

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

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

Mr. Justice Shahbaz Khan, Judge.

CPLA. No. 02/2012.

1. Mst. Hawa d/o Akhon Ali r/o Markunja Tehsil Shigar District Skardu.

Petitioner.

Versus

1. Shaikh Muhammad Hussain s/o Akhon Ali r/o Markunja Tehsil Shigar District Skardu.

Respondent.

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ORDER XIII OF GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES 2008, READ WITH ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER 2009 AGAINST THE JUDGMENT PASSED BY THE LEARNED GILGIT-BALTISTAN CHIEF COURT DATED 10.05.2012.

PRESENT:-

1. Mr. Kazim Ali son/Attorney for the petitioner is present in person.
2. Mr. Shaukat Ali Senior Advocate for the respondent.

DATE OF HEARING: - 26.04.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment dated 10.05.2012 in CSA No. 02/2010 passed by the learned Gilgit-Baltistan Chief Court whereby the appeal of the respondent was accepted while setting aside the judgment dated 27.09.2010 in CFA No. 14/2010 passed by the learned District Judge Skardu whereas the judgment dated 28.05.2010 in Civil Suit No. 17/2008 passed by the learned Civil Judge 1st Class Shigar was maintained.

2. The brief facts of the petition are that the petitioner and the respondent are the legal heirs of their late father Akhond Ali. The petitioner filed a suit for declaration claiming her legal/Shari share from the legacy of her father. The respondent denied the claim and contended that the whole property of her father had been divided between the legal heirs including the petitioner in the life time of their father through gift deeds. The authentication of the gift deeds was challenged by the petitioner terming the same as fraudulent and fake. The learned Civil Judge Shigar District Skardu vide judgment dated 28.05.2010 dismissed the suit on the ground that the petitioner had failed to prove the fraudulent execution of the said gift by the respondent. The petitioner feeling aggrieved by and dissatisfied with the judgment of the learned Trial Court filed CFA No. 14/2010 in the court of District Judge Skardu whereby the appeal of the petitioner was accepted vide judgment dated 27.09.2010 and the judgment of the learned Trial Court was set aside. The respondent being aggrieved challenged the judgment of the learned District Judge Skardu in the learned Gilgit-Baltistan Chief Court which upon hearing vide judgment dated 10.05.2012 in CSA No. 02/2010 set aside the impugned judgment of the learned District Judge Skardu and the judgment passed by the learned Trial Court Skardu was maintained. The petitioner feeling aggrieved filed this petition for leave to appeal. This court vide order dated 29.08.2013 issued notice to the respondent. The case was heard on 26.04.2016.

3. Mr. Shaukat Ali learned senior counsel for the respondent contends that the impugned judgment of the learned Gilgit-Baltistan Chief Court is well reasoned and well founded. The same has been passed in accordance with law and facts of the case. He submits that the petitioner has been given her Shari share from the legacy of her father in the year 1977. The same was reaffirmed in the year 1996 in the presence of the notables of the area. The property given to the petitioner from the legacy of her father is in the possession of the petitioner. He submits that there is no illegality and infirmity in the impugned judgment hence no interference is warranted into it in the interest of justice.

4. We have heard the learned counsel for the respondent at length, perused the record of the case thoroughly and gone through the impugned judgment as well as the judgments of the courts below. The learned counsel has frankly conceded that although the petitioner has been given her Shari share but it is not 1/3 of the total property left by her late father. Secondly, the careful perusal of the record reveals that the suit property was never been distributed amongst the legal heirs of late Akhond Ali as per Muslim Personal Law. Mere repeating of "will" in presence of two people at two or more than two times is not sufficient for execution of a valid gift. The mandatory provisions of a valid gift i.e. proper declaration and acceptance by and from the donor and donee have neither been fulfilled nor the same has been registered in accordance with law.

5. In view of the above and in our considered view the impugned judgment dated 10.05.2012 in CSA No. 02/2010 passed by the learned Gilgit-Baltistan Chief Court is not well reasoned and well founded. Consequently, we, converted this petition into an appeal and the same was allowed vide our short order dated 26.04.2016. The impugned judgment dated 10.05.2012 in CSA No. 02/2010 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 28.08.2010 in Civil Suit No. 17/2008 passed by the learned Civil Judge Shigar Skardu are set aside whereas the judgment dated 27.09.2010 in CFA No. 14/2010 passed by the learned District Judge Skardu is maintained.

6. The appeal is allowed.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?