

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. NO. S-1371 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

Date of Hearing : 09.03.2018.

Date of Order : 09.03.2018.

Mr. Mumtaz Ali Soomro, Advocate for petitioner.
Respondent Muhammad Naeem in person.
Mr. Allah Bachayo Soomro, Addl. A.G. Sindh.

ORDER

AGHA FAISAL, J: This is a matter wherein inter alia the Judgment of the learned District Judge Jamshoro, dated 13.05.2016, (hereinafter referred as to the "Impugned Judgment") passed in Family Appeal No.05 of 2016, has been assailed.

2. It may be pertinent to reproduce the operative part of the Impugned Judgment herein below:

"POINT No.2: In view of discussion on the above point, the judgment and decree of the trial Court are not sustainable under the law, which is liable to be modified. The appeal is allowed. The maintenance amount of Rs.3000/- per month for respondent/plaintiff is reduced to Rs.2000/- per month and maintenance amount of Rs.4000/- per month for child is reduced to Rs.2000/- per month for the same period and same enhancement per annum, specified by learned trial Court in the Impugned Judgment and decree. Let copy of this judgment alongwith R & Ps be sent to the learned trial Court for information."

3. The petitioner had filed a suit for maintenance against the respondent No.1, which was decided vide judgment of the learned Family Judge Jamshoro @ Kotri, in Family Suit No.36/2015, dated

15.12.2015. The operative part of the aforesaid judgment is reproduced herein below:

“ISSUE NO.4. In view of the discussion made in the above said issues, that plaintiff Mst: Uzma Kausar is entitled for recovery of her maintenance at the rate of Rs:3000/- per month from the date of filing of the suit viz: 27.06.2015 till her iddat period and she is also entitled for recovery of maintenance for her minor baby Sabiha at the rate of Rs:4000/- per month with increase of 10% annually till marriage of baby girl Sabiha from defendant, however prayer of plaintiff regarding delivery expenses is declined, suit of plaintiff is decree with no order as to costs.”

4. Thereafter the respondent No.1 preferred a family appeal against the aforesaid judgment of the learned trial Court, which was decided vide the Impugned Judgment, the operative part whereof has already been reproduced herein supra.

5. The learned counsel for the petitioner has stated that the Impugned Judgment suffers from several legal infirmities including a misreading of evidence.

6. The primary contention of the petitioner is that the respondent no. 1 has concealed his means / assets and perjured himself in respect thereof in an attempt to shirk from his responsibility of paying maintenance for his minor child.

7. The learned counsel has showed the examination-in-chief of the respondent No.1 and pointed out the part wherein he has stated on oath that he does not own any land.

8. The learned counsel also adverted to the examination-in-chief of the witness of the respondent No.1, wherein he has stated that ,” *There is no agriculture land in the name of the defendant who is his real son.”*

9. The learned counsel then showed this Court an application dated 13.5.2016 filed by the respondent No.1 before the learned District

Judge Jamshoro in Family Appeal No.05 of 2016, wherein once again the respondent No.1 deposed that he has no land.

10. After having shown the statements of the respondent No.1, and his witness, denying the ownership of any land, the learned counsel for the petitioner drew the Court's attention to the letter issued by Mukhtiarkar (Land Revenue) Assistant Collector-II Taluka Mehrabpur, dated 01.07.2016 (hereinafter referred to as the "Verification Letter"), the content whereof is reproduced herein below:

"To,

The Superintendent
District Court Jamshoro
@ Kotri, District Jamshoro

Through: The Deputy Commissioner Naushahro Feroze.

Subject: VERIFICATION FOR OWNERSHIP OF PROPERTY OF MUHAMMAD NAEEM S/O MUHAMMAD SALEEM ARAIN VIDE MUTATION ENTRY NO.118 DATED 18-12-2014 IN DEH VIGHIMAL TALUKA MEHRABPUR.

Reference: The Honourable Court's letter No.Jud/3510 dated 4.6.2016.

Whereas, the Honourable Court directed to the undersigned for verification of the property of Muhammad Naeem S/O Muhammad Saleem caste Arain in family Appeal No.05/2016 as appellant prayed vide para-05 of the accompanying affidavit of the appeal Suit.

