

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

GILGIT

Before:- Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

Civil Appeal No. 33/2017

In

CPLA. No. 54/2014

Wajid Ali s/o Ghulam Nabi resident of village Chongra Astore and 09 others.

Petitioners

VERSUS

Murtaza son of Khowaja Khan resident of Chongra Astore.

Respondent

PRESENT:-

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

DATE OF HEARING:- 17-04-2017.

DATE OF DETAIL JUDGMENT:--08-2017.

JUDGMENT

JAVED IQBAL, J..... This petition for leave to appeal has been directed against the judgment/decreed passed by learned single bench of Chief Court Gilgit vide civil 2nd Appeal No. 07/2010 dated 10-10-2013, whereby the learned single bench of Chief Court set aside the judgment/decreed passed by learned District Judge vide CFA. No. 05/2010 dated 11-10-2010.

2. Brief facts of the case, according to the plaint, the suit property measuring 1 kanal 16 marlas under khasara no. 339, which is inheritance of father of respondent/plaintiff. Father of respondent/plaintiff namely Khawaja Khan has got this property through exchange from the father of the petitioner/plaintiff No.2 to 4 namely Ghulam Muhammad. This case property was still in name of Ghulam Muhammad in revenue record respondent/plaintiff mortgaged the disputed land to petitioner/defendant

No.1 for Rs. 10,000/- (Rupees Ten Thousand) in the year 1986 for twenty years. Respondent/Plaintiff in year 2006, respondent/plaintiff offered the mortgaged money Rs. 10,000/- to petitioner/defendant for redemption, which is refused by petitioner/defendant. Petitioner/defendant denied the mortgaged and presented a fake sale deed, which is registered as registry No. 49/1986 dated 28-10-1986 and mutation No. 904, with collusion revenue authorities.

The petitioner/defendant in his written statement dated 10-11-2007 denied almost all averments of the plaint and taken the defense that, respondent/plaintiff has sold the suit land with a sum of Rs. 15000/- (Rupees Fifteen Thousand) on 27-10-1986 and the petitioner/defendant is in possession of suit land since 1986 as owner.

3. Trial Court in the light of pleadings framed as many as 10 issues including relief. The Trial Court after leading the evidence by both the parties decreed the suit of respondent/plaintiff vide judgment/decreed dated 30-03-2010. This decree/judgment assailed by the petitioner/defendant before learned District Judge Astore. The learned District Judge has accepted the appeal of petitioner/defendant and set aside the decree/judgment passed by Trial Court and suit of respondent/plaintiff has been dismissed vide judgment in CFA No. 05-2010 dated 11-10-2010.

Having been dis-satisfied and aggrieved with the order/judgment of learned Civil 2nd Appeal, the learned Chief Court single bench after hearing both parties set aside the findings of learned District Judge Astore and maintained the judgment/decreed of trial Court vide Civil 2nd Appeal no. 07/2010 dated 10-10-2013 which is reproduced herein as under,

“To meet the lacunas the learned 1st Appellate Court managed to invoke the provisions contained in the order 41 rule 27 and got recorded the statement of record keeper of the Registrar Astore, who was summoned alongwith the record in sheer violation of provision of order 41 rule 2,

according to which it is mandatory to record reason for summoning the additional witness”.

The relevant order 41 rule 7 is reproduced as under,

“Production of additional evidence in Appellate Court-
(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The Appellate Court may allow such evidence of document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

It is crystal clear that perusal of the above 2nd proviso of the rule 27 that the Appellate Court must record the reasons to the admission of additional evidence, but the order of the 1st Appellate Court is altogether silent on. Consequently, the learned single bench of Chief Court Gilgit, accept the appeal, filed by the petitioners/plaintiff and maintained the judgment/decreed of trial court, dated 30-03-2010.

4. We have heard the learned counsel for petitioner/defendant Mr. Johar Ali Advocate, contended that, learned Chief Court has misread and non-reading of evidence as well as documents produced by parties, and ignored the law points, also contended that, Civil 2nd Appeal is not maintainable in the eyes of law, and suit of plaintiff/respondent is time barred.

On the other hand, the learned counsel for respondent submitted that the findings of learned Civil Judge Astore and learned Single bench of Chief Court are based on solid grounds, therefore the same be maintained.

5. We minutely scrutinized and examined the record available on case file, as well as arguments advanced by learned counsel by both the parties, also examined the impugned judgments/decrees of learned Courts below.

In our considered view, that, judgment/decreed passed by Civil Judge Astore, in Civil Suit No. 46/2006, dated 13-03-2010 and Civil 2nd Appeal No. 07/2010 dated 10-10-2013, decided by learned single bench of Chief Court Gilgit-Baltistan, are well reasoned as no infirmity and illegality was pointed out by learned counsel of petitioner. This petition was consequently converted into an appeal and same was dismissed. These are the reasons for our short order dated 17-04-2017.

The appeal is dismissed in above terms.

JUDGE

CHIEF JUDGE

Whether the case is Fit to be reported or Not?