

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.
CPLA NO.41/2014**

Before :-

**Mr.Justice Raja Jalal-Ud-Din, Acting Chief Judge.
Mr.Justice Muzaffar Ali, Judge.**

1. Suleman
 2. Sharif Khan
 3. Shamas sons of Shafi residents of Seegali Muhallah Gilgit.
- Petitioners/Defendants**

Mst.Marooft daughter of Abdullah Khan through LRs:-

1. Amin Khan
2. Younus sons
3. Mst.Rajo daughter r/o Kashorte Gilgit.

Respondents/Plaintiffs

PETITION FOR LEAVE TO APPEAL UNDER ORDER 61 OF (GILGIT-BALTISTAN EMPOWERMENT AND SELF GOVERNANCE ORDER) 2009 AGAINST THE JUDGMENT/ORDERE DATED 28-10-2013 WHEREBY THE LEARNED SINGLE JUDGE CHIEF COURT GILGIT-BALTISTAN HAS UPHELD JUDGMENT /DECREE DATED 27-03-2013 OF THE LEARNED ADDITIONAL DISTRICT JUDGE GILGIT.

FOR SETTING ASIDE BOTH THE IMPUNGED JUDGMENT/DECREES OF LEARNED LOWER COURTS BY MAINTAINING THE JUDGMENT/DECREE OF LEARNED TRIAL COURT DATED 03-05-2010, APPEAL MAY GRACIOUSLY BE ACCEPTED BY CONVERTING THE PETITION FOR LEAVE TO APPEAL INTO APPEAL TO MEET THE ENDS OF JUSTICE.

Present :-

Mr. Amjad Hussain Advocate for the petitioners.

DATE OF HEARING 18-08-2015:

ORDER:-

Mr.Justice Muzaffar Ali, J..... This petition for leave to appeal

has been preferred against the judgment/order dated

29-10-2013 passed by a learned single Bench of the Chief Court

Gilgit-Baltistan , whereby a learned Single Judge of the Chief Court

Gilgit-Baltistan has upheld the judgment/decreed dated 27-03-2013 passed by learned Additional District Judge Gilgit.

2. The facts of the case are as such that, the mother of the present respondents Mst. Maroof has filed suit No.11/97-83/80 before the court of learned Civil Judge Gilgit, against the present petitioners with the contention that she being the sister of the father of defendants, is entitled to get possession of her sharie share from the defendants/petitioners.

3. The plaintiff passed away during pendency of the suit as such her legal heirs were arrayed in the list of respondent. The learned civil Judge after framing issues finally adjudicated the matter and de-suited the plaintiff holding that the additional issue No.3 has been proved by the defendants against the plaintiff. The findings on the additional issue No.3 is re-produced hereunder:-

“Onus of this issue is placed on defendants to prove. Defendant examined two D/Ws to prove this issue. Both D/Ws stated that plaintiff has given/forgiven her shari share to defendants father vide deed dated 15-03-1997. This issue proved in favour of defendants.”

4. The legal heirs of the plaintiff Mst.Marooof feeling aggrieved and being dis-satisfied with the findings of the learned Civil Judge Gilgit went to the ist appeal before the learned court of Additional District Judge Gilgit. The learned Additional District Judge accepted the appeal and decreed the suit land in favour of the plaintiffs by setting the impugned judgment/decreed passed by the learned Civil Judge Gilgit, aside.

5. The present petitioners filed a Revision petition before the learned Chief Court against the judgment/decreed passed by the learned Additional District Judge Gilgit. The Revision petition was heard by a learned Single Judge of the Chief Court Gilgit-Baltistan and, the same was dismissed. Hence this petition before this court.

6. We heard the learned counsel at a length. He argued that Mst. Maroof had abandoned her shari share in favour of her brother and father of the present petitioners. The present petitioners have fully proved the additional issue No.3 framed in this regard. The learned counsel further argued that the father of the plaintiff Mst. Maroof late Abdullah had passed away in the year 1955, and her hereditment was devolved to the father of present petitioners under the customary law prevailing at that time. The customary law precluded Mst. Maroof to get any share from her father's hereditament.

7. We after going through the record, have come to the conclusion that the learned Civil Judge has erred in law by relying on a document which is neither original nor registered and by dint of which a co sharer lady cannot be ousted from her share unless it is proved that she has transferred her share without any reasonable doubt or undue influence. Superior courts are at consonance that unless a solid proof is available on the record that a pardanasheen lady has withdrawn from her share without any coercive and undue influence, she can not be deprived of her legal share. In the case in hand the father of the present petitioners being male was in a position to have undue influence over her sister Mst. Maroof and to

compel her not to claim her share. He might also use unfair means to deprive his sister from her share.

8. The next point raised by the learned counsel for the petitioner also has devoid of substance and it contradicts the ist point taken by the counsel in his arguments, reasoning with that if Mst. Maroof was precluded from getting any share in hereditment of her father under customary law prevailing at that time, then what was need to execute the document though it is not admissible in evidence but it contra indicates that Mst. Maroof was not excluded by any custom prevailing at that time when her father demised. Further more a plea of custom unless proved beyond any shadow of doubt with solid evidence to be acted upon for time immemorial in a particular area, cannot be pretext to deprive a female co sharer from her sharie share.

The upshot of the above discussion is that the
Petition is refused to convert the same into appeal and dismissed with costs.

Announced
18-8-2015

Acting Chief Judge

Judge