

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Jalal-ud-Din, Judge.**

Civil Appeal No. 01/2011

CPLA NO.40/2011

1. Mst. Gumboori w/o Saleem Khan, d/o Mulki khan
2. Mst. Gul Zareen w/o Katoor Khan d/o Mulki Khan
Residents of Sher Qillah Tehsil Punial District Ghizer.

Petitioner/appellants

VERSUS

1. Maherban Shah s/o Bakhdur.
2. Bakhdur Khan s/o Jangi Khan, residents of Sher Qillah
Tehsil Punial District Ghizer.

Respondents

PRESENT:-

1. Mr. Sharif Ahmed advocate for the petitioners.
2. Mr. Ehsan Ali Advocate on behalf of Respondents.

DATE OF HEARING: - 21-10-2015.

DATE OF DELIVERY OF DETAIL JUDGMENT: - 25.11.2015.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ.....This appeal has been arisen out of the impugned judgment in Civil Revision No. 42/2006, dated 28.06.2011, passed by the learned Chief Court Gilgit-Baltistan. Wherein, the learned Chief Court dismissed the said Civil Revision by upholding both the judgments/decrees of the learned courts below.

The learned counsel for the petitioners submits that during the pendency of Revision Petition before the learned Chief Court i.e. on 24-05-2007, the petitioners/appellants submitted an application under Order 6 Rule 17 CPC for amendment of plaint and the learned Chief Court allowed the application. He further

submits that after allowing application for amendment the learned Chief Court invited amended plaint from the petitioners/appellants and after submission of amendment plaint the respondent also filed amended written statement.

He also submits that the petitioners/appellants raised factual point in this amendment application and in the light of application the learned Chief Court was legally bound to frame additional issues in the light of amended plaint, but the learned Chief Court has not framed the issues and without resolving issues & giving an opportunity to petitioner enabling them to prove their case in the light of amendments, dismissed the Revision, hence the impugned Judgment passed by the learned Chief Court is not sustainable and liable to be set aside.

He further submits that the respondents vehemently alleged in his written statement that disputed property was gifted by the father of the petitioners/appellants to the respondents, and the petitioners/appellants challenged the "Gift Deed" and the learned trial Court also framed issue No.9, however, the respondents failed to prove the factual position of the gift in accordance with law and according to him the learned Chief Court has not followed the provisions of Mohammadan Law. He continued his arguments and submits that according to Mohammadan Law, there should be a declaration of a gift by the donor in addition to the following essential ingredients for validity of a gift:-

- a. **An acceptance of gift expresses or implied by or on behalf of the donee.**
- b. **Delivery of possession of the subject of gift by the donor to the donee as mentioned in law.**

He also submits that the respondents have failed to substantiate the gift in accordance with law.

He submits that all the three Courts below have failed to draw inference on law point of gift. Further the disputed land is in possession of namely (1) Akbar Shah (2) Shukoor Khan and (3) Mehr Ali, who were necessary party of the suit, but they have not been impleaded as defendants, which caused great miscarriage of justice while passing the Judgments/decrees by all the three learned Courts below hence liable to set aside. While saying so, he relied upon the reported Judgments in case of Muhammad Abdullah Khan Niazi versus Rais Abdul Ghafoor & others, (i). (PLD 2003 SC 379), in case of Ashiq Hussain & another versus Ashiq Ali, (ii). (1972 SCMR 50) in case of Muhammad Yaqoob through Legal heirs versus Feroz Khan & others, (iii). (2003 SCMR 41).

He finally submits that the impugned Judgment/Decree in Civil Revision No. 42/2006 dated 28.06.2011 of the learned Chief Court, the Judgment/ decree in Civil First Appeal No. 07/2006, dated 02-09-2006, passed by the Additional District Judge Ghizer and the Judgment/decrees of learned Civil Judge Punial/Ishkoman in Civil Suit No. 82/2001 dated 17-02-2006, may please be set aside to meet the ends of justice. He concludes his arguments and submits that the said

impugned Judgment as well as the concurrent findings of the learned Courts below are the result of the misconception of law, misreading and non-reading of the materials on the record hence the same are not tenable.

On the other hand, the learned counsel for the respondents supports the impugned judgment passed by all three Courts below. He submits that the said judgments have been passed on the basis of evidence & material on record in accordance with law hence no interference is warranted and the same be upheld.

We have heard the learned counsels at length, perused the case file and gone through all the three Judgments/Decrees passed by the learned Courts below & case laws relied upon by the learned counsel for the petitioners. In case of “Muhammad Abdullah Khan Niazi versus Abdul Ghafoor & others”, supra, the Hon’ble Supreme Court of Pakistan has held that where such amendment is allowed and additional written statement by the other side is submitted then the further evidence to be led. In case of “Ashiq Hussain versus Ashiq Ali”, supra, the larger bench of the Hon’ble Supreme Court of Pakistan has held that mere recital in the Gift Deed that possession has been delivered to the donee is not enough. There are three essentials of gifts under the Mohammadan Law:

- (i) A declaration of gift by the donor;
- (ii) An express or implied acceptance of the gift by the donee;

- (iii) Seisin or the delivery of possession of the gifted property by the donor to the donee. The delivery of possession by the donor as a conscious, unequivocal and distinct act on his part is necessary to perfect the gift made by him.

In case of “Muhammad Yaqoob versus Feroz Khan & others”, supra, the Hon’ble Supreme Court of Pakistan was pleased to further hold that delivery of possession was essential ingredient to constitute a valid Gift, the Gift without possession is void abinitio and could not be made to get the land in question mutated. The factum of gift cannot be proved by adducing cogent and convincing evidence. We are in agreement with the contentions raised by the learned counsel for the petitioners and case laws relied upon by him are applicable.

In view of the above, the appeal is allowed, all the judgments/ decree(s) passed by all three below i.e.(i) impugned Judgment in Civil Revision No.42/2006, dated 28.06.2011,(ii) the Judgment/Decree in Civil First Appeal No. 07/2006, dated 02-09-2006, passed by the Additional District Judge Ghizer and (iii) the Judgment/decree of learned Civil Judge Punial/Ishkoman in Civil Suit No. 82/2001 dated 17-02-2006, are set aside. These were the reasons of our short order dated **21.10.2015.**

The appeal is allowed.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?

