

**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. 24/2015

In

CPLA No. 97/2014.

Muhammad Hussain & others

Petitioners.

VERSUS

Malik Ashdar & others

Respondents.

PRESENT:-

1. Mr. Shakoor Khan advocate for the petitioners.
2. Malik Ashdar respondent No. 1 is present in person.

DATE OF HEARING: - 04.12.2017.

DATE OF ANNOUNCEMENT OF JUDGMENT: - 12.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Civil appeal has arisen out of the impugned judgment dated 01.07.2014 in Civil Revision No. 19/2011 passed by the learned Chief Court Gilgit-Baltistan whereby the said Civil Revision filed by the respondents was accepted by setting aside the concurrent findings of the courts below, hence, this appeal. This court vide order dated 18.09.2015 granted leave to appeal. The notices were issued to the respondents and the case was heard on 04.12.2017.

2. Briefly, the facts of the case are that the petitioners/plaintiffs filed, Civil Suit No. 226/97 and 87/2003 for declaration and possession of the suit land measuring 07 kanal in the Court of learned Civil Judge 1st Class Nagar which upon hearing both the suit(s) decreed in their favour. As per contentions of the plaintiff/petitioners the said land was in their possession.

They also contended that the respondents/defendants be restrained from forceful dispossession from the land in question which was upheld by learned First Appellate Court on appeal through its judgment dated 13.06.2011. The respondents being aggrieved by and dissatisfied with the concurrent findings of the Courts below preferred Civil Revision appeal No. 19/2011 in the learned Chief Court which upon hearing was accepted by setting aside the judgments/decrees of the two Courts below.

3. The learned counsel filed written arguments stating therein that the learned trial Court has decreed the suit of the petitioners after framing as many as 08 issues including two additional issues. The petitioners/plaintiffs have successfully proved their case through documentary as well as oral evidence. Per learned counsel, the possession of the disputed land remained with the plaintiff/petitioners after the death of their father till institution of the suit being the inherited land. During the pendency of the said Civil Suit, the possession was forcibly taken by the respondents. The disputed land was allotted and given to the father of the petitioner in return of his service to look after the water channel which was proved by the plaintiffs by PWs namely Ali Muhammad, Mastan Ali and Haider Ali. He submits that the concurrent findings passed by the two Courts below were wrongly set aside by the learned Chief Court which is not tenable in law and liable to be set aside. He submits that the learned Trial Court framed as many as

the following 08 issues including issue No.09 & 10 as additional issues:-

- i. Whether the suit of the plaintiff is not maintainable under the law?
- ii. Whether the plaintiff has no locus standi and cause of action against the defendants?
- iii. Whether the suit of the plaintiff is liable to be dismissed on non-joinder of necessary parties?
- iv. Whether the suit of the plaintiff is based on malafide hence not maintainable?
- v. Whether the plaintiffs are owners of the suit land under law?
- vi. Whether the plaintiffs are in possession of suit land for three generations and the irrigating channels was dug by the grandfather of the defendants?
- vii. Whether the suit land is in possession of the defendants from the time to their grandfather and the defendants planted tree on it with the help of AKRSP?
- viii. Whether the defendants developed the land by investment?

Additional Issues

- ix. Whether the defendants dispossessed the plaintiffs from the suit land after issuance of status quo from the court and whether the plaintiffs are entitled to get possession of suit land from the defendants?
- x. Whether the suit is within time?

4. The learned Trial Court decided the above issues as under:-

Issue No. 1 & 4

The defendants and their counsel did not produce any specific law or provisions on this issue. The suit in hand is filed for

declaration and possession of suit land on the ground of ownership. Civil suit for declaration with consequential relief may be filed before Civil Court for determination of rights between the parties. After perusal of record the malafidy of the plaintiffs is not appeared. Hence these issues are disproved.

Issue No. 2

The plaintiffs filed the suit for declaration and possession of suit land on the ground of ownership and claimed that the suit land is their ancestral property. The plaintiffs claimed the ownership on the footings of their father hence they have locus standi against the defendants, when the defendants denied the rights of the plaintiffs in suit land than the plaintiffs can file suit against the defendants. Defendants did not provide any material before the court to prove this issue, hence this issue is disproved.

Issue No. 3

It is a well settled law that a suit cannot be dismissed on non-joinder or mis-joinder of parties. Defendant No. 1 did not say a single word in his statement neither their counsel raised any point in his written arguments on this issue, hence this issue is disapproved.

Issue No. 5

The plaintiffs had to prove this issue. The defendant NO. 1 stated in his statement that the suit property was given to their father for his services to look after and repairing of the irrigating channel constructed on that locality. This version of the plaintiffs is supported by the PWs namely Ali Muhammad and Mastan Ali and Haider Ali in their statements. Two PWS namely Ali Muhammad and Haider Ali are the proprietors of the adjacent land and also watering their land from that channel. They further stated that the plaintiff's father looked after the water channel till his death. Defendants could not produce any evidence to rebut the versions of

the plaintiffs. Defendants witness namely Lambardar Mast Ali also admitted during cross examination that the suit land was given to Muhammad Ali (Plaintiff's father) against his services (to look after and repairing of channel). All the three witnesses did not say any single word about the rights of the defendants on suit land, hence, plaintiffs are succeeded to prove this issue.

