

(18)

**IN THE COURT OF MUHADMMAD IMTIAZ CIVIL JFC/CJ-II**

**ORAKZAI**

Suit No..... 01/03 of 2019  
Date of Institution..... 23/07/2019  
Date of Decision..... 04/01/2020

1. **Minhaj Bibi** D/O Muhammad Nazir, R/O, Sheikhan, Tappa Samozai, Sra Neka, Mishti Mela, Tehsil Central, District Orakzai.
2. **Muhammad Saqib** S/O Mian Khan (**Minor**) through Plaintiff No.01  
..... (Plaintiffs)

**VERSUS**

**Mian Khan** S/O Hakeem Khan R/O, Sheikhan, Tappa Samozai, Sra Neka, Mishti Mela, Tehsil Central, District Orakzai.  
..... (Defendant)

**SUIT FOR RECOVERY OF DOWER AND MAINTANANCE**

***Mr. Ihsan Ullah Khan Advocate for the Plaintiffs***  
***Mr. Khalid Mehmood Advocate for Defendant***

**JUDGMENT**

1. Brief facts of the case; *as per Plaintiff*, are that Plaintiff No.01 was the wife of Defendant. Defendant forcibly ousted Plaintiff No. 01 from his house on Jan,2018 in miserable condition and later on divorced her. At the time of Nikah Dower of 03 Tola Gold was fixed. Which is still outstanding against the Defendant. Since Jan,2018 Defendant has also

19  
not fulfilled his legal obligations of maintaining Plaintiffs hence, Present  
Suit for: -

- i. **Recovery** of 03 Tola Gold as Dower
- ii. **Recovery** of Rs. 30,000/- as price of goat belonged to Plaintiff No.01 and take away without her consent by defendant.
- iii. **Recovery** of Maintenance of Plaintiff No.01 @10,000/- per Month from Jan,2018 till Iddat and @ 10,000/- Per month for Plaintiff No. 02 from Jan,2018 till his Majority.

2. Defendant was summoned through the Process of the Court upon he appeared. Filed Written Statement and denied the claim of the plaintiffs and objected the same on so many legal and factual grounds.

3. Pleadings of the parties were reduced to as many as in the following Consolidated issues.

**ISSUES:**

- i. *Whether plaintiffs have got cause of action? OPP*
- ii. *Whether the dower of the plaintiff NO.1 was fixed as 03 Tola Gold which is still outstanding against the defendant? OPP*
- iii. *Whether Plaintiff No.01 is entitled for Recovery of a goat @ Rs. 30,000/-? OPP*
- iv. *Whether plaintiff No.01 is entitled for recovery of maintenance @ Rs. 10,000/- per month from Jan 2018 till period of Iddat? OPP*
- v. *Whether Plaintiff No.02 is entitled for recovery of maintenance @ Rs. 10,000/- per month from Jan 2018 till age of Majority? OPP*
- vi. *Whether plaintiffs are entitled for the decree as prayed for? OPP  
Relief?*

20

4. Parties were provided with an opportunity to produce their respective evidence who accordingly produced them as follows:

5. PW-01 Plaintiff No.01 herself appeared before the Court as PW-01. Recorded her statement on oath. Reiterated the same set of facts as in Plaintiff. Prayed for granting decree in her favour as prayed for.

6. Then after Plaintiff closed his evidence.

7. On the other hand, Defendants produced the following evidence.

8. DW-01 Defendant himself appeared as DW-01. Recorded his statement on oath. Submitted "Iqrar Nama" regarding fixation of Dower and Head Money as Ex.PW 01/01(dated back at time of erst-while FATA). Reiterated the same set of facts as in his written statement. Prayed of dismissal of Plaintiffs Suit with Cost. Evidence of the Defendant then closed

9. With the valuable assistance of learned counsel for the parties, I have gone through the record.

10. My issue wise findings are as under: -

*Issue No. 02: - Whether the dower of the plaintiff No.01 was fixed as 03 Tola Gold which is still outstanding against the defendant? OPP*

11. Onus to proof this issue is upon the Plaintiff No.01. In para No.02 of the Plaintiff, Plaintiff No.01 alleged that dower of 03 Tola Gold was fixed. In the last para of the Plaintiff, Plaintiff alleged that her dower is still outstanding. She was required to prove her stance through oral or documentary evidence (best available evidence).

12. It is within the Judicial Notice of this Court that in erst-while FATA there was no system of registration of marriage. Even there was

*Mst. Minhaj Bibi and 01 other vs Mian Khan*  
*Case No. 03 of 2022*  
*Section 108 of Criminal Procedure Code*

(21)

no official Post and Office of Nikah Registrar. Most of the Nikah were solemnized orally. But yet Plaintiff No.01 was required to support and prove her stance through Oral Evidence. But she did not. She failed to produce any oral or documentary evidence in her support.

13. Counter to her claim, Defendant in para No.02 of his written statement alleged that dower of 01 Tola Gold was fixed at the time of Nikah. It equally shifts burden upon the Defendant. Although Defendant produced Ex.DW 1/1 in his support but has not produced any marginal witness of Ex.DW 1/1. But Plaintiff No.01 in her cross-examination admitted that Defendant had given her 01 Tola Gold as Dower. Her words are reproduced as under: -

"--- مد علیہ نے مجھے ایک تولا سونا حق مہر میں دیا تھا لیکن مجھ سے واپس لے کر فروخت کر دیا۔۔۔۔۔"

14. Taking into consideration the above discussion it appears that Dower of 01 Tola Gold was fixed which was paid by the Defendant and given possession of the same *once* to the Plaintiff No.01.

