

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.
Mr. Justice Shehbaz Khan, Judge.**

Civil Appeal No. 32/2016.

In

CPLA .No. 07/2012.

1. Fazal Shah Son of Muhammad Shah.
2. Wali Muhammad son of Sher Ali r/o Harcho District Astore.

Petitioners.

Versus

1. Molvi Ramazan.
2. Rasool Khan.
3. Johar son of Nawaz.
4. Ahmed Ali son of Ghulam Jan.
5. Muhammad Ali son Naqeebullah.
6. Tahir Son of Ramazan r/o Harcho District Astore.
7. Abdul Majeed son of Abdul Shtar r/o Dashkan District Astore.

Respondents.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE) ORDER, 2009 ALONGWITH SUPREME APPELLATE COURT RULES AGAINST IMPUGNED JUDGMENT DATED 17.10.2011 PASSED BY LEARNED DIVISION BENCH OF CHIEF COURT GILGIT-BALTISTAN IN CIVIL FIRST APPEAL NO. 06/2009 WHEREBY THE DIVISION BENCH OF CHIEF COURT HAS ACCEPTED APPEAL NO 06/2009. CONSEQUENTLY SET ASIDE DECREE IN FAVOR OF PETITIONERS/PLAINTIFFS DATED 31.03.2009 HOLDING THAT SUIT OF PLAINTIFFS AS UN FOUNDED.

PRESENT:-

1. Mr. Johar Ali Khan Advocate for the petitioner.
2. Tahir Son of Ramazan present in person.

DATE OF HEARING: - 13.05.2016.

DATE OF DETAIL JUDGMENT: - 19.05.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned judgment dated 17.10.2011 in

CFA No. 06/2009 passed by the learned Gilgit-Baltistan Chief Court. The Civil First Appeal filed by the respondent was allowed and the judgment/decreed dated 31.03.2009 passed by the learned Civil Judge Astore was set aside. The petitioner being aggrieved by and dissatisfied with the said impugned judgment of the learned Chief Court filed this petition for leave to appeal.

2. The briefly facts of the petition are that the petitioner No. 01 & 02 filed Civil Suit No. 08/2004 for recovery of Rs. 300,000/- (rupees three lac only) in the learned court of Civil Judge Astore against the present respondent. Who upon hearing decreed the said Suit in favor of the petitioner/plaintiff vide judgment dated 31.03.2009 in Civil Suit No. 08/2004. The respondent being aggrieved called in question the said impugned judgment of the learned Civil Judge Astore before the learned Chief Court wherein the Civil First Appeal of the present respondent was allowed while setting aside the same declaring it failure of justice and equity vide impugned judgment dated 17.10.2011 in CFA No. 06/2009 passed by the learned Gilgit-Baltistan Chief Court. The plaintiff/petitioner contended that the respondent had purchased 100 kanals of lands at Village Dawal at Rawalpindi for the consideration of Rs. 12,00,000/- (rupees twelve lac only) and a sum of Rs. 300,000/- has also been paid to one Arshad Mehmood as earnest money with the pledge to pay the entire remaining amount on 15.07.2013. The petitioner also contended in his Suit that after receiving the entire amount the owner of the said land has to be transferred to the

petitioner after fulfilling all the legal formalities i.e. mutate the land in the name of the petitioner and deliver possession of the said property thereto. According to them an agreement dated 15.04.2003 was also executed between the present petitioner and the owner of the land through the respondent. This court issued notice to the respondent on 22.03.2016.

3. Mr. Johar Ali Khan the learned Advocate for the petitioner at very outset of the proceeding requests to withdraw the petition as the parties have already entered into a compromise and they want to resolve this prolonged dispute amicably out of the court. The request of the learned counsel was declined in absence of the respondents. Consequently, we want to decide the case on merit.

4. We have heard the learned counsel for the petitioner at length, perused the record of the case file and gone through the impugned judgment/order dated 17.10.2011 in CFA No. 06/2009 passed by the learned Gilgit-Baltistan Chief Court. The careful perusal of the record reveals that the transaction of the disputed land had been executed at Rawalpindi, the alleged earnest money was also paid at Rawalpindi to the owner of the land. The property in question is also situated at Rawalpindi, hence, the question of territorial jurisdiction arises. The learned Chief Court has rightly held that the judgment passed by the learned Civil Judge Astore was without jurisdiction and lawful authority.

5. The respondent has already suffered an irreparable loss because of uncalled for prolonged litigation initiated by the petitioner and the judgment passed by the learned Civil Judge Astore was without jurisdiction. The administration of justice demands that the respondent has to be compensated accordingly. The learned counsel for the petitioner could not point out any infirmity/illegality in the impugned well reasoned judgment passed by the learned Chief Court.

6. In view of the above discussions we have converted this petition into an appeal and the same was dismissed vide our short order dated 13.05.2016. The petitioner is directed to pay cost of Rs. 50,000/- (rupees fifty thousand only) to the respondent within a period of fifteen (15) days positively. Consequently, the impugned judgment dated 17.10.2011 in Civil First Appeal No. 06/2009 passed by the learned Chief Court is upheld being well reasoned and well founded whereas the judgment/decreed dated 31.03.2009 in Civil Suit No. 08/2004 passed by the learned Civil Judge 1st Class Astore being without jurisdiction was set aside. The respondent may claim damages against the petitioner in accordance with law. We are constrained to observe that the learned Civil Judge 1st Class Astore failed to scrutinize the pleadings of the suit and allowed the evasive pleadings to be taken into trial without taking judicial notice, instead, he had travelled beyond his jurisdiction. Because taking of cognizance by the learned Civil Judge 1st Class District Astore without jurisdiction, the respondents were dragged

into uncalled for litigation for more than eleven (11) years who have suffered irreparable losses and injuries. The copy of this order be sent and placed before the Hon'ble Chief Judge, Gilgit-Baltistan, Chief Court for his perusal and order, if his lordship deems it necessary or otherwise. These were the reasons of our said short order dated 13.05.2016.

7. The appeal is dismissed in above terms with cost.

Chief Judge.

Judge.

Judge.

Whether the case is fit to be reported or not?