

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN  
GILGIT.  
CPLA NO.44/2014.**

Before :- Mr.Justice Raja Jalal-Ud-Din Acting Chief Judge.  
Mr.Justice Muzaffar Ali Judge.

1. Fatima Bi wife of Hussain,
2. Muhammad Ismail,
3. Fida Muhammad, and
4. Ghulam Nabi sons of Hussain Residents of Mohallah Khansar, Tehsil Khaplu Bala District Ghanche

Petitioners

Versus

1. Abdur Rehim,
2. Mussa sons of Ali Naseeb Residents of Mohallah Khansar Tehsil Khaplu Bala, District Ghanche.

Respondents.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE) ORDER, 2009 AGAINST THE JUDGMENT/DECREE DATED 25-11-2013, PASSED BY THE LEARNED SINGLE JUDGMENT OF CHIEF COURT GILGIT-BALTISTAN, IN CIVIL REVISION NO.07/2013 WHEREIN THE DISMISSED PETITION OF PETITIONERS/DEFENDANTS AND UPHELD THE JUDGMENT/DECREE OF THE IST APPELLATE COURT DATED 20-11-2012 WHEREIN THE IST APPELLATE COURT HAD ACCEPTED THE APPEAL OF THE RESPONDENTS IN APPEAL NO.13/2012 AND DISMISSED THE PARTIAL APPEAL OF THE PETITIONERS/APPELLANTS IN APPEAL NO.15/2012 AGAINST THE PARTIAL JUDGMENT/DECREE OF THE TRIAL COURT DATED 21-05-2012.

FOR SETTING ASIDE THE IMPUGNED JUDGMENT/DECREE PASSED BY THE LEARNED SINGLE JUDGMENT GILGIT-BALTISTAN CHIEF COURT DATED 25-11-2013, AS WELL AS THE JUDGMENT/DECREE OF 1<sup>ST</sup> APPELLATE COURT DATED 20-11-2012 AND JUDGMENT OF THE TRIAL COURT DATED 21-11-2012 TO THE EXTENT OF CANCELLATION OF MUTATION NOS.3416 AND 3348 TO MEET THE ENDS OF JUSTICE.

Present :-

1. Malik Shafqat Wali Sr. Advocate on behalf of the present.

Date of Hearing :- 30-03-2015:

### **JUDGMENT :-**

**Mr. Justice Muzaffar Ali J.....** This petition for leave to appeal impugns not only the judgment/decreed dated 25-11-2013 passed by a learned Single Bench of the Hon,ble Chief Court Gilgit-Baltistan, but also impugns the decree dated 20-11-2012 passed by the learned Ist appellate Court and partially the decree dated 21-5-2012 , passed by the learned trial court concerned.

The brief facts gave birth to the instant petition are as such that, one Ibrahim residents of District Khaplu died issueless leaving behind the suit property. Since the man died issueless as such his two sisters Mst.Fatima Bi and Mst.Skina remained legal heirs behind him. Mst. Skaina leaving in her husband's house while Mr.Ibrahim and Mst. Fatima Bi were residing together. Hence the hereditment of the Mr. Ibrahim remained with Mst. Fatima. Mst. Skaina also died after death of her brother Ibrahim and her legal heirs filed suit No.38/08 before, the court of learned Civil Judge Khaplu against the present petitioners, claiming their legal share out of the hereditment of Mr. Ibrahim. the present petitioners submitted their written statement whereby they denied any legal right of the plaintiffs with the specific contention of the gift made by the late Ibrahim in favour of the defendant No.1 in respect of his legacy and submitted the document Ex.D-2 with their written statement.

The learned civil Judge Khaplu proceeded the suit and finally reached into the conclusion on merits that, the plaintiffs are entitled to be decreed the suit partially to the extent of cancellation of some mutations and de-suited the plaintiffs in regard to their prayer "**declaration cum possession**" of the disputed land as they claimed. The plaintiff as well as the defendants both being dissatisfied with the findings of the learned trial court, filed appeals against before the court of learned Additional District Judge Khaplu. The learned District Judge accepted the appeal filed by the plaintiffs and passed the impugned decree and dismissed the appeal submitted by the present petitioners. The present petitioners filed a revision petition against the decree before the learned Chief Court G.B. The revision petition was also dismissed on merits by a learned Single Judge of the learned Chief Court Gilgit-Baltistan . Hence this petition before this court.

We heard the learned counsel for the petitioners .The learned counsel before us also re-iterated the same plea of gift in favour of the petitioner No.1 by the late Ibrahim and referred the document Ex.-D-2 and the statements of the marginal witnesses to the document and emphasized to be proven.

We minutely have gone through the document Ex.D-2. It is a photo state copy of a document titled "\_\_\_\_\_ " and attested by the AOR for the petitioner. The document being a photo state copy of the original is not admissible under Qanoon-e-shahdat . the

learned trial Judge has marked it as Ex.D-2/2 and has declared the same to be admissible in evidence and has relied upon without enquiry about the original of it which have neither been placed in the file of the case nor the record reveals that, the original document was presented before the trial court and was returned to the plaintiffs after perusal.

The document, even if the original paper was attached with the file, could not be relied upon, as it was un- registered or was written at least on a stamp paper. The document ought most having status of a “**will**” which is meant to be operative after the death of the executor of the document. The Executor was Muslim and under Islamic Law he was bound to execute a will in respect of 1/3 of his estate but in violation of Islamic law he had executed the will in respect of entire property he owned as such the document is void under Islamic law.

The nutshell of the above discussion is that the counsel for the petitioner has failed to persuade us to grant the leave to appeal, hence the petition is refused to convert it into appeal and dismissed. The impugned decree passed by the learned Single Judge and the learned District Judge are upheld. No orders as to cost.

**Announced**  
**30-03-2015**

**Acting Chief Judge**

**Judge.**