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IN THE COURT OF IJAZ MAHSOOD,
JUDGE FAMILY COURT, ORAKZAI AT BABER MELA

Civil Suit No. 1/3 of 2024
Date of Institution: 04.05.2024
Date of Decision: 25.09.2025

Naila w/o Azeem Ali
***R/O Qoum Bar Muhammad Khel, Tappa Khwaided Khel,
District Orakzai.***
..... (Plaintiff)

VERSUS

Azeem Ali s/o Nazeer Hussain R/O Qoum Mani Khel, Tappa
Zakaria Khel, District Orakzai.
..... (Defendant)

**SUIT FOR DISSOLUTION OF MARRIAGE, RECOVERY OF
DOWER, DOWRY, MAINTENANCE, AND MEDICAL
EXPENSES**

JUDGEMENT:
25.09.2025

This order is to decide instant suit filed by Mst. Naila, the plaintiff, for dissolution of marriage, recovery of dower, dowry, maintenance, and medical expenses, against Mr. Azeem Ali, the defendant.

Pleadings:

The plaint recounts that plaintiff married the defendant in the year 2016 with a dower amount fixed at Rs. 10,000/-. Initially, the relation between the spouses was warm and affectionate but with time defendant's attitude began to change. He would mistreat, and abuse the plaintiff habitually, while the latter stood firm in her loyalty to him and their marriage. Ultimately, in January 2021, plaintiff was forcibly expelled by her husband, and ever since she has been living with her

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parents. She left her husband's house without her belongings. Defendant has not paid any maintenance or expenses incurred on the treatment of the plaintiff. It is further claimed that multiple attempts at reconciliation were made by the plaintiff but to no avail. Now, it is asserted, the plaintiff is not ready to continue with the relationship at any cost or condition. In addition to the dower and dowry items, and monetary compensation, the plaintiff has prayed for dissolution of her marriage with the plaintiff on the grounds and for the reasons stated above.

Defendant has rebutted the assertions and the claim. In addition to the regular objections to the legal sustainability of the suit, the defendant has submitted contrary version of the factual elements involved in the suit. He asserts that a written deed to record the terms of the marriage was scribed prior to nikah. The dower, as per Shia customs, was agreed to be a religious book which was duly delivered.

In response to the factual assertions and allegations the written statement reads that defendant has never mistreated or physically abused the plaintiff. It adds that violence against women is against local culture. It is alleged that plaintiff is a rude and misbehaving woman who habitually disrespected and insulted her in-laws. On the point of her departure from the defendant's home, it is divulged that she left without lawful or just excuse, and of her own will. It is further alleged that she took along her entire belongings, and a cash amount of Rs. 600,000/- which the defendant had given for safe-keeping.

The written statement further informs that defendant wholeheartedly loves and cherishes the plaintiff, but the latter, owing to the

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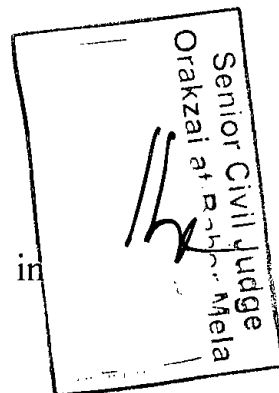
malice of her family, is unwilling to return to her husband. It is alleged that the actual bone of contention is a financial transaction under which defendant paid plaintiff's father the consideration for purchase of a plot, but the latter is now reluctant to convey the title. The reply ends with a prayer for dismissal of the suit.

The differences between the positions of the parties were distilled and reduced into the following issues:

Issues:

1. Whether suit is legally fit, and the forum is competent to try it?
2. Whether plaintiff was forcibly expelled by the defendants, and therefore, she is entitled to receipt of maintenance and medical expenses?
3. Whether plaintiff is entitled to a decree for dissolution of marriage?
4. Whether plaintiff is entitled to recovery of dower and dowry in the quantum detailed in the plaint?
5. Whether defendant is entitled to receipt of Rs. 600,000/- which the plaintiff, allegedly, took with her when she left the former's house?
6. Whether plaintiff/defendant is entitled to the relief(s) prayed for in their respective pleadings?
7. Relief.

Thereafter, both sides were allowed/invited to produce evidence in support of their respective position.



Witnesses/Exhibits:

Mr. Amir Ali s/o Aim Ali, appeared as PW-01, Mr. Amin Afzar s/o Noor Afzal as PW-02, Mr. Aim Ali s/o Ali Mat Khan as PW-03, Mr. Syed Kamal Deen Shah s/o Syed Muhammad Taqi as DW-01, Mr. Akmal Hussain s/o Wazir Hussian, as DW-02, Mr. Azeem Ali s/o Wazir Hussain, the defendant himself as DW-03 and Muhammad Wazir s/o Gul Mehdi as DW-04. They have exhibited the following documents;

- i. Copy of CNIC of PW-01 as Ex.PW-1/.
- ii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iii. Copy of CNIC of DW-01 as Ex.DW-1/2.
- iv. Copy of CNIC of PW-02 as Ex.DW-2/1.
- v. Copy of CNIC of DW-03 as Ex.DW- 3/1.
- vi. Copy of CNIC of DW-04 as Ex.DW- 4/1.

