

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
Gilgit
(Appellate Jurisdiction)

CPLA No. 32/2011

Before:

Mr. Justice Rana Muhammad Arshad Khan, Chief Judge.
Mr. Justice Raja Jalal Uddin, Judge.

1. Habibullah, 2. Abdul Hanif, 3. Abdul Wadood, 4. Shukoor, 5. Muhammad Nazeem Sons of late Sherdullah, 6. Hameedullah son of Abdullah, 7. Abdul Jamil, 8. Fasal Hussain, 9. Abdur Rasheed, 10. Naseer-ud-Din sons of late Sher Wali, 11. Janan son of Kush Khan, 12. Ali Jan son of Ali Khan, 13. Ghulam Muhammad son of Late Atta Muhammad, 14. Qasim, 15. Qazi sons of Jumma Khan, 16. Ourang Zeb, 17. Barkat Ali son of Shah Nawaz, 18. Yaseen son of Jan, 19. Kaseer son of late Faqir all resident of Village Louse, Tehsil & District Astore.

..... **Petitioners**

VERSUS

1. Rahimullah, 2. Lal Khan, 3. Ghulam Jan, 4. Ghulam Nabi, 5. Bibi Ruquia, 6. Hoori, 7. Tauraza daughter and sons of Abdul Qayyum, 8. Serah wife of Abdul Qayyum, 9. Abdul Razaq son of Abdul Khaliq, 10. Sher Jahan son of Muhammad Yousuf, 11. Amir Shah son of Ali Khan, 12. Muhammad Rasool son of Himat Shah all residents of Village Louse, Tehsil and District Astore.

..... **Respondents**

**PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 60(13) OF GILGIT-BALTISTAN
(EMPOWERMENT AND SELF GOVERNANCE)
ORDER, 2009 AGAINST THE
JUDGMENT/ORDER DATED 28.06.2011
PASSED BY THE HON'BLE CHIEF COURT
GILGIT-BALTISTAN**

Present:

1. Mr. Rehmat Ali Advocate for Peitioners.
2. Mr. Muhammad Hussain Shahzar alongwith Mr. Latif Shah Advocate, counsel for the respondents.

Date of hearing: 22.05.2014

JUDGMENT

Rana Muhammad Arshad Khan, CJ: The instant petition for the grant of leave to appeal has been directed against the judgment dated 28.06.2011 passed by the learned single Judge in Chamber of the Chief

Court Gilgit-Baltistan in Civil Revision Petition bearing No. 11/2011 whereby Civil Revision Petition was dismissed and the order dated 29.03.2011 passed by the learned Additional District Judge Astore was upheld.

2. The facts of the case as steamed out from the record are that a Civil Suit was filed by the respondents regarding the distribution of the spring water Channel Turpee according to their legal shares. The petitioners controverted the averments made in the plaint by filing a written statement. The learned Trial Court in order to resolve the controversy framed as many as eight issues. The parties to suit adduced the evidence to substantiate their stand for resolution of dispute between them. The learned trial Court, on the conclusion of the proceedings of the case and after hearing the learned counsel of the respective parties dismissed the suit vide judgment dated 10.04.1995. The respondents feeling aggrieved and dissatisfied called in question the judgment and decree dated 10.04.1995 of the learned trial Court through an appeal bearing No. 26/95 in the Court of learned District Judge Diamer at Chillas which came up for hearing in the Court of learned Additional District Judge Astore and the same was also dismissed vide Judgment dated 21.08.2001 while modifying the judgment of the learned trial Court. The petitioners preferred second appeal in the Chief Court Gilgit-Baltistan which came up for hearing before the learned single Judge of the Chief Court and the same was converted into revision to meet the ends of justice. However, the Revision Petition was dismissed vide Judgment dated 05.06.2006.

3. The respondents, thereafter, filed execution petition before the Civil Court on 28.04.2007. The petitioners also filed the cross

objection on 10.10.2008. The learned executing Court, however, dismissed the cross objection of the petitioners vide order dated 26.08.2009 which was assailed before the learned Additional District Judge Astore by filing an appeal. The appeal, however, was dismissed vide order dated 02.04.2011. The petitioners feeling aggrieved called in question the order dated 02.04.2011 through a Civil Revision Petition before the Chief Court Gilgit-Baltistan. The Revision Petition was also dismissed vide Judgment dated 28.06.2011. Hence this petition for leave to appeal has been filed.

4. The learned counsel for the petitioners vehemently argued that learned revisional court failed to appreciate the grounds taken in the cross objection filed in pursuance of the executing proceedings before the executing court which resulted into gross miscarriage of justice; that the matter in controversy at the time of execution before the trial court involved framing of issues and then its determination after recording of evidence; that courts below committed material irregularity by deciding the matter in a mechanical manner and that too without application of judicious mind. Argued further that the learned courts below exercised their jurisdiction arbitrarily which is quite alien to the scheme of law; that the orders of the courts below are non speaking and have been passed without adhering to the record; that the judgment impugned has been passed in slipshod manner which is not warranted under the law and the same is liable to be set aside in the interest of justice.

