

**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. 65/2017
in
CPLA No. 31/2017.**

Gohar Hayat & another

Petitioners.

Versus

Ali Ahmed Jan & others

Respondents.

PRESENT:-

1. Mr. Muhammad Shafi senior Advocate for the petitioner.
2. Mr. Kamal Hussain Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondents.

DATE OF HEARING: - 29.09.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Civil petition has arisen out of the impugned judgment dated 06.12.2016 passed by the learned Chief Court whereby the Writ Petition No. 90/2016 filed by the petitioners was dismissed being meritless, hence, this petition for leave to appeal. This court vide order dated 09.08.2017 issued notices to the respondents and the case was heard today.

2. Briefly, the facts of the case are that the respondent No. 01 & 02 filed Civil Suit No. 08/2009 in the court of learned Civil Judge 1st Class Hunza against the respondent No. 07 and one Fazal deceased son of petitioner No. 01 for possession of house allegedly occupied with collusion of respondent No. 03 & 04 by ejecting their

tenants respondents No. 05 & 06. The above suit was contested by respondent No. 07, after full trial the learned Trial Court passed a decree vide Judgment/decreed dated 08.10.2010. Respondent No. 07 and other person namely Fazal challenged the above decree before the District Judge Gilgit thereafter the same was withdrawn during the course of which the above Fazal has gone to his account and his Legal heirs qua the present petitioner No.01 filed a revision petition before the learned Chief Court Section alongwith the above defendant Jan Alam which was dismissed as withdrawn vide order dated 13.09.2013 passed in Civil Revision No. 20/2012 and in this was the judgment /decree dated 08.10.2010 attained finality. The present respondent No. 1&2/judgment debtors filed execution petition. The petitioners contested the same by filing objections before the Executing Court which was dismissed vide order dated 04.09.2014. The above order of dismissal of objection was assailed before the learned Chief Court through revision petition which met the same fate. The petitioners alongwith other judgment debtor Jan Alam thereafter filed a declaratory suit before the learned trial Court challenging the above decree dated 08.10.2010. The above suit was rejected by the learned trial Court under Order 7 Rule 11 CPC which was impugned through an appeal before the learned Chief Court which was also dismissed and as last resort the present petitioners have filed an application under section 12 (2) challenging the validity of the judgment /decree dated 08.10.2010 . The same was dismissed in limini by the learned trial Court vide

order dated 03.09.2015. The same was further assailed through Revision Petition before the learned District Judge. The learned First Appellate court vide judgment /order dismissed the revision Petition holding the same devoid of any merit which was subsequently upheld by the learned Chief Court.

3. The learned counsel for the petitioners contends that the judgment/decreed dated 08.10.2010 in Civil Suit No. 08/2009 was obtained by the respondents through fraud, misrepresentation and want of jurisdiction without impleading the petitioners as necessary party. He also submits that the grandfather of the petitioners and judgment debtor i.e. late Mirza Baig and the grandfather of the decree holders/respondents No. 01 & 02 were real brothers inter se. Mirza Baig died leaving behind three (03) sons i.e. Maj. Nadir Aman, Muhammad Baig and Shamsheer (Minors) and two (02) daughters namely Mst. Shukrat and Nijat. Nadir Aman died leaving behind three (03) sons namely Mehboob Alam, Jan Alam and Ghulam Murtaza similarly Jan Alam died leaving behind two (02) sons i.e. Zahid Karim and Shahid Karim. Likewise, Muhammad Baig died leaving behind two (02) sons and one (01) daughter namely the petitioner and judgment debtor respondent No. 07. He further submits that Shamsheer died leaving behind 04 sons Manzoor Karim, Ghazi Karim, Sartaj Karim and Sarfraz Karim. Later on, Ghazi Karim also died leaving behind one son Junaid. Mst. Shukrat died leaving behind 01 son Niamat Khan whereas Mst. Nijat died leaving behind 01 son namely Ali Madad who passed away leaving

behind 01 daughter Salima. Similarly, Qalamo, the grandfather of the decree holders/respondents No. 01 and 02 died leaving behind 03 sons namely Muhammad Shafa, Akbar and Muhammad (Minors). Muhammad Shafa died leaving behind the decree holder and 01 daughter Mst. Shamia whereas Akbar died issueless while Muhammad Issa died leaving behind 02 sons and 01 daughter i.e. Danish, Suleiman and Nazia. Per learned counsel, the petitioners and the respondents have common landed property at Danyore Gilgit and at Ali Abad Hunza. After the deaths of both the grandfathers of the respective parties, the partition of the common property took place amongst the eldest sons of Mirza Baig and Muhammad Shafa. According to the said partition, the landed property at Danyore Gilgit went into the share of Muhammad Shafa and his brother while landed at Aliabad Hunza went into the share of Nadir Aman and his brothers. The legal heirs of the respective parties are in the possession of the respective properties. He reiterates that although there are concurrent findings of the three courts below against the petitioners yet the said findings were based on misrepresentation, fraud and want of jurisdiction and the same may graciously be set aside being not sustainable.

4. On the other hand, the learned counsel for the respondents supports the impugned judgment as well as the concurrent findings of the learned courts below. He contends that filing of the suit and the proceedings thereto in various courts of law was in the knowledge of the petitioners. Further, the petitioners

also contested the suit by joining the proceedings, hence, the plea of fraud and misrepresentation taken by the petitioners is not understandable. Per learned counsel, the house in question was handed over to the plaintiffs in the year 1998 by the elders of Qabila-e-Khurkose by partitioning the joint property of the respective parties and the respondents are in the possession of the said land/house since then. He contends that the possession of the property in question has been admitted by the petitioners/defendants in Para-2 and 03 in their written statements. Per learned counsel, all the three courts below have rightly dismissed the application under Section 12(2) CPC filed by the petitioners being not maintainable. He prays that the impugned judgment dated 06.12.2016 passed by the learned Chief Court may graciously be affirmed.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment as well as orders/judgments of courts below. The learned counsel for the petitioners has not controverted that the proceedings on record of Civil Suit and the Revision, was in the knowledge of the petitioners rather they participated in the said proceedings. In our considered view, the impugned judgment passed by the learned Chief Court is well reasoned as no infirmity and illegality is pointed out by the learned counsel for the petitioners, hence, no interference is warranted into the impugned judgment.

6. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, the impugned judgment dated 06.12.2016 passed by the learned Chief Court is affirmed.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.