

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

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

C. Appeal No. 37/2016

in

CPLA.NO. 80/2015.

1. Mst. Zainaba & 03 others

Petitioners.

Versus

1. Sher Sulieman & 01 other

Respondents.

PRESENT:-

1. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Nemo for Respondents.

DATE OF HEARING: - 19.10.2016.

DATE OF DETAIL JUDGMENT: - 03.11.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment/order dated 17.04.2015 in Civil Revision No. 45/2014 passed by the learned Gilgit-Baltistan Chief Court whereby the Revision Petition filed by the petitioners was dismissed by maintaining the impugned judgment decree passed by the learned Additional District Judge Gilgit dated 31.03.2014 in CFA No. 20/2013. The petitioners being aggrieved by and dissatisfied with the said impugned judgment/order filed this petition for leave to appeal. This court vide order dated 26.09.2016 granted leave & ordered for issue notices to the respondents. The case was heard on 19.10.2016. and this appeal was dismissed vide our short order dated 19.10.2016.

2. Briefly the facts of the case are that the respondent No. 01 namely Sher Sulieman filed a Civil Suit No. 140/1998 in the court of the learned Civil Judge 1st Class Gilgit. He claimed that the disputed land given to him by his father Dodu as his share in consequence of the partition of his legacy in his life time, however, it was retained by his father as Amanat. After the death of his father, the respondent/petitioner No. 01 who was then residing with his father was not ready to deliver the possession of the land to him as it was gifted to her by her father Dodu. The petitioner and the respondent are sister and brother inter se. While defending the suit the petitioners/respondents in their written statement have contended that the land in question has been gifted to petitioner No. 01 by her father Dodu through gift deed dated 02.01.1984 as such the claim of the petitioner was not sustainable in the eye of law.

3. The learned counsel for the petitioners submits that the learned courts below while adjudicating the case had fell in error in understanding the point which was actually controversial between the parties. The suit was disposed off directing to divide the disputed land among the legal heirs of Dodu in accordance with their Sharia Share, which was not in accordance with law. He also submits that the disputed land was entirely owned by the father of the parties who had gifted it to respondent No. 01 through Gift Deed dated 02.01.1984. He further submits that the suit land was in possession of the respondent No. 01 in consequent of the said

gift but the learned courts below did not consider this fact and wrongly decreed the suit in question in favour of the respondent. He finally argued that the learned Chief Court fell in error while deciding the Civil Revision No. 45/2014 and passing the Impugned Judgment dated 17.04.2015 filed by the petitioners which according to them is not sustainable and liable to be set aside being the result of misconception of law and facts.

4. We have perused the judgment of the learned trial court who decreed the suit as under:-

- (i) ***Plaintiff is entitled to get 10 Kanal 12 Marlas 6 Sarsahi from the suit land out of 22 kanal 12 marla 6 sarsahi after deduction of 12 Kanal which is already in his possession.***
- (ii) ***Defendant No. 1 and Mst. Sahar Gul are in possession of their shares measuring 13 kanal each which have been given to them by their father Dadoo as admitted by the plaintiff in Para No. 2 of his plaint which will be remained in possession of defendant No. 1 and Mst. Sahar Gul as their shares.***
- (iii) ***Defendant No. 5 is entitled to get 11 kanal 6 Marlas and 3 Sar Shai from the suit land which is legacy of her father.***
- (iv) ***Gift deed dated 2/1/1984 and mutation No. 5 dated 27/3/1988 are hereby cancelled.***
- (v) ***Plaintiff, defendant No. 5 and Mst. Sahar Gul are entitled to get their Sharia shares from the house and three cattle sheds.***

5. In appeal the learned appellate court was pleased to uphold the judgment & Decree dated 16.08.2013 passed by the learned trial court. The Civil Revision No. 45/2014 filed by the

petitioner, upon hearing the learned Chief Court was pleased to hold that it is evident from the record that during the life time of Dadu he has given some land to the daughters and son but one could not definitely say that the said distribution was in accordance with Sharia. Thus, justice demands that landed property left by Dadu i.e. the disputed land and the land now under the possession of the off-springs of Dodu should be divided among the L.Rs. of Dodu in accordance with Sharah they follow. In this regard late Dodu has also not imposed an ban showing the land given by him to his daughters and son in his life time should not be disturbed. The learned counsel for the petitioners could not point out any illegality and infirmity in concurrent findings of three courts below.

6. In view of the above discussions we dismissed the above appeal vide our short order dated 19.10.2016. Consequent thereto the impugned judgment dated 17.04.2015 in Civil Revision No. 45/2014 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment in CFA. No. 20/2013 dated 31.03.2014 passed by the First Appellate Court and judgment in Civil Suit No. 140/1998 dated 16.08.2013 passed by the learned Civil Judge 1st Class No. 01 Gilgit were maintained. These were the reasons for our short order dated 19.10.2016.

7. The Appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?