

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
C.P.L.A. NO. 09/2010**

**Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge
Mr. Justice Syed Jaffar Shah, Judge.
Mr. Justice Muhammad Yaqoob, Judge.**

1. Jan Muhammad
2. Abdul Khaliq
3. Abdul Rauf sons/Lrs of Mst. Khairun-Nisa
4. Mst. Khanum W/O Muhammad Musa R/O Makiyal District Astore
Appellants/Plaintiffs.

Versus

Muhammad Musa S/O Muhammad R/O Makiyal Tehsil & District Astore
Appellants/Defendant

**PETITION FOR LEAVE TO APPEAL AGAINST THE
ORDER/JUDGMENT, DATED 2008-2009, PASSED BY SINGLE BENCH
OF THE CHIEF COURT GILGIT-BALTISTAN GILGIT, WHEREBY, THE
LEARNED JUDGE HAS ACCEPTED, THE CIVIL REVISION OF
RESPONDENT, WITHOUT COGENT REASONS.**

Present:- Mr. Javed Iqbal. Advocate, assisted by
Mr. Ali Nazar, Advocate on record for appellants
Mr. Johar Ali Advocate, for respondents.

Date of hearing 07-07-2010.

JUDGMENT

Syed Jaffar Shah, J.....This appeal by leave of this court is directed against judgment dated 20-08-2009 passed by single bench of Chief Court Gilgit in Civil revision No. 24/2008, whereby the learned judge of Chief Court while accepting the revision petition of respondent set aside the exparte decree dated 23/6/2005 passed by Civil Judge Chillas and maintained by Additional District Judge Astore.

1. Brief facts leading to the present petition are that the mother of petitioners Mst. Khairun Nisah filed a Civil Suit in the Court of Civil Judge Astore for her Sharie share in respect of landed property situated in District Astore entered in Khasara No. 28 and 30. Which was resisted by respondent. However during pendency of the lis Mst. Khairun Nisah died and the present petitioners represented her as her legal heirs.
2. That during pendency of the said suit the plaintiff filed an application before the Additional District and Sessions Judge Chillas for transfer of Civil Suit from the diary of Civil Judge Astore to another Court of competent jurisdiction. The learned Additional District and Sessions Judge Chillas while accepting the petition of the plaintiff transferred the suit from the Court of Civil Judge Astore to that of Civil Judge Chillas vide order dated 18-03-2004. this order was also maintained by learned Chief Court in a civil revision filed by the defendant/respondent.

3. After transfer of the case to the court of Civil Judge Chillas by Additional District & Sessions Judge the respondent/defendant stated to have not appeared before trial court and consequently the trial court proceeded the defendant/respondent ex-prate vide order dated 09-08-2004, recorded statements of P.W's in absence of defendant/respondent and adjourned the case for consideration, but before passing any ex-prate decree the defendant/respondent appeared before the trial court on appointed dated i.e. 24/08/2004 and moved an application for setting aside ex-prate proceedings dated 09-08-2004, the trial court fixed a date i.e. 30-10-2004 for arguments on the application but before the fate of this application could be decided, the record of the case was requisitioned by the Chief Court as the defendant had challenged the transfer order in a revision petition before it.
4. The Chief Court maintained the order of Additional District and Sessions Judge Chillas dated 18-03-2004 and directed the parties to appear before the trial court i.e. Civil Judge Chilas on 05-03-2005 as directed by Chief Court, and the defendant/respondent was again proceeded Ex-prate and consequently an ex-prate decree infavour of plaintiffs/petitioners was granted on 23-06-2005.
5. The defendant/respondent challenged the ex-prate decree dated 23-06-2005 in the 1st Appellate court which was dismissed vide judgment dated 17-05-2007 having been barred by time, but the learned Chief Court in an appeal filed by the defendant/respondent reversed findings of both the lower court, set aside the Ex-prate decree and remanded back the matter to trial court for its disposal on merits with the following observation.

“I therefore recall both the impugned orders passed by lower courts but the defendants are also penalized for their relaxed attitude in proceedings the case against them, by imposing cost of Rs. 5000/- and the case is remitted back to the Civil Judge Chillas for its adjudication on merits from the stage of evidence of the plaintiff. Parties to appear before the learned Civil Court Chillas on 15-12-2007.

