

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
CPLA No. 01/2010

Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Syed Jaffar Shah, Judge.

Jamsheed Khan etc

Petitioners.

Versus

Provincial Government etc

Respondents.

Malik Shafqat Wali, Sr. Advocate for petitioners
Advocate General Gilgit Baltistan for respondents
Mr. Muhammad Hussain Shahzad Advocate for respondents for 4
to 6.

Date of hearing: 09-06-2010

JUDGMENT

Muhammad Nawaz Abbasi, CJ: This petition has been directed against the order dated 03-12-2009 passed by the Chief Court by virtue of which an application under Order 6 Rule 17 CPC for amendment of plaint in the Civil Suit filed by the petitioner in Civil Revision has been dismissed. The suit was filed by the petitioner for cancellation of mutation of suit land sanctioned in favour of private respondent and possession of land which was decreed by the court of first instance but the decree was reversed by the appellant court in appeal filed by the respondents. The petitioners filed a Civil revision in the Chief Court against the judgment of appellant court alongwith Civil Revision by moving an application under Order 6 Rule 17 Cr.P.C. sought amendment in the plaint. The Chief Court pending decision of the Civil Revision dismissed this Application vide Order under challenge.

The dispute between the parties in the suit was in respect of an area of six kanals of land allotted to the private respondent in Khasra No. 103 from agricultural farm in 1981. The case of the petitioner in the suit was that the allotment in favour of the respondents was made out of the land measuring 21 kanal which was allotted to the petitioner from the same khasra in the year 1945 therefore, mutation of land sanctioned in favour of respondents was ineffective to their rights. The subsequent amendment sought in the plaint was that “allotment order on the basis of which mutation was sanctioned in favour of respondents was illegal”.

Learned Judge in Chamber in the Chief Court after detail discussion of the matter dismissed the application with observation that proposed amendment if allowed may change the character of the suit.

Learned counsel for the petitioners has contended that without challenging the order by virtue of which allotment was made in favour of respondents, the ultimate success in Civil Revision would be of no use as petitioners would not be able to get possession of land on the basis of such declaratory decree, therefore the amendment sought in the plaint was necessary for just decision of the suit.

Learned counsel for the respondent on the other hand has submitted that the allotment in favour of both the parties was made in Khasra No. 103 of Agricultural Farm, Jaglot in their own

right and the proposed amendment seeking declaration that allotment in favour of the respondent was illegal would amount to set up a new case at the final stage of litigation and may change the character of the suit.

Learned Advocate General has submitted that the controversy between the parties could be resolved by demarcation of the land without the proposed amendment in the plaint which may change the cause of action and nature of suit.

The careful perusal of the record would show that controversial question regarding the validity of the allotment of respondents could be decided under issue No. 5 and 6 framed by the trial court in the suit and fate of Civil Revision before the Chief Court would also depend upon the decision of these pivotal issues therefore the petitioners instead of seeking amendment in plaint should concentrate on the question of law and facts arised thereunder before the Chief Court in Civil Revision.

The petitioner has neither questioned the validity of allotment of respondent at an early stage nor pleaded in the suit that it was a case of double allotment, therefore he could not be allowed to setup a new case with change of character of suit at this stage.

After hearing the learned counsel for the parties we have not been able to find out any substantial ground or reason for interference in the judgment of the Chief Court and consequently dismiss this petition.

Chief Judge

Judge