Reasons:

Reasoning of the court and decision on each issue is as follows:

Issue No 01:

The dispute is a matrimonial controversy between spouses which is categorized under law as family matter. This court is invested with the jurisdiction of Judge family court. Therefore, the court is competent to try the matter. Further, no insurmountable legal defect was either pointed out or noted in the legal content of the suit during trial, hence, it is held fit. The issue is decided accordingly.

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Issue No 02:

This issue attempt to examine and settle the allegations in the plaint that plaintiff was forcibly expelled by the defendant from his house. This issue is pivotal to many of the reliefs claimed by the plaintiff. Naturally, the onus to prove the issue/allegations fell on the plaintiff. Below we shall examine and weigh the evidence relevant to the issue.

- Three witnesses testified for the plaintiff including her brother and father. Mr. Aamir Ali, brother of the plaintiff and witness no 1, explicitly acknowledges his ignorance of the alleged '*forcible expulsion*' of the plaintiff. He did not have anything to say on the point.
- In his cross, he further admits that he is unaware of any verbal or physical abuse to which the plaintiff might have been subjected. Similarly, he admits ignorance of any real differences between the spouses.
- Mr. Ameen Afzal, witness no 02, merely alludes to the fact the plaintiff has been living at her parent's since 2021, without shedding any light on the '*forcible expulsion*'.
- Aim Ali, father of the plaintiff took the witness stand as PW-03. In his direct statement, he informs that plaintiff came to his house in the year 2021. The choice of words is curious. The witness maintains that *she came to his house*, rather than confirming the allegation of '*forcible expulsion*'.

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- Additionally, about the whereabouts of the plaintiff during the period, the witness states that once the defendants came to his house, and once he took the plaintiff to her husband's house, but in both instances she could not be settled and restored to her spousal position.
- In his cross-examination, he further concedes that he has never witnessed verbal or physical abuse of the plaintiff at the hands of the defendant.
- In view of the foregoing, it could be safely concluded that far from proving forcible expulsion of the plaintiff or her physical abuse at the hands of the defendant, her witnesses have omitted to mention it.
- Once forcible expulsion is not proved, the claims of maintenance and medical expenses also stand defeated. The husband, by law, is not responsible for these if the wife has left his house of her own will in defiance of her spousal obligations, and not because of a serious fault on his part. The issue is decided against the plaintiff.

Issue No 03:

This issue deals with the question of dissolution of marriage. The plaintiff claimed that she was forcibly expelled and have not been taken back since 2021. However, under the discussion on issue no 02, she could not establish cruel treatment or forcible expulsion.

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[Signature]

Plaintiff seeks dissolution of her marriage. In addition to allegations of cruelty and mistreatment, plaintiff has pleaded '*extreme dislike and repulsion*' as a ground for dissolution.

Both attempts at reconciliation between the parties have failed. The plaintiff is not willing to join the defendant in matrimonial relation. To quote from her plaint, '*she would prefer death to life with the defendant*'.

To paraphrase the law on the situation, if the wife is seeking separation owing to a fault on part of the husband, she is entitled to both dower and dowry, however, if no fault is established, wife has to forego her dower in return for release from the wedlock.

Under issue no 02, plaintiff failed to establish cruel and inhuman treatment by the defendant as alleged in her plaint. This leaves the court with the plea of '*extreme dislike*'.

Since *Balqis Fatima Vs Najmul Ikram* (PLD 1959 Lah 566) superior courts have consistently held utter dislike and temperamental incompatibility as a valid ground for dissolution of marriage between the spouses.

Family courts act under *Section 10(4)* in its proviso, provides, " the family court in a suit for dissolution of marriage if reconciliation fails, shall pass a decree for dissolution of marriage forthwith and also restore the husband the Haq Mehar received by the wife in consideration of marriage at the time of marriage."

Defendant in his cross-examination has clarified his intent on multiple occasions on the point of dissolution/divorce. He has stated that

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if his valuables are returned, he is willing to release the plaintiff from the wedlock. Again, he states that if the plaintiff is unwilling to join him in their matrimonial relation, he is ready to divorce her. At yet another place he holds that if the court decides to dissolve the marriage, he would accept the outcome.

Under *Fiqah Jaffariya*, if it is apprehended that the husband might not be willing to comply with the process of divorce despite a decree, the religious judge may order dissolution of marriage. Illaqa Qazi is the local legal equivalent for a religious judge in our legal system.

Considering the observations above, the court is disposed to order dissolution of marriage subject to return of dower. Plaintiff shall return the book '*Tahfa tul Uloom*' she had received in lieu of dower from the defendant. Their marriage stands dissolved. Issue is decided accordingly.

