

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. 35/2017

In

C.P.L.A. No. 65/14

Bakhtawar Shah s/o Turab r/o Kanjukushal Tehsil Nagar No.
1, District Hunza-Nagar.

Petitioner

VERSUS

1. Khuda Aman s/o Khuda Yar r/o Chili Kushal Nagar No.1
and another.

Respondents

Present:-

1. Syed Muhammad Aga Advocate alongwith Mir Akhlaq Hussain Advocate and Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Johar Ali Khan Advocate on behalf of the respondents.

DATE OF HEARING:- 27-4-2017.

DATE OF DETAIL JUDGMENT:--08-2017.

JUDGEMENT

JAVED IQBAL, J..... This petition for leave to appeal has been directed against the concurrent judgments/decrees passed by the learned courts below i.e. learned Chief Court and learned District Court Gilgit dated 18-3-2012 vide CFA No. 71/2012 and whereby, the learned courts, has dismissed the Civil 1st Appeal by learned District Judge and same judgment/decrees passed by learned District Judge has maintained by learned Chief Court Gilgit. While the learned

Civil Court Nagar has decreed the suit of petitioner dated 26-10-2011, vide Civil Suit No.91/2006 as prayed for.

2. Concisely the back ground of this litigation as transpiring from plaint is that, the petitioner/plaintiff filed a pre-emption suit for possession. According to averments of plaint, the respondent/defendant No. 2 has sold the suit land to the respondent No.1 in consideration of Rs. 65000/- (Sixty Five Thousand) to respondent No.1, without knowledge and informed to petitioner while, the petitioner was entitled to purchase the suit property being adjacent the residential house near suit property.

3. On the other hand, the respondents No. 1 to 2 contested the suit through their separate written statement and denied all averments of the plaint, and averred that, the suit property was not purchased but has obtained by respondent No. 1 in exchange of house the petitioner/plaintiff also filed re-joinder and denied the all averments of respondents/defendants, which he taken in written statement.

4. The learned trial court framed 8 issues in the light of pleadings of the parties. Parties adduced their evidence pro and contra and arguments advanced by the counsel of the parties the learned trial court has decreed the suit of the petitioner/plaintiff as prayed for with cost.

5. This judgment/decree has been challenged by the respondents before learned District Court by filing Civil 1st Appeal No. 49/2011 before learned District Court Gilgit dated 31-10-2011. The learned District Judge accepted the appeal filed by respondents/defendants vide judgment/decree dated 10-10-2012 and dismissed the suit of plaintiff.

6. The petitioner/appellant aggrieved by the judgment/decree passed by learned District Court filed a Civil Revision No. 71/2012, before learned Chief Court on 08-12-2012,

the single bench of Chief Court has maintained the judgment/decree of learned District Court vide judgment dated 18-3-2014, consequently the pre-emption suit of the petitioner/plaintiff dismissed holding that,

“Findings arrived at by the District Judge Gilgit did not warrant any interference being based on solid grounds of law and facts.”

7. We have heard the arguments of the counsel of the parties at great length. The learned advocate Mir Akhlaq Hussain on behalf of the petitioner, vehemently argued the case that petitioner/plaintiff filed a pre-emption suit against the respondents with the contention that, respondent No. 2 sold the pre-empt property without notice and secretly in consideration of Rs. 65000/- to respondent No.1 while the petitioner being neighbor with the adjacent of his residential house, he has superior right to purchase the disputed land then the respondents.

8. On the other hand, the learned counsel of respondents Mr. Johar Ali Khan vehemently opposed the version of petitioner and contended, that, the suit property was not purchased, rather it was obtained by respondent No. 1 in exchange of house, which handed over to respondent No.2.

9. We have minutely examined the record of the case, with the help of arguments by the counsel of both the parties, also perused the judgments of lower courts. The learned counsel of the petitioner argued his case in good manner, and contended that, the petitioner has preferential right than the respondent No. 1, because the petitioner is neighbor and his residential house is adjacent to respondent's house. In proof of the version of plaintiff, the petitioner produced two PW's who only stating about adjacency of suit property and they are silent about price of suit land, that petitioner is ready to pay in case of decree. We also observed that, petitioner himself and PW's are mum about price of suit land. The only one

rebuttal evidence has produced by the petitioner stated that, he heard, that disputed property has purchased in consideration of Rs. 60,000/- which is hearsay evidence could not be reliable in above circumstances. Moreover, it is evident from available record, that exchange of properties has been affected between the parties. It is not a case of sale. Certain law provided by Gilgit-Baltistan right of prior-purchase regulation that right of prior purchase could not be exercised only the case of sale. Moreover, it is also well principle of law, that,

“Plaintiff has to prove his case independently, plaintiff cannot take the benefit from weakness of the defendant.”

So, in the above circumstances, we feel that the petitioner has bitterly failed to established and prove his case independently.

So we did not find any reason for our interference in the impugned judgments/decrees of learned Chief Court dated 18-3-2014 and District Court Gilgit. We proceeded to convert this petition into appeal and same was dismissed by our short order dated 27-4-2017.

10. The appeal is dismissed in above terms.

JUDGE

CHIEF JUDGE

Whether the case is Fit to be reported or Not?