

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

BEFORE:

Mr. Justice Syed Arshad Hussain Shah, Chief Judge

Mr. Justice Wazir Shakeel Ahmed, Judge

CPLA No.160/2019

(Against judgment dated 28.09.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No.72/2019)

(1). Asghar Khan (2) Rizwanullah, (3) Kamran ullah sons of Aslam Khan (late) (4) Mst. Nazia Begum (5) Mst. Shimaila Begum (6) Mst. Anika Begum daughters of Aslam Khan (late), all residents of Kashrote Tehsil & District Gilgit

..... **Petitioners**

Versus

Mst. Sitara Begum, widow of Aslam Khan (late) r/o Usmania Mohallah Kashrote, Teshil & District Gilgit

..... **Respondent**

PRESENT:

For the Petitioners : Mr. Muhammad Saleem Khan Advocate

For the respondent: Mr. Manzoor Ahmed Sr. Advocate

Date of Hearing : **02.04.2021**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:-This judgment shall dispose of the instant Civil Petition for Leave to Appeal directed against the judgment dated 28.09.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 72/2019, whereby Civil Revision filed by the present petitioners was partially allowed thereby directing the present petitioners to deposit an amount of Rs. 600,000/- before the learned District/Guardian Court, Gilgit as remaining amount of *Shari Share* of present respondent.

2. Brief facts of the case are that after demise of Aslam Khan, an employee of PIA, (father of present petitioners and husband of the present respondent/widow), the present parties/legal heirs jointly obtained a Succession Certificate from the learned District/Guardian Court Gilgit in respect of an amount of Rs. 347,722, monthly pension, GP Fund, Benevolent Fund, Assistance Package and other privileges. The total

amount came to the tune of Rs. 674,7722/-. After obtaining the Succession Certificate, an issue of distribution of above amount cropped up between the parties because the present petitioners, on the basis of a document of Will allegedly executed by late Aslam Khan, claimed exclusive ownership over the above amount. This act of the present petitioners gave rise to grievances for the present respondent which led her to approach the learned District/Guardian Court with a Civil Misc. Application No. 54/2019. The learned District/Guardian Judge, vide Order dated 04.05.2019, ordered freezing of amount lying in the account maintained with Habib Bank Ltd. NLI Market Branch, Gilgit, surrendering of share of the present respondent before the learned Court as well as depositing of the monthly pension of late Aslam Khan in the said Court. The present petitioners being aggrieved by the Order passed by the learned District/Guardian Court rushed to the learned Chief Court by means of filing of Civil Revision No. 72/2019. The learned Chief Court, after hearing the parties, partly allowed the Civil Revision and set aside the Order of the learned District/Guardian Judge to the extent of freezing of bank account and depositing of family pension in the Court. The present petitioners again being aggrieved by and dissatisfied with the impugned judgment of the learned Chief Court have approached this Court by way of the instant civil petition for leave to appeal.

3. The learned counsel appearing on behalf of the present petitioners argued that the impugned judgment passed by the learned Chief Court was against facts and law inasmuch as is the result of misconception, misunderstanding, misinterpretation and non-reading/misreading of evidence, hence was liable to set aside. He next argued that in presence of a Will executed by father of the present petitioners (late Aslam Khan) in their favour, the respondent was not entitled to any Shari Share out of the disputed amount while the learned Trial Court without appreciating these facts entertained a civil misc. application of respondent and passed Order dated 04.05.2019 which was further wrongly maintained by the learned Chief Court with some modifications, hence both the Order/Judgment of the learned Courts below being suffering from illegality and infirmity were not maintainable and were liable to be set aside. It was next argued by the

learned counsel for the petitioners that the succession certificate obtained was only with regard to an amount of Rs. 347,722/- hence, the learned Trial Court could not go beyond to pass the impugned orders for surrendering of share of respondent and depositing of monthly pension in the Court. On the other hand, the learned counsel for the respondent advanced his arguments in defense of the impugned judgment and prayed for maintaining the same.

