IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.
C.P.L.A NO.04/2013

Before :-

1.Mr.Justice Dr. Rana Muhammad Shamim,Chief Judge.
2.Mr.Justice Jalal-Ud-Din, Judge.
3.Mr.Justice Muzaffar Ali, Judge.

Mst. Mumtaz Begum s/o Nawab Khan r/o Sonikot Gilgit.
Petitioner

Versus

Mst.Taj Begum d/o Wazir Mohammad Ashraf r/o Majini Mohallah Gilgit. Respondent

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 65 OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE ORDER) 2009 READ WITH ARTICLE 61 OF GILGIT-BALTISTAN GOVERNANCE ORDER 2009 AND ORDER XIII OF SUPREME APPELLATE COURT AMENDED RULES 2008 AGAINST THE JUDGMENT OF THE CHIEF COURT GILGIT-BALTISTAN DATED 20-09-2012.

Present :-

1. Mr.Shehbaz Khan Advocate alongwith Mr.Johar Ali,

AOR for the petitioner.

2. Mr.Muhammad Ashgar Attorney /son of respondent (Taj Begum)

Date of Hearing:- 05-11-2015.

JUDGMENT:-

Mr.Justice Muzaffar Ali, J……The present respondent filed suit No. C.Rev.53/2007, before the Court of Civil Judge Gilgit, for declaration cum possession with the contention that the suit land was rented out by her father in favour of father of defendant No.1 in the year 1955 through agreement deed Exh.P-1,in his life time. The father of the defendant No.1 paid rent Rs.2/- per month as stipulated in the rent agreement in his life to the father of the plaintiff. The suit land retained with the defendant No.1 as legal heir of her father after his demise. But the respondent No.1 not only denied to pay the rent to the plaintiff but also sub let the land to the defendant No.2, despite the plaintiff being legal heir of her father, claimed rent from the defendant No.1 and also demanded to vacate the same as she had violated the rent laws by sub letting the suit land to the defendant No.2, and by denying to pay the rent to the plaintiff but the defendant No.1 rejected the claim, posing herself owner of the suit land, hence the suit.

On the other hand the defendant attended the learned trial court in response to the summons issued and submitted her written statement, whereby she denied the ownership of the plaintiff with the plea that, the suit land was gifted to her father, by the father of the plaintiff in his life time and her father remained in possession of the suit land as donee and after his death, she is in possession of the land as owner, being the legal heir of the donee. The suit land has never been devolved to the plaintiff, since the suit land was not hereditament of her father but was gifted.

The learned trial court proceeded the suit as per procedure and abstracted 15 issues from the pleadings of the parties. Finally decreed the suit as prayed for, in favour of the plaintiff as the defendant No.1 failed to prove the plea of gift in favour of her father. The defendant No.1 being aggrieved and dissatisfied from the decree passed by the learned trial court invoked the jurisdiction of Ist appellate court through the appeal. The Ist appellate court also agreed with the findings of the trial court and maintained the decree

passed by the learned trial court and dismissed the Ist appeal filed by the defendant No.1.

The defendant No.1 assailed both the concurrent decrees before the learned Chief Court Gilgit-Baltistan in Revision but got the same fate. The learned Single Judge of the Chief court refused interference with the concurrent findings of the learned lower courts and dismissed the revision through the impugned judgment. Hence this appeal against, as the petition for leave to appeal No. CPLA 04/2013 submitted by the appellant was dismissed by converting the same into appeal vide short order dated 05-11-2015 of this court. Thereupon the detail reasons for, in the succeeding paras of this judgment.

We, heard the learned counsel for the parties. The learned counsel for the appellant assailed the concurrent findings of the courts below with the contention that the appellant is in possession of the suit land as owner by dint of gift made in favour of her father by the father of the respondent No.1 and the plaintiff herself has

conceded that no rent has been paid to her. Since no rent has been paid to the respondent No.1 in her life as such the respondent No.1 has failed to prove relationship of tenant and owner between appellant and respondent No.1.

On the other hand the learned counsel for the respondent No.1 vehemently argued that the appellant has admitted the ownership of the father of the respondent No.1 over the suit land but at the same time she has taken a specific plea of the gift by the father of the respondent No.1 in favour of the father of the appellant as such the burden of proof was shifted to the appellant to prove but she badly failed. He further urged that denial of rent to be paid, does not create any ownership over the suit land unless the ownership is proved otherwise.

We have, gone through the record of the case, also considered the points raised by both the learned counsel for the parties and reached to the *conclusion that no legal infirmity seems in the concurrent findings, as the learned counsel could not explain any*

legal error by the learned courts below and no appeal before this court is competent unless an appellant refers a vital legal question floating on the face of the impugned judgment, oversighted by the learned courts below and if same was appreciated, was sufficient to reach into findings otherwise. The plea of misconceiving or misunderstanding of facts of the case by the lower courts, is hardly a ground before this court.

In the case in hand the appellant has admitted the initial ownership of the father of the respondent No.1 as such she could not be the owner of the suit land unless she proves plea of gift in favour of his father but the appellant miserably failed to prove the issue in this regard, no single documentary or oral evidence is available on the record of the case to prove the plea of gift. The plea of non payment of the rent by the appellant to the respondent No.1 also has no substance as it is well settled principle of law that, "**once a tenant always a tenant.**" Meaning thereby is that, no tenant can claim the ownership over the rented property because no rent has been paid to the owner. The ownership is needed to be proved otherwise.

Adverse to the plea of appellant, the respondent No.1 has filed Exh.P-1 dated 18-08-1955,which transpires that the land was rented to the father of the appellant for Rs.2/- per month as a rent and the document, being more then 30 years old, is admissible in evidence and proves relationship of tenant and owner between the parties as such the possession of the appellant over the land is permissive and constructive possession lies with the respondent No.1 being the Legal heir of the owner (her father) and no limitation runs in favour of appellant.

Since when it is proved that the appellant is in possession of the suit land as tenant then a question could be raised that, the matter was triable by the rent control under rent restriction ordinance for ejectment of the tenant, though the point has not been taken before us but as being point of law and touches the jurisdiction therefore it needs to discuss accordingly for future guidance of lower courts that, in a simple case for ejectment of tenant, the rent controller under the ordinance has exclusive jurisdiction to entertain the matter and the general jurisdiction of the learned Civil courts is barred by

the special law but when a person claims himself owner of the disputed property and denies relationship of tenant and owner, and makes the title disputed then the Civil courts having jurisdiction to determined the title between the parties.

The upshot of the above discussion is that, the appeal is dismissed being meritless and concurrent findings of the lower courts are maintained. No order as to costs.

Date of Reasoning

10-11-2015.

Whether this judgment is fit for reporting or not.

Judge

Chief Judge

Judge