

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

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

Mr. Justice Javed Iqbal, Judge.

Mr. Justice Shehbaz Khan, Judge.

Civil Appeal no.31/2016.

in

CPLA .No. 03/2015.

1. President Al-Sabah Multipurpose Society Gupis office Punial Road Gilgit.
2. Ex- Hav: Adina Shah s/o Nigahban Shah.
3. Ex-Subedar Ziarat Shah s/o Sher Thanat Shah r/o Handrap Gupis.
4. Sher Murad s/o Arrak Khan.
5. Tatto Khan s/o Farman Baig r/o r/o Yasin presently at Gilgit.

Petitioners.

Versus

1. Zar Nazir Khan s/o Doulat Khan Ex Principal Inter College Gahkuch r/o Phander presently at Gahkuch District Ghizer.

Respondent.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER, 2009, READ WITH RELEVANT ARTICLE/GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES AGAINST THE IMPUGNED JUDGMENT/ORDER DATED 15.08.2014 PASSED BY THE LEARNED GILGIT-BALTISTAN CHIEF COURT IN CIVIL REVISION/MISC NO. 55/2014 WHEREBY RESTORATION/READMISSION APPLICATION FILED BY PETITIONERS AGAINST THE EX-PARTE DISMISSAL OF REVISION NO. 55/2014 HAS BEEN DISMISSED.

PRESENT:-

1. Mr. Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Amjad Hussain Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondent.

DATE OF HEARING: - 13.05.2016.

ORDER.

Dr. Rana Muhammad Shamim, CJ.....This Petition has been arisen out of the Impugned Judgment/Order dated 15.08.2014 in Civil Revision/Misc No. 55/2014, passed by the

learned Chief Court, whereby the petition of the petitioner was dismissed on the basis of non-appearance of the petitioner on account of verification of the affidavit, hence, this petition for leave to appeal. This court vide order dated 23.09.2015 issued notice to the respondent for his appearance and the case was heard today on 13.05.2016.

2. The brief facts of the petition are that the respondent/plaintiff filed Civil Suit No. 38/2008-120/2008-87/2010 in the court of learned Civil Judge Gilgit for declaration and perpetual injunction of the Suit property which had been sold to the petitioner No. 02 & 03 by the respondent and subsequently the said property was sold to petitioner No. 01 by the petitioner No. 02 & 03 through two (02) separate transaction. Upon hearing the Suit of the respondent/plaintiff was decreed vide judgment dated 10.03.2011 by the learned Civil Judge Gilgit. The present petitioner being aggrieved by and dissatisfied with the said judgment filed CFA No. 36/2011 before the learned Additional District Judge Gilgit, wherein the Civil First Appeal of the petitioners was dismissed vide judgment dated 23.04.2013 while maintaining the judgment of the learned Civil Judge Gilgit. The petitioners being aggrieved filed Civil Revision No. 59/2013 before the learned Gilgit-Baltistan Chief Court. During the pendency of the said Civil Revision an application No. 59/2013 was filed which upon hearing was dismissed in default on the ground of non-prosecution vide order dated 15.08.2014 passed by the learned Gilgit-Baltistan Chief Court.

3. Mr. Ali Khan learned Advocate for the petitioners submits that the petitioners are the office bearers of a registered Cooperative Society namely Al-Sabah Multipurpose Cooperative Society having its office at Punial Road Gilgit. He further submits that the respondent No. 01 sold out a piece of land measuring two (02) Kanal situated at Soni Kot Khari under Khasra No. 822 at the rate of Rs. 70,000/- per kanal to Petitioner No. 02 & 03 which was subsequently sold out to the petitioner No. 01 in the year 2005 vide sale agreement dated 10.08.2005. He submits that the learned Gilgit-Baltistan Chief Court while hearing the Civil Misc Application No. 55/2014 in Civil Revision No. 59/2013 had wrongly dismissed the Revision of the petitioners on the ground of non-prosecution despite the fact that the petitioner No. 01 was present in the court and an affidavit duly signed by the petitioner No. 01 was also produced before the learned Gilgit-Baltistan Chief Court. The learned Gilgit-Baltistan Chief Court did not apply its judicial mind and passed the impugned order dated 15.08.2014, hence, the same is not tenable and liable to be set aside being the result of misconception of law. He finally submits that the said impugned judgment/order of the learned Gilgit-Baltistan Chief Court may very graciously be set aside to meet the ends of justice.

4. On the other hand, Mr. Amjad Hussain learned counsel for the respondent contends that the learned Gilgit-Baltistan Chief Court has rightly dismissed the Civil Misc Application No. 55/2014

in Civil Revision 59/2013 filed by the petitioners. The petitioners had been given sufficient opportunities to ensure their presence before the court and defend their case but they had miserably failed to prosecute their case. He finally contends that the impugned judgment/order passed by the learned Gilgit-Baltistan Chief Court is well reasoned and well founded, hence, no interference is warranted into it in the interest of justice and equity.

5. We have heard both the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment/order dated 15.08.2014 in Civil Misc No. 55/2014 in Civil Revision No. 59/2013 passed by the learned Gilgit-Baltistan Chief Court as well as the judgments passed by the courts below.

6. In view of the above discussions we without going into the merit of the case are inclined to convert this petition into an appeal and the same is conditionally allowed subject to the payment of Rs. 50,000/- (Rupees fifty thousand only) as cost to be paid to the respondent within a period of fifteen (15) days positively. The case is remanded back to the learned Chief Court to hear and decide the same afresh on its own merits and dispose of in accordance with law. Consequently, the impugned Order dated 15.08.2014 in Civil Misc.No. 55/2014 passed by the learned Chief Court is set aside.

7. The appeal is conditionally allowed and the same is disposed off in above terms.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?