Issue No. 6 & 7

The defendant's attorney and their all three witnesses categorically stated that the defendants planted trees with the help of AKRSP on the disputed land and also received Rs. 10500/= from AKRSP as remuneration in the year 1996. The Defendants stated that the irrigation channel was dug by their grandfather. The all plaintiff's witnesses and defence witnesses agreed/admitted that the channel was initially constructed by the grandfather of the defendant's and few other persons to irrigate their lands as regard the possession of the land all the defence witnesses stated in their statements that the defendants are in possession of the disputed land at this time or since 1996. All the three defence witnesses did not say any single word that the disputed land is in possession of the defendants from their father or grandfather's era. The defendants could not prove their possession of the land from three generation. They are in possession of suit land since 1996 or from a later stage. Hence, these issues are partially proved to the extent of defendants possession since 1996 and last part of issue No. 07 is proved (to the extent of planting trees with help of AKRSP is proved). Although defendants have proved these issued partially but these facts did not give any right of title on suit property to the defendants.

Issue No. 8

The defendants claimed that they have developed the disputed land by investment. The defence witnesses namely

Suleman and Mast Ali in cross examination that there was no tree existed at the time when the defendants planted there with the help of AKRSP. The witness namely Mast Ali further authenticated that the suit land was barren three years ago. The defendants could not produced sufficient evidence before the Court to prove this issue. Hence disapproved.

Issue No. 9

The plaintiffs stated that they were in possession of suit land after death of their father till institution of the suit. During pendency of the suit the plaintiffs have been disposed by the defendants by force. The plaintiff No. 02 submitted an application before the Assistant Commissioner on 08.10.1998 and stated there that the defendants are trying to dispose the plaintiffs from the land. The plaintiff's witness namely Ramzan Ali stated that the defendants are in possession of the suit land for 4/5 years, his statement is recorded on 17.10.2001. the witness namely Haider Ali stated in cross examination that the suit property is in possession of the defendants since 1997. On the other side all the defence witnesses stated that the defendants planted on the disputed land with the help of AKRSP in the year 1996 and they are silent about the possession of the suit land before 1996.

After above discussion on this issue the learned trial Court has come to the conclusion that the plaintiffs have been illegally dispossessed by the defendants in the year 1997/98, during pendency of the suit. Hence, this issue is proved.

Issue No. 10.

Plaintiffs field the present suit for declaration and permanent injunction on 01.09.1997 and filed amended plaint on 04.09.2000 and sought possession of the land when the defendants dispossessed the plaintiffs from the suit land during pendency of suit. The cause of action against the defendants on suit land firstly

arose on 1996 when the defendants denied the plaintiff's right on suit land and lastly when the plaintiffs have been dispossessed from the land in the year 1997/98. The suit of the plaintiffs is well in time under Articles 142 & 144 of the Limitation Act which provides a period of twelve years to file suits. Hence, this issue is proved.

5. In view of the above, the learned Trial Court was pleased to hold that the petitioners/plaintiffs were succeeded to prove their right of ownership on the suit property. Consequently, the Civil Suit was decreed in their favour and against the respondents. The learned First Appellate Court after hearing, dismissed the appeal filed by the respondents holding it was without merits. Consequently, the judgment/decreed of the learned trial Court was maintained. The learned Chief Court upon hearing the Revision Petition reversed the concurrent findings of two courts below as the same were passed on non-reading and misreading of the evidence on record and the respondents have bitterly failed to prove issue No.09.

6. Conversely, the respondents also filed written arguments who strongly refuted the contentions of the petitioners/plaintiffs. As per averments of the respondents, the suit property is owned and possessed by their family for three generation and they have dug/constructed the water channel to irrigate the said land. They have developed the said land by planting thousand of trees etc by the help of Aga Khan Rural Support Program (AKRSP). They submit that the petitioners/plaintiffs have miserly failed to prove their dispossession by the respondents. The witnesses produced by the

respondents have deposed in the learned trial Court that they were in possession of the disputed land since three generation. According to the respondents that the two Courts below failed to apply their judicial mind while passing the judgment whereas the impugned judgment passed by learned Chief Court is well reasoned and well founded. They prayed that the same may pleased be maintained.

7. We have gone through the written arguments of the respective parties as well as the impugned judgment and the judgments of the learned courts below. The perusal of impugned judgment passed by the learned Chief Court transpires that it has been passed only on two issues i.e. the Issue No. 09 & 10 relating to the possession and limitation only whereas the learned trial Court and learned First Appellate Court have discussed all the ten issues in detail and passed its judgments on the ownership/title etc. In our considered view, the impugned judgment is the result of misconception of law and misreading & non-reading of the evidence of the case, hence, the same is not sustainable whereas the judgments passed by the learned trial Court and learned First Appellate Court are well reasoned and have a legal force.

8. In view of the above discussion, we allow this appeal. Consequently, the impugned judgment dated 01.07.2014 in Civil Revision No. 19/2011 passed by the learned Chief Court is set aside by upholding the judgment dated 13.06.2011 in Civil First Appeal No. 10/2008 passed by the learned Additional District Judge at

Gilgit and judgment dated 06.12.2007 in Civil Suit No. 226/97 & 87/2003 passed by learned Civil Judge/judicial Magistrate at Nagar.

9. The appeal is allowed in above terms.

Chief Judge

Judge