

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

W.P.No.1685/2021

Asif Nazeer etc. **Vs.** The Senior Civil Judge
(Family Division) etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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25.02.2021 Ch Faqir Muhammad, Advocate for the petitioners.

Through this petition the petitioners seek setting aside the order dated 10.02.2021 passed by learned Judge Family Court, Rahim Yar Khan whereby petitioners' application for deleting them from the array of defendants in the family suit for recovery of dowry articles filed by respondent No.2 against her husband respondent No.3 and the petitioners who are brother, mother and sister-in-law of the respondent No.3, respectively, has been dismissed.

2. It is contended by learned counsel for the petitioners that the suit could only have been filed by respondent No.2 against respondent No.3 and petitioners had been unnecessarily impleaded in the same as defendants, therefore, by setting aside the said impugned order their names be deleted from the array of defendants.

3. To resolve the controversy whether the petitioners who were close relatives of husband of respondent

No.3, have rightly been impleaded as party, reference has to be made to Section 2(d) of the Family Courts Act, 1964 which provides definition of party; the same is reproduced as under:

“(d) “party” shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute.”

4. It is observed that in the present suit, claim of respondent No.2 was that dowry articles were in possession and use of the defendants, which include respondent No.3 and present petitioners and the petitioners have to defend the said claim of respondent No.2. Consequently, in terms of Section 2(d) of the Family Courts Act, 1964 they were necessary parties for proper decision of the dispute, therefore, it is held that the learned Judge Family Court has rightly dismissed the aforesaid application for deletion of names of the petitioners from array of parties. The reliance of the petitioners on the judgment of Hon’ble Sindh High Court reported as Wajid Abbasi v. Tahira Jamil and another (2013 MLD 755) is misplaced because in the said suit, the wife had filed suit for dissolution of marriage by raising allegations of cruelty, maltreatment and lurking house trespass at midnight with intent to commit unnatural act on her against real brother of her

husband, who filed an application for being impleaded as respondent in the said suit but the Court had refused to implead him in the array of respondents as decree for dissolution of marriage was not sought against him. Therefore, the facts of the said case are distinguishable and not applicable to the present case.

5. In view of above, it is observed that the petitioners who have been impleaded as defendants in the suit, against whom relief for recovery/delivering of dowry articles has been claimed by pleading that the said articles are in their use and possession and effective decree, if any, could not be passed in their absence and that too without providing them with opportunity to defend themselves, fall within the definition of “party” as provided under Section 2 (d) of the Family Courts Act, 1964, therefore, their application for deletion of their names has rightly been declined by the Family Court. However, it is clarified that this observation does not necessarily imply that a decree is in all circumstances to be definitely passed against them if the plaintiff fails to prove her claim or they make out a case by successfully defending the suit filed against them, as the Family Court can refuse to pass a decree against them if no case is made out; hence no right of the petitioners would be prejudiced if they remain as defendants in the case rather their rights shall be

protected which shall enable the court to reach a just decision in the matter which even otherwise is important to provide fair trial to the parties under due process of law. Reference in this regard may be placed on the judgment reported as Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another (2012 SCMR 1235), the relevant portion of which reproduced below:

“Although from the very inception the concept of fair trial and due process has always been the golden principles of administration of justice but after incorporation of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 vide 18th Amendment, it has become more important that due process should be adopted for conducting a fair trial and order passed in violation of due process may be considered to be void.”

6. For what has been discussed above, there is no illegality and jurisdictional defect in the impugned orders for this Court to warrant interference and this petition being devoid of merits is **dismissed**. However, the learned trial court shall proceed to decide the matter on its own merits without influenced by any observations made in this order.

(MUZAMIL AKHTAR SHABIR)
Judge

Waqar

Approved for reporting.