The office of the undersigned directed to the concerned Supervising Tapedar of Record Cell & beat Tapedar for investigation & report whereby they reported that the Respondent cited in subject verification has immoveable landed property which is submitted vide Mutation Entry No.118 dated 18-12-2014 in Deh Vighiamal Tapa Hote Khan Jalbani Taluka Mehrabpur (copy enclosed). Therefore, Muhammad Naeem S/O Muhammad Saleem case Arain (C.N.I.C # 45305-0357609-3) holds an agriculture land for an area admeasuring (06-00) Six acres in survey numbers 432/1 and 433/1,2, having share of (0-50 paisa) in the said survey numbers & such mutation is placed on the basis of Registered Sale Deed cited in column No.06 of mutation entry of Revenue Record of Rights.

The report is submitted forthwith after verification to the Honourable Court in compliance & further direction in the instant matter in the interest of justice.”

11. The learned counsel for the petitioner contended that in view of the aforesaid verification of ownership of the property of respondent No.1 it was patently clear not only that the said respondent No.1 perjured himself and concealed his assets before the appellate Court but also that the fraudulent misrepresentation of the respondent no. 1 had induced the appellate Court into modifying the judgment of the learned trial Court and reducing the amount of maintenance payable to the minor child.

12. The learned counsel then prayed that the Impugned Judgment be set aside and the judgment of the learned trial Court be upheld in the present proceedings.

13. In response thereof the respondent No.1 appeared in person and admitted before this Court that the agriculture land, existence whereof had been proven vide the aforesaid Verification Letter, was indeed in his name. However, he stated that he is not entitled to any benefit therefrom during the life of his father.

14. The respondent No.1 also showed receipts of the maintenance amount being deposited before the learned trial Court and it was manifest that such payments were not being made on a regular basis, as was required under the law.

15. The learned A.A.G argued in favour of the Impugned Judgment and submitted that the same was in due consonance with law. The learned A.A.G further argued that the review application preferred by the petitioner before the appellate Court was even barred by limitation.

16. This Court has heard the arguments of the learned counsel and also the submissions advanced by the respondent No.1 in person.

17. It would appear that the deposition made by the respondent No.1 before the learned trial Court on 27.01.2016 is controverted by the Verification Letter.

18. It would further appear that the deposition of the witness for the respondent No.1 dated 01.02.2016, is also controverted by the Verification Letter.

19. Further that the statement on oath made by the respondent No.1 in the application before the appellate Court on 13.05.2016, also appears to be contradictory to the.

20. It is duly noted that the content of the aforesaid Verification Letter, has been accepted as correct by the respondent No.1 in the proceedings before this Court today.

21. It was recorded in the Impugned Judgment and typed at page-4 thereof that, *"During the course of arguments, respondent and her advocate stated that if appellant gives in writing that he has no landed property and showroom, then they will accept any amount fixed by the Court. On this, appellant gave in writing that he has no landed property and showroom."*

22. It appears from the foregoing that a written undertaking given by the respondent No.1 during the course of proceedings before the appellate Court, has also been controverted by the record.

23. The learned appellate Court appears to have erred by not having given due credence to the contradictions as stipulated supra.

24. The jurisdiction of this Court in the present proceedings appears to be warranted as the learned appellate Court has modified a judgment

of the learned trial Court in reliance upon evidence which is prima facie contradictory to facts available on the record.

25. In view of the foregoing it is the considered view of this Court that the Impugned Judgment suffers from a misreading of evidence and hence the same is hereby set aside, in terms herein contained, and the matter is remanded back to the appellate Court to be heard afresh in due consonance with the law.

26. The respondent No.1 is hereby directed to ensure that payments are made timely in the quantum and the manner prescribed by the trial judgment dated 15.12.2015, pending final adjudication of the appeal.

27. The learned appellate Court shall address the issues raised in the appeal and in addition thereto shall also determine the issue of the statements made on oath by, and on behalf of, the respondent No.1, which prima facie appear to be controverted by the documentary record available before this Court.

28. It may be pertinent to mention that the observations made herein shall cause no prejudice to the proceedings before the learned appellate Court.

29. The office is directed to convey copies hereof directly to the learned appellate Court and also to the learned trial Court.

Announced in Court.

JUDGE

S.Shaikh