4. We have heard the arguments advanced by the learned counsel for the parties. We have also gone through the record of case as well as the impugned judgment/order of the Courts below.

5. Before we go into merit of the case, we deem it appropriate to reproduce contents of the Succession Certificate to substantiate whether the Succession Certificate was sought only with regard to the amount of Rs. 347,722/ or otherwise as claimed by the present petitioners:

“SUCCESSION CERTIFICATE

Whereas, you applied on 17.01.2018 for grant of succession certificate under section 372 of Successions Act, 1925 in respect of following of late Aslam Khan son of Shah Alam Khan rs/o Village Kashrote, Tehsil and District Gilgit

Name of Debtor	Distribution & date of instrument if any by which debt is secured	Amount of debt including interest on the date of application
Habib Bank branch NLI Market Gilgit	A/C 70850107- 00045754-01	Rs. 347,722/-
2. Monthly Pension, 3. GP Fund, 4. Benevolent Fund, 5. P.M/CM Assistance Package and other privileges provided in rules etc.		

This succession certificate is accordingly granted to your LRs of late Aslam Khan son of Shah Alam Khan rs/o Village Kashrote, Tehsil and District Gilgit and empowered you to collect the above mentioned claims/amounts from the concerned Department/Bank with interest if admissible on the date of application with the direction to utilize and distribute the amounts among yourselves according to your Shari Share after realization”.

6. Perusal of the Seccession Certificate reveals that the same was granted by the learned Guardian Court upon joint application of both the parties and was issued in their joint names. In addition to an amount of Rs. 347,722/-, other benefits in terms of Monthly Pension, GP Fund, Benevolent Fund and P.M/CM Assistance Package and other privileges were also included in 3rd row of the Succession Certificate. In the Succession Certificate, the learned District/Guardian Court has ordered the

parties to collect the amounts/claims from the concerned Department/Bank and utilize and distribute among the parties after realization. As such, a question arises that in presence of the alleged Will, why the petitioners joined the respondent in obtaining the Succession Certificate and why they did not produce the copy of the alleged Will at the time of proceedings of Succession Certificates before the Court. Be that as it may, it appears that after obtaining of the Succession Certificate in the joint names, the present petitioners took a summersault and tended to take shelter of the alleged Will to deprive the present respondent of the *Shari Share* left behind by her late husband. Perusal of the record further reveals that the petitioners took two instances in on breath i.e. on one hand, the petitioners contended that in the light of the alleged execution of the Will by the late Aslam Khan, the respondent was not entitled to any Shari Share out of his inheritance, while on the other hand they contended that they have already paid Rs. 280,000/- to the respondent as her *Shari Share*. For the sake of brevity, the relevant lines from the replication/objections submitted by the present petitioners before the learned District/Guardian Court in Civil Misc. No. 54/2019 are reproduced below. The lines are in Urdu Language which is translated into English as under:

“Despite this, respondents paid Rs. 280,000/- together to the applicant in presence of witnesses which was her Shari Share”

7. In addition to the above, during the course of arguments before the learned Chief Court, parties admitted *Shari Share* of respondent amounting to Rs. 800,000/- out of the total amount of Rs.6,747,722/-. It was further admitted that Rs. 280,000/- was already paid to the respondents by the petitioners as her *Shari Share*, while with regard to the remaining amount of *Shari Share* of the respondent, the petitioners showed readiness to deposit the same in the Court of learned Guardian Judge. The relevant para from the impugned judgment of the learned Chief Court is reproduced below:

“8. During course of arguments, the learned counsel for the parties stated that Shari Share of respondent Mst. Sitara Begum is an amount amounting to Rs. 800,000/- out of total amount of Rs. of Rs.6,747,722/= lying in account

No.70850107-00045754-01 and the petitioners have paid Rs. 280,000 to the respondent and the petitioners are ready to deposit remaining amount of share of the respondent amounting to Rs. 543,000/- in the court of learned Guardian Judge Gilgit”

8. In view of the statement of the petitioners quoted herein above, there remained nothing for petitioners to agitate before this Court. Furthermore, Orders of the learