioner

-Versus-

Most. Lutfa Begum and another

----- Opposite parties

Mr. Sharif U Ahmed, Advocate

----- For the petitioner

Mr. Md. Abdullah Al Mamun, Advocate

----- For the Opposite Parties

Heard on: 21.05.2023, 23.05.2023 and
Judgment on 06.06.2023

Rule was issued calling upon the opposite parties to show cause as to why the Judgment and decree dated 26.08.2018 passed by the learned District Judge, Lalmonirhat in Family Appeal No. 08 of 2017 allowing the appeal and modifying the judgment and decree dated 25.07.2017 and 30.07.2017 in Family Suit No. 41 of 2014 upholding the Dower Money and reduced maintenance decree Tk. 38,388.00 in favour of the plaintiff respondent opposite party No. 2 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite parties as plaintiff No. 1 and 2 filed Family Suit No. 41 of 2014 in the Family Court Hatibandha, Lalmonirhat for dower and maintenance impleading the instant

petitioner husband as defendant in the suit. The trial court upon hearing the parties, taking depositions, adducing evidences and framing issues etc. allowed the suit by its judgment and decree dated 30.07.2017. Being aggrieved by the judgment and decree of the trial court the defendant husband filed Family Appeal No. 08 of 2017 which was heard by the learned District Judge, Lalmonirhat. Upon hearing the appeal the Appellate Court dismissed the appeal by its judgment and decree dated 26.08.2018 and thereby affirmed the judgment of the trial court passed earlier.

The plaintiff's case inter alia is that the petitioner got married with the opposite party No. 1 on 16.09.2008 fixing dower money worth at taka 1,99,125. 00 only among others paid up dower money was 25,000/- taka and rest of taka 1,73,625.00 was unpaid, the petitioner No. 1 demanded 1,00,000/- taka as dowry money to her with the influence of other defendants opposite parties and in a stage of continuing their conjugal life she paid taka 50,000/- in cash as dower money soon after having demanded rest of taka 50,000/- he used to torture her physically and mentally and during their conjugal life they become the parents of a child namely Latiful Islam aged about 3(three) years now and again on 08.05.2014 he (petitioner) demanded taka 50,000/- as dowry money in denying the same he declared not to continue their conjugal life and after on 08.05.2014 she was

bound to leave her husband's home and since then she is staying in the house of her father. Thereafter she instituted the aforesaid suit against the opposite party for dower money and maintenance.

The defendant husband upon filing written statement denied the material statements in trial and inter alia denied all the allegations of torture and claimed that the dower money was already adjusted since the petitioner husband gave the dower money by way of a Heba deed gifted and granted a piece of land to the plaintiff wife by way of the Heba deed which is exhibit-5. He inter alia alleges that therefore the suit has been wrongly filed and ought to be dismissed.

Learned Advocate Mr. Sharif U Ahmed appeared for the petitioner husband while learned Advocate Mr. Abdullah Al Mamun represented the plaintiff opposite parties wife and minor son.

Learned advocate for the petitioner submits that both courts below upon total misappraisal of evidences of record and upon misconception of facts arrived upon their findings and those judgments are not sustainable and ought to be set aside. The learned advocate for the petitioner mainly relies on his claim that the dower money has been adjusted upon gift by way of a Heba deed comprising of a piece of land to the plaintiff wife which is exhibit-5. He submits that both courts upon erroneous

finding raised a doubt regarding the intention behind execution of the deed which is totally upon misconception of the courts since exhibit-5 is admitted by the plaintiff and the plaintiff also did not any stage deny her signature therein. He submits that only because a formal delivery of possession has not been done yet cannot invalidate existence of the Heba deed which is admitted by the plaintiff and not denied anywhere. He submits that therefore since the petitioner husband already paid her dowry dues whatsoever there is no need to pay any dower money to the plaintiff wife. He submits that both courts below incorrectly gave the judgment and decree and needs interference. He concludes his submissions upon assertion that the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned advocate Mr. Abdullah Al Mamun opposes the Rule. His contention mainly revolved around the issue of the Heba deed. He submits that although the Heba deed was executed admittedly but however since no delivery of possession was handed over to the plaintiff wife, therefore the courts below correctly observed that the intention of the defendant husband is doubtful. He submits that the delivery of possession is necessary and prerequisite for a Heba deed to be valid under the Muslim Law. He submits that therefore since in this case both courts found that the intention of the defendant husband is doubtful since no delivery of

possession has been given therefore the courts correctly dismissed the appeal and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides and perused the application and materials on record. In my considered view the main issue is the intention of the defendant husband in executing the Heba deed on behalf of the plaintiff wife. The existence of the Heba deed is not denied by the plaintiff. It is also clear and admitted that the plaintiff signed on the Heba deed which is exhibit-ϑ with full knowledge. Therefore both sides gave their signature consciously therefore it cannot be denied that a Heba deed was executed.

Both courts below found that the intention of the defendant husband is not clear since delivery of possession was not granted. Upon a query from this bench the learned advocate for the petitioner submits that they have no objection to giving delivery of possession of the land to the plaintiff wife in lieu of dower money. And admittedly the plaintiff wife signed on the Heba Deed consciously and with full knowledge.

I am of the considered view that ends of justice would be best served if delivery of possession is formally granted to the plaintiff to adjust the dower money. Therefore I am inclined to dispose of this case with an order of remand to the appellate court being the last court of facts.

In the result, the Rule is disposed of with directions. Therefore, the Judgment of the courts below, being the Judgment and decree dated 26.08.2018 (decree signed on 30.08.2018) passed by the District Judge, Lalmonirhat in Family Appeal No. 08 of 2017 allowing the appeal and modifying the judgment and decree dated 25.07.2017 and 30.07.2017 in Family Suit No. 41 of 2014 are both hereby set-aside. Relying on the observation and findings above the trial court is hereby directed to issue necessary orders for delivery of possession of the subject matter of the Heba deed to the plaintiff wife. The trial court is hereby also directed to adjust the dower money amount with the value of the land. It is hereby also directed that the trial court may dispose of the matter as expeditiously as possible preferably within sixty days of receiving the copy of the judgment and order.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Record at once.

Communicate the order at once.

Shokat (B.O)