

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR.
JUDICIAL DEPARTMENT.

R.F.A. No.94/2010.
Syed Saeed Hussain Shah Humayun.
Versus
Mst. Asima Saeed etc.

R.F.A. No.106/2010.
Mst. Asima Saeed
Versus
Syed Saeed Hussain Shah Humayun etc.

Date of Hearing	09.12.2015.
Appellant By	Mian Ahmad Nadeem Arshad, Advocate.
Respondents By	Mian Faiz-ul-Hassan, Advocate.

MUHAMMAD AMEER BHATTI, J:- R.F.A. No.94/2010
has been filed by the appellant to impugn the judgment and
decree dated 31.07.2010 passed by the learned trial Court
whereby the suit for recovery of rupees one Koror as damages was
dismissed except granting relief to the extent of Rs.10,000/-
whereas on the other hand respondent No.1 preferred R.F.A.
No.106/2010 challenging portion of decree of Rs.10,000/-. Both
these appeals were heard together and being decided through this
consolidated judgment.

2. The appellant-plaintiff instituted a suit for recovery of
rupees one Koror on account of mental torture suffered by him in

proceedings of a suit for maintenance of minor filed through respondent No.1-Mst. Asima Saeed. From the averments of the plaint, it is clear that the appellant being grandfather had been included in the array of defendants in the suit for maintenance of the minor filed on behalf of minor by respondent No.1 as next friend. Subsequently on application filed by him, appellant's name was deleted, who thereafter challenged the action of respondent No.1 *inter alia* on the ground that by adding his name in the array of defendants unnecessarily, he suffered mental agony and torture, therefore, he claimed damages to the tune of rupees one Koror from respondent No.1. The written statement was filed by the respondents controverting the facts of the case and also raised preliminary objections besides maintainability of the suit. From the divergent pleadings of the parties, issues were framed and the learned trial Court after recording evidence of the parties held the plaintiff entitled for decree of Rs.10,000/- with the observation that he got rid of litigation at the earliest but faced humiliation when he received the summon/notice in family suit as he is a practicing Advocate and such act caused damage to his personality.

3. The learned counsel for the appellant-plaintiff contended that the learned trial Court on one hand admitted that when notice was received in the Court premises by the appellant, it caused embarrassment for him but on the other hand has granted

decree to the extent of Rs.10,000/- only, therefore, when the appellant established from record that he had been unnecessarily and without any legal justification dragged in the litigation, then decree for full claimed amount must have been passed and by not doing so, the learned trial Court erred in law inasmuch as the awarded decree does not commensurate with the humiliation, mental torture and agony suffered by him; hence, the judgment & decree impugned is not sustainable in law.

4. On the other hand, learned counsel for the respondents contended that the learned trial Court could not grant decree as the respondents had not committed any fault by impleading the appellant in the array of defendant in a suit for maintenance being grandfather of the minor. This being so, the decree of Rs.10,000/- awarded by the learned trial Court is not sustainable as no evidence is available on record to establish that the respondents have impleaded the appellant without any legal justification and the same has been misread and misconstrued to this extent.

5. We have heard the learned counsel for the parties and examined record of the case.

6. Most important feature of the case, which could not attract the attention of the learned trial Court, was the document available on record as Exh.P-A, a suit for maintenance instituted by

Mughees Ahmed alias Hamza through her mother. It is clear from bare reading of this memo of parties that the suit for maintenance of minor had been instituted through his next friend i.e. the real mother. Present respondent No.1 was neither the plaintiff nor she claimed anything for herself from the present appellant by impleading him a defendant in a suit for maintenance of minor. The minor instituted proceedings through next friend acting on his behalf during his minority because without a next friend no suit could proceed. Another aspect of the case, which went unattended, was para No.2 of the plaint of maintenance suit, which stood incorporated after seeking amendment in plaint, which says that defendant No.1 was living abroad whose father only knew the address of defendant No.1 because of their interaction being father and son. This para was intended just to effect service of defendant No.1, the father of minor and for that reason defendant No.2-appellant had been impleaded by filing amended plaint certainly with permission of Court but nothing is available on record but the learned trial Court while accepting the application of the appellant for deletion of his name from array of defendants had not examined this aspect of the case and without getting information about defendant No.1' address, his sources or properties in Pakistan, proceeded to delete appellant's name from array of defendants, who otherwise, for this purpose, if not necessary but

was a proper party. Although the suit for maintenance of the minor had been exparte decreed against defendant No.1, father of minor, but the same has not seen its execution, as no one had been attending the Court proceedings because of non-disclosure of whereabouts of appellant's son causing serious damage to the proceedings qua recovery of maintenance. Learned counsel for the respondents also confirms that despite having the decree of maintenance, it is not executable on account of lack of information of defendant No.1's abode, property etc., who even otherwise was legally and morally bound to maintain his minor son.

Dissection of record further reveals that the appellant himself filed an application for custody of the minor being grandfather by impleading the present respondents as party. Although the minor was with her mother and the application could have been maintainable against the mother but her father had been unnecessarily involved in that litigation and this litigation remained pending. The appellant is blowing hot and cold at the same time, as on one hand he has shown his anxiety to take custody of the minor being grandfather but on the other hand when he was impleaded as party just for getting information qua whereabouts of his real son, he started raising hue and cry that on account of receipt of notice/summon of Court, his personality has been damaged in social set-up. Where a man had already

instituted more than one litigation against a lady and her father then he had no right to claim that his respect has been damaged on account of filing of suit for maintenance. This reason alone is sufficient to non-suit the appellant. Besides, the suit was not filed by a lady as the same was instituted on behalf of minor plaintiff and at the most if the appellant felt annoyed on account of inclusion of his name as defendant, the grievance would have been against the minor, his grandson and not the respondent lady. In all respect, we have explored the case from all angles and do not agree with the learned trial Court who had granted decree of Rs.10,000/- so as to vindicate and satisfy the appellant about his claim in the plaint. Mere filing of suit just for the purpose to effect service of appellant's real son, the minor had not committed any illegality or caused any damage to character of the appellant. It was the paramount duty of the learned trial Court first to see as to whether the suit was filed by the minor or lady, where-after it ought to have rejected the plaint not disclosing any cause of action against the present respondents. We feel no hesitation to dismiss the appeal of the appellant, as it has no merits. As a consequence whereof, the appeal filed by the respondent-Mst. Asima Saeed is allowed; partial decree granted by the learned trial Court for Rs.10,000/- in favour of the appellant is hereby set-aside by

holding that the plaint was liable to be rejected as no cause of action was being disclosed against present respondents.

(MUHAMMAD AMEER BHATTI)
JUDGE.

(ZAFARULLAH KHAN KHAKWANI)
JUDGE.

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