

**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. 30/2015

In

CPLA No. 48/ 2015

Provincial Government & others

Petitioners.

Versus

Muhammad Musa & others

Respondents.

PRESENT:-

1. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General and Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Sharif Ahmed Advocate alongwith Mr. Imran Hussain Advocate and Mr. Johar Ali Khan Advocate-on-Record for respondents.

DATE OF HEARING: - 10.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This appeal has arisen out of the impugned order dated 27.03.2015 in Civil Revision No. 13/2015 passed by the learned Chief Court whereby the said Civil Revision filed by the petitioners was dismissed in limini, hence, this petition for leave to appeal. This court vide order dated 21.10.2015 issued notices to the respondents and the case is heard today.

2. Briefly, the facts of the case are that the respondents/plaintiffs filed a Civil Suit No. 11/2002 in the court of learned Civil Judge Gilgit for declaration of their title on suit land situated at Jutial Gilgit measuring 24 Kanals for its restoration or alternatively for payment of compensation thereto. The

petitioners/defendants contested the suit on the ground that land under Khewat No. 1693,2424 measuring 66 kanals and 13 marlas situated at "BEROUN LINE" was mutated in the name of Chief Secretary Gilgit-Baltistan vide mutation No. 3845. Out of which 62 kanals and 07 marlas was transferred in the name of Commandant Frontier Constabulary vide mutation No. 4691 dated 30.03.2001 vide transfer Order No. RC-1(1)/2000. The learned Trial Court considering the above facts, decreed the Civil Suit in favour of the respondents/plaintiffs. Being aggrieved by and dissatisfied with the said decree, the petitioners filed Civil First Appeal No. 25/2013 in the learned District Judge Gilgit which upon hearing was dismissed being barred by limitation. Feeling aggrieved, the petitioners filed Civil Revision No. 13/2015 before the learned Chief Court. Upon hearing, the learned Chief Court also dismissed the said Civil Revision in limini.

3. The learned Advocate General submits that the disputed property in question has already been mutated in the name of the petitioners vide Khasra Nos. 3215, the disputed property in vide Khasra Nos. 3215, 3313, 1608 and 2218 and Khiwat/Mutation Nos. 1693, 2424, 3845 and 4691 respectively which is evident from the revenue record. The respondents have no right over the disputed property. Per learned Advocate General, the orders passed by the three learned Courts below were altogether different versions, hence, the same are not sustainable. He submits that the petitioners were condemned unheard while passing the above

referred orders by the three Courts below, therefore, the said orders are not tenable in the eyes law. He prays that the concurrent findings of the learned Courts below may graciously be set aside.

4. On the other hand, the learned counsels for the respondents support the concurrent findings of the learned Courts below. They contend that the case of the petitioners was/is hopelessly barred by time and limitation. Per learned counsels, Mr. Akbar Khan, the then Naib Tehsildar, Gilgit has in his statement recorded on 24.11.2008 before the learned Trial Court admitted in cross-examination that mutation of the suit property as per claims of the respondents were attested and was given 06 kanals land with the approval of Commissioner in the general distribution. They further contends that when facts are admitted no further investigation and inquiry into the matter was required. They add that the learned Trial Court had appointed commission for demarcation and ascertainment of the disputed land and whose report also reflects that almost 15 kanals of lands is in possession of the respondents. They submit that the learned Chief Court has rightly dismissed the Civil Revision of the petitioners being barred by time. They pray that the concurrent findings of the learned Courts below may pleased be maintained to meet the ends of justice.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through concurrent findings of the learned Courts below. In our considered

view, a factual controversy is involved which can only be resolved after recording of evidence on disputed land in the learned Civil Court. Further, the learned Courts below have miserably failed to appreciate the evidence on record.

6. In view of the above discussions, we allow this appeal and the same is remanded back to the learned Trial Court, Gilgit to hear and decide the same in its own merits in accordance with law. Consequently, all the three judgments/orders i.e. the impugned judgment/order dated 27.03.2015 passed by the learned Chief Court in Civil Revision No. 13/2015, the judgment dated 30.04.2014 in Civil First Appeal No. 25/2013 passed by the learned District Judge Gilgit and judgment dated 20.04.2013 in Civil Suit No. 11/2002 passed by the learned Civil Judge First Class Gilgit are set aside.

7. The appeal is allowed in above terms.

Chief Judge.

Judge.