5. Conversely, the learned counsel for the respondents vigorously argued that the petition in hand is an afterthought story and the same has only been filed in order to deprive the respondents of the fruit of the decree fell into their lap after long legal battle. He vehemently

argued further that the decree has become final and the executing court is not competent to go behind the decree. The executing court is not under legal obligation to treat the application as suit and to frame the issues, record the evidence and determine the controversy between the parties afresh. The decree is to be executed in its terms only.

6. We have heard the learned counsel for the respective parties at a considerable length and perused the record with their able assistance.

7. The controversy between the parties in the suit was with regard to distribution of the turn of irrigation water of their land flowing from the spring water channel and the same was resolved by the learned courts below. The issues were framed and then the parties were given ample opportunity to lead evidence in order to substantiate their stand taken in the plaint as well as the written statement, resultantly, the judgment and decree came into existence. It may be pointed out that the petitioners moved the trial Court under Section 47 of the Code of Civil Procedure. It is axiomatic that Section 47 is meant to regulate and determine the questions raised before the executing Court. The plain reading of Section 47 of the Code of Civil Procedure would make it clear that any or all questions, relating to execution, discharge or satisfaction of the decree, arising between the parties to the suit or their representatives, shall be determined by the executing court and not through separate suit. The basic principle is that the executing court cannot go beyond the decree and its prime function is to execute the decree in its stricto sensu. It is well established by now that the executing court can neither go outside the decree passed by the Court of competent jurisdiction nor can allow its validity to be impugned in

executing proceedings. It is not within the domain of the executing Court that in the executing proceedings, the question as to whether the view of the Court which passed the decree is right or wrong as it is no more open for adjudication by the executing Court. Same view has been taken by the Hon'ble Supreme Court of Pakistan in a case titled Mst. Naseem Akhtar and 4 others v. Shalimar General Insurance Company Limited and 2 others (1994 SCMR 22), which reads as under: -

“..... Thus the decree became final. In the execution proceedings, it was not open to the respondent No. 1 to take up the plea which he had not taken before the learned trial Court during the course of the hearing of the suit which was ultimately decreed and the decree allowed to become final. In these circumstances, the respondent No. 1 itself is responsible for the decree against it, even though its liability was limited. It is not open to the respondent No. 1 judgment-debtor now to contend that its liability has not been correctly assessed or determined. If it were permissible, there will be no end or finality to the judgment and decree which had become final. Precedents noted and analysed above make quite clear that once a decree is passed it has to be executed in its terms and it is not open to executing Court to go behind it and re-determine the liability of the parties. In this view of the matter, there is no option but to allow this appeal and hold that the learned Judge in the High Court fell in error in giving effect to the plea of the respondent No.1 which had not been raised before the learned trial

court which granted the decree to the appellants. It may also be noted that the decree has already been executed. There is no good ground in the circumstances to put the clock back.....”

8. The executing Court is required to execute the decree as it is, particularly, when the decree has attained the finality, even executing court is not competent at all to rectify any mistake in the decree. It is only required to be executed in its letter and spirit, otherwise, it would be tantamount to go beyond the decree. When the decree is unambiguous, the executing court is bound to execute the same as such. If, some factual objections are raised before the executing court at the time of execution of the decree, the executing court is not under legal obligation to resolve the same during the proceeding of the execution of the decree and those could only be made before passing of the decree. It is strongly noted that all those objections were never pleaded in either written statement nor during the recording of evidence were pointed out by the witnesses in their statements made before the learned trial court and neither those objections were ever raised before appellate Court as well as the revisional court. In this view of the matter, the decree has attained finality. The petitioners are themselves responsible for having lost their defense. The decree has to be executed as it is, it is not permissible to go behind it. It is important to note that there is no jurisdictional error while passing the decree and if the Court passing the decree had the jurisdiction, no exception can be taken. The suit filed by the petitioners and the written statement was filed by the respondents, the petitioners did not take the plea at the relevant time before learned trial court to the effect that there was some ambiguity regarding the facts in the case and

issue was not framed on a controversial point. However, the decree was passed in favour of the respondents. The appeal was directed against the Judgment dated 10.04.1994 and that too, was dismissed with certain modifications and thereafter, revision petition was also failed and the decree in question became final.

9. It is not open to the executing Court to re-determine the rights and liabilities of the parties and once a decree is passed, it has to be executed in its terms. The points of attack or defense which were never agitated at the time of trial can never be raised at the stage of execution of the decree by filing an independent application under Section 47 of the Code of Civil Procedure.

10. In the case in hand after passing of judgment and decree, the petitioners have come with the plea that some of the issues regarding a pedigree of ancestors, gift, fraud and legal status of some of the decree holders is to be determined at the time of execution of a decree. However, the fact remains that all such questions relate to pre decretal matters and executing court has no jurisdiction to determine the same in view of the law laid down in the case mentioned supra. If at all the petitioners were aggrieved of the judgment under execution, with reservation that the same was outcome of exercise of fraud and misrepresentation, then they were at liberty to move an independent application under section 12(2) CPC, however, they are restrained, under the law, from raising such question at the then stage when the executing proceedings are in progress.

11. In view of what has been discussed above, we are of the confirmed view that the judgment dated 28.06.2001, passed by the learned single judge in chamber suffers from no illegality and no

exception can be taken. The petition in hand is misconceived and meritless and the same is dismissed, there is no order as to cost.

12. Leave refused.

Chief Judge

Judge