15. Hence above issued is decided in "Negative"

**Issue No.03: - Whether Plaintiff No.01 is entitled for Recovery of a goat value @ Rs. 30,000/-? OPP**

16. Onus to prove this issue is upon the plaintiff. Plaintiff alleged in Para No.02 of the Plaint that a goat was given to her by Parents at time of *Rukhsati*. Defendant against her will slaughter said Goat. Defendant has not stated anything in acceptance or denial of said Para in his written statement.

17. But it is worth mentioning that Plaintiff No.01 in her cross-examination admitted that she has given goat to defendant at her own free will. Her words are reproduced as under: -

22

”.....میں نے بوجہ اچھے تعلقات کے بکری اور سونا مد علیہ کو دیا تھا۔۔۔“

18. It clearly shows that Plaintiff No.01 has given her goat to defendant at her own free will. There is no element of compulsion or coercion. Plaintiff No.01 failed to discharge her burden. That makes her dis-entitled for recovery of value of the Goat as Rs. 30,000/-

19. For what has discussed above this issue is decided in “Negative”

iv. *Whether plaintiff No.01 is entitled for recovery of maintenance @ Rs. 10,000/- per month from Jan 2018 till period of Iddat? OPP*

v. *Whether Plaintiff No.02 is entitled for recovery of maintenance @ Rs. 10,000/- per month from Jan 2018 till age of Majority? OPP*

20. Both issues are inter-related, will be decided together.

21. It is admitted fact that Plaintiff No.01 was the wife of defendant. Plaintiff No.02 is the Son of defendant. Defendant **divorced** Plaintiff on **27-05-2019**. Plaintiff alleged that defendant forcibly ousted her on **Jan,2018** from his house as per her Claim in Para No.03 of the Plaint. Defendant denied her contention and alleged that Plaintiff No.01 is living in her father house Since **05-05-2019**.

22. Regarding forcible ousting of Plaintiff No.01 from her house by defendant both parties at variance on date. But Plaintiff No.01 in her examination in chief admitted that she was ousted in month of Ramadan 2019. Her words are reproduced as under:-

”... گزشتہ رمضان سال 2019 میں مجھے گھر سے نکالا گیا۔۔۔“

23  
Which supports defendant's version because it is within Judicial Notice that May (05<sup>th</sup> month) of 2019 was Holy Month Ramadan. Hence date of ousting Plaintiff No.01 by defendants is determined as **05-05-2019**.

23. Being wife of defendant and in the absence of any such material in evidence on record to disentitle her from maintenance, Plaintiff No.01 is entitled for maintenance from 05-05-2019 till period of Iddat. As defendant divorced her on 27-05-2019. **Her maintenance period will be from 27-05-2019 to 27-08-2019.**

24. Being father of Plaintiff No.02, Defendant is duty bound for his maintenance till age of majority.

25. Regarding quantum of maintenance, keeping in view the financial position of the defendant, as he stated in his evidence that he is a school teacher earning Rs.45000/- as monthly salary, and giving Rs.5000/- to his first wife. Therefore, defendant has to pay Rs.5000/- to Plaintiff No.01 from 05-05-2019 till 27.08.2019 (which comes around  $04 * 5000 = 20000/-$ ) and RS. 2000/- per month to Plaintiff No.02 with annual rise of 10% till minor (plaintiff NO 02) attains the age of majority (18 years).

26. Hence both issues are decided in **Affirmative**".

*i. Whether plaintiff has got of cause of action? OPP*

*ii. Whether Plaintiffs are entitle to the decree as prayed for?*

**OPP**

27. Both of the above issues are inter-related hence will be decided together.

28. As per above discussion while deciding issues No. "iv" an "v" Plaintiffs have **Got** cause of action.

24  
29. Also in the light of above discussion Plaintiffs are entitled to the partial decree as per prayer (iii) only. To the extent of prayer “i” and “ii” Suit of the Plaintiffs stands rejected for the want of proof.

30. Both of the above issues are decided “**Accordingly**” as per Para No 28 and 29.

### ***Relief***

31. In sequel to above discussion, plaintiffs are held entitled as per prayer “iii” of the Plaint to the following relief:

a) **Plaintiff No. 01 is entitled to recover maintenance from 27-05-2019 till 27.08.2019 (which comes around Rs.04\*Rs.5000=Rs.20000/)**

b) **Plaintiff No. 02 is entitled to recover RS. 2000/- per month with annual rise of 10% till he attains the age of majority (18 years).**

32. To the extent of Suit Prayer “i” **Recovery** of 03 Tola Gold as dower and “ii” **Recovery** of a goat value @ Rs. 30,000 Suit of the Plaintiff Stands Dismissed for the Want of proof.

33. Case file be consigned to record room after necessary completion and compilation.

**ANNOUNCED:**  
**04/01/2020**

Muhammad Imtiaz  
CJ/JFC-II  
Orakzai (Azhar Mela)  
04/01/2020  
**MUHAMMAD IMTIAZ**  
**CJ/JFC-II**  
**ORAKZAI**

### **CERTIFICATE**

Certified that this judgment consists of Seven (07) pages and every page is read over, checked and corrected wherever necessary.

Muhammad Imtiaz  
CJ/JFC-II  
Orakzai (Azhar Mela)  
04/01/2020  
**MUHAMMAD IMTIAZ**  
**CJ/JFC-II**  
**ORAKZAI**