

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN AT
SKARDU REGISTRY.**

Before:

**Mr. Justice Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Civil Appeal. No 08/2014
in
CPLA. No. 71/2014.**

1. Abdul Karim & another

Petitioners.

Versus

1. Mst. Zehra daughter of Muhammad Ali & 03 others.

Respondents.

PRESENT:-

1. Mr. Muhammad Issa senior Advocate for the petitioners.
2. Mr. Ishaq Shakir Advocate on behalf of the respondents.

DATE OF HEARING:- 16.11.2016.

DATE OF DETAIL JUDGMENT:- 05.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned judgment dated 12.09.2013 in Civil Revision No. 43/2012 passed by the learned Gilgit-Baltistan Chief Court whereby the said Civil Revision filed by the petitioners was dismissed directing the Collector District Ghanche for partition of the property of deceased Mr. Muhammad Ali among his heirs afresh, hence, this petition for leave to appeal. This court vide order dated 17.09.2014 granted leave to appeal and the case was finally heard on 16.11.2016. Consequently, the appeal was dismissed by maintaining the impugned judgment dated 12.09.2013 in Civil Revision No. 43/2012 passed by the learned Gilgit-Baltistan Chief Court and the judgment dated 28.06.2012 in CFA. No. 19/2011

passed by the learned District Judge Ghanche whereas the judgment dated 04.10.2011 in Civil Suit No. 20/2009 passed by the learned Civil Judge Khaplu was set aside.

2. Briefly facts of the case are that on 20.05.2009 the plaintiff/petitioner filed Civil Suit No. 20/2009 for declaration and possession etc. against the respondents to the effect that they are the owners of the land under Khiwat No. 196 Khasra No. 7388 measuring 01 Marla, under Khasra No. 7614 measuring 05 Marla under Khasra No. 7648 measuring 06 Marla alongwith a constructed house, two pieces of land situated at Mouza Kharko Tapari on the basis of mutation No. 3176 attested on 31.10.1981. According to the averment of the petitioners/plaintiffs the Suit property is in the possession of respondent No. 01 & 02 without any legal authority. The petitioners/plaintiffs prayed for perpetual injunction restraining the respondents/defendants from constructing & alienating the suit land. The parties are inter se relatives which is an admitted fact. Mr. Ashoor has 02 sons i.e. Mr. Muhammad Ali and Mr. Bahadur. Mr. Bahadur died issueless. After the dead of Mr. Ashoor his whole property devolved on Mr. Muhammad Ali, who had 02 sons namely Mr. Abdul Karim & Mr. Muhammad Ibrahim. He has also 02 sisters i.e. Mst. Zehra (respondent No. 01) & Mst. Gulnar. Both the sisters withdrew from any claim in the legacy of their father and gave their due share to the petitioners. Similarly the mother of the parties also gave her share to the petitioners/plaintiffs. The disputed land is consisting of

12 Marla with a constructed house thereon. As per the pleadings the entire property of Mr. Ashoor is comprised of 10 Kanals & 10 Marla. Out of which 12 Marla suit land is not full share of Mst. Zehra.

3. The learned counsel for the petitioners submits that the petitioners are the owners of the suit property being the donees as their mother and sisters gifted the said property in their name and the mutation was also prepared duly attested by the concerned authorities. He also submits that the respondents in Para No. 06 of their written statement have admitted the factum of gift and the PW-01 who is the mother of the petitioners/plaintiffs has deposed statement in favour of the petitioners which is also an admission on the part of the respondents. He further submits that the learned Trial Court has rightly appreciated the gift vide its judgment dated 04.10.2011. He also submits that the respondents could not produce any evidence regarding the sale deed whereas the temporary possession of house has been proved through the statement of PW Fatima. He finally submits that the learned First Appellate Court and the learned Gilgit-Baltistan Chief Court fell in error in appreciating the credible evidence produced by the petitioners, therefore, the impugned judgment dated 12.09.2013 passed in Civil Revision No. 43/2012 by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 28.06.2012 in CFA. No. 19/2011 passed by the learned District Judge Ghanche are not sustainable.

4. On the other hand, the learned counsel for the respondents supports the impugned judgment dated 12.09.2013 passed by the learned Gilgit-Baltistan Chief Court. He contends that the petitioners miserably failed to prove the gift deed and they could not produce any iota of evidence in support of their version. He also contends that the gift deed cannot be proved mere on the basis of 02 oral evidence as per law. He finally contends that the learned Gilgit-Baltistan Chief Court as well as the learned First Appellate Court have rightly declared the respondents entitled for their due Shari share as per injunction of Islam. He prays that the impugned judgment dated 12.09.2013 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 28.06.2012 passed by the learned District Judge Ghanche may graciously be maintained.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 12.09.2013 in Civil Revision No. 43/2012 passed by the learned Gilgit-Baltistan Chief Court as well as the concurrent findings of the courts below. The contentions of the petitioners/plaintiffs are that the suit land was gifted to them by their sisters and mother while they could not produced any evidence of Gift Deed in support of their contentions. Admittedly the respondents/defendants are the legal heirs of Mr. Muhammad Ali, the elder son of Ashoor, therefore, they are entitled to their Shari share in the suit property as well as in the rest of the property of

their brother/father. Furthermore, the learned counsel for the petitioners could not point out any illegality and infirmity in the impugned order passed by the learned Gilgit-Baltistan Chief Court. In our considered view no interference is warranted into it.

6. In view of the above discussions, we dismissed this appeal vide our short order dated 16.11.2016. Consequent thereto, the impugned judgment dated 12.09.2013 in Civil Revision No. 43/2012 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 28.06.2012 in Civil First Appeal No. 19/2011 passed by the learned District Judge Ghanche were maintained whereas the judgment dated 04.10.2011 in Civil Suit No. 20/2009 passed by the learned Civil Judge 1st Class Khaplu was set aside. These were the reasons of our short order dated 16.11.2016.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?