Issue No 04:

This issue addresses the claim of plaintiff for recovery of dower and dowry as detailed in the plaint. Naturally, the onus to prove the claim fell on the plaintiff. She claims that her dower was fixed at Rs. 10,000/- which remains unpaid. Below the court shall first assess the merits of the evidence in respect of the dower, and then proceed to the claim about dowry.

- None of the witnesses for the plaintiff were present at her Nikah ceremony admittedly. PW-01 and PW-02 plainly concedes their absence, without commenting on the incidence of fixation of dower, or its quantum. PW-03, father of the plaintiff, also concedes that about the terms of Nikah he was informed by the

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plaintiff. Thus, his testimony is based on heresy, and therefore, inadmissible.

- Now the court shall advert to the claim of dowry. Pleadings assert that 04 tola gold was given to the plaintiff by her parents. Father of the plaintiff, in her statement in chief reports that 2 ½ gold was given to the plaintiff, and in his cross examination, he maintains that it was 2 tola.
- From among the varying reports the court has to pick and rely on one statement of fact. Defendant also concedes in his statement that plaintiff was given gold by her father without stating its weight.
- It is common human behavior for a person to overstate a good or benefit due to him/her, but nobody ever understates such a benefit, especially when it is being claimed in a judicial trial. For witness no 03, father of the plaintiff, it would have been understandable if he had overstated the weight of gold but to state its weight less, voluntarily, is not appealable unless he was stating the truth. Therefore, gold gifted by the father is held as 02 tola.
- About the dowry items, the plaintiff claims she received valuable household items from her parents. Her witnesses have also reiterated the same. She claims that she left her husband's house without her belongings.
- Mr. Azeem Ali, the husband, took the witness stand as witness no 03. He concedes in his cross-examination that the plaintiff left her stuff behind at his house when she left. He admits that her stuff is

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placed in a closet at his house. He also concedes that plaintiff's father had bought her 'garments, crockery, furniture etc'. Essentially, he has admitted the claim of the plaintiff in respect of the dowry items.

- About the shoes claimed i.e. 30 pairs, the court was slightly hesitant to admit it as an accurate statement. To its deliverance, father of the plaintiff, testifying as PW-03, brought the number down to 20, which, although still a huge number, is better than the original claim.
- However, it is pertinent to underscore that the couple got married in 2016. The dowry items that the plaintiff allegedly took with her from her parents', if admitted, should have been used and rendered worn-out by now. It is difficult to imagine that after 09 long years, the plaintiff still retains the shoes and clothes that her parents gave her. Simultaneously, she must have a collection of shoes and dresses, like any ordinary person. It is admitted by her husband that she left her personal belongings behind.
- In view of the discussion above, the dowry items as claimed in the plaint are decreed in the terms that plaintiff shall receive half the number of the clothes and shoes. Other items listed should be conveyed to the wife in usable condition, else their equivalent price for their *Fair Average Quality* (FAQ) be paid. The issue is decided in the terms above.

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Issue No 05:

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The issue carries the allegation of the defendant that plaintiff took with her 6-lac cash which the defendant had given to her for safe keeping. The burden to prove this allegation fell on the defendant.

Before delving into the evidentiary merits of the material on record in relation to the issue, it is pertinent to underscore at the outset that there is no witness of the alleged taking of the cash by the plaintiff. None of the witness for defendants was admittedly present when she left.

Surprisingly, the claim of misappropriation further expands in evidence to 05 tola gold which finds no mention in the pleadings. Defendant in his statement as a witness alleges that in addition to the cash amount, the plaintiff took with her 05 tola gold which he had bought for her.

Witnesses for the defense concedes that none from the family folk witnessed the departure of the plaintiff from the house of the defendant. There is no eye-witness to the alleged taking of gold or cash. Further, the time, place, date, manner etc. of the alleged taking is not mentioned or proved.

Defendant and his brother both concede that the former is jobless, and without any earning. It is further admitted that no maintenance has been paid to the plaintiff since her departure in 2021. Given this financial status, it is hard for the court to accept that he could have given or kept with the plaintiff the valuables claimed.

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In these circumstances, the court is unpersuaded about the veracity of the allegation that the plaintiff took with her Rs. 6 lac cash. The issue is decided against the defendant.


Issue No 06 and 07:

This issues addresses the question of relief to which the parties might be entitled. Plaintiff could not establish forcible expulsion or alleged physical and verbal abuse. Therefore, her marriage is dissolved subject to return of the book '*Tohfa tul uloom*' she received as dower.

She is also entitled to recovery of gold weighing two tola that she had received as gift from her father. She shall also recover of her stuff as claimed in the plaint i.e. furniture, garments, footwear, in the terms decided under issue no 04.


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

Announced
25.09.2025


Ijaz Mahsood)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of Twelve (12) pages, each has been checked, corrected where necessary and signed by me.


(Ijaz Mahsood)
Senior Civil Judge,
Orakzai at (Baber Mela)