- 6 The above order of learned Chief Court was called in question before this court in C.P.L.A.No. 03/2008 and this court while setting aside the findings of the Chief Court remanded the matter back to learned Chief Court for recording a reason based judgment after treating the second appeal as revision.
- 7 On remand the learned Chief Court while treating the Civil Suit as Revision as directed by this Court, decided the controversy in issue vide impugned judgment and maintained its previous decision, resultantly the

ex-parte Decree was set aside and the matter was remanded back to trial court with the following observations.

“Consequent upon the above discussion, both the impugned orders/decrees passed by the learned trial court as well as the learned Additional District Judge are set aside and the case is remanded to the trial court to hear the application dated 24-08-2004 filed by the defendant and to dispose the same on merits then to move towards the suit. The trial court is also directed to expedite the trial keeping in view the delay caused in the matter. The defendant is also penalized to pay cost of Rs. 10,000/- for his irresponsible attitude in the case, parties to appear before the trial court on 25-03-2010”.

8. Having been aggrieved and dissatisfied with the above judgment dated 20-08-2009 passed by learned Chief Court the petitioners have filed the present appeal and this court on 26-04-2010 granted leave to appeal as under:-

“ The learned counsel contended that Chief Court instead of deciding the question of limitation in appeal before the learned District Judge, while traveling on wrong premises has set aside Ex-parte decree passed by the court of first instance and maintained by the Appellant Court, on the ground that the order of Ex-parte proceedings was passed on a date which was not the date of hearing whereas the said order was passed on the date on which the case was fixed for evidence and in that the impugned judgment is badly suffering from material illegality. The contention raised requires consideration.

Leave is accordingly granted in this petition with direction that main appeal shall be heard on present record with permission to the parties to place on record the Additional documents if any. The appeal shall be fixed in the last week of May 2010.

9. We have carefully examined the contentions of learned counsel for parties in the light of relevant provision of law and record of the case. We have also perused the judgment passed by Single Bench of Chief Court as well as judgment of lower Court.
10. The crucial question for determination is whether the 1st Appeal before Additional District Judge was time barred and whether the date on which ex-parte proceedings was initiated was a date of hearing. A close scrutiny of the record of the case would reveal that the ex-parte proceedings were taken against the defendant/respondent on 09-08-2004 when the defendant/respondent did not put his attendance before the trial court after transfer of the case from the court of civil Judge District Astoria, consequently the trial court proceeded the defendant/respondent ex-parte. It is an admitted fact that the defendant appeared on following date i.e. 24-08-2004 and filed an application for setting aside the Ex-

parte proceedings dated 09-08-2004, but during pendency of this application the R & P of the case was called by the Chief Court which was remitted back to trial court after disposal of a revision petition filed by the defendant/respondent, and the parties were directed to appear before the trial court on 05-03-2005 but as a result of his failure to attend the trial court, the defendant/respondent was once again proceeded Ex-parte followed by Ex-parte decree dated 23-06-2005.

11. The record also reveals that the date on which Ex-parte proceeding were initiated was fixed for disposal of an interlocutory application i.e. for setting aside of ex-parte proceedings, the trial court was required to have decided the fate of application dated 24-08-2004 first and than to proceed on wards, but the trial court instead of dealing with the application ordered Ex-parte proceedings and consequently passed the Ex-parte decree against the defendant/respondent. Since this was not a date for hearing as such Ex-parte proceedings and all subsequent orders including Ex-parte decree in consequence thereof passed by trial court are of no legal effect and void and liable to be set aside.
12. So far as question of limitation is concerned the application for setting aside Ex-parte proceedings was filed within a period of 30 days as such the application was within time. Secondly as stated earlier the Ex-parte decree was passed on a date which was fixed for hearing of an interlocutory application and was not a date of hearing as such no limitation will run against it and the same could be set aside by invoking inherent powers under Section 151 CPC. According period of limitation would be regulated by residuary Article 181 of limitation Act. And not Article 164 of Limitation Act. Article 118 limitation Act provides three years limitation period for setting aside of Ex-parte decree while in the present case the Ex-parte decree was passed on 23-06-2005 and appeal was filed on 24-08-2005 against Ex-parte Decree which was not time barred, learned Single Bench of the Chief Court has rightly set aside the same.
13. What has been discussed above we have come to the conclusion that the findings recorded by the learned Chief Court in the impugned Judgment are based on cogent and plausible reasons warranting no interference, consequently the appeal fails and is hereby dismissed with no order as to cost.

Appeal dismissed.

Chief Judge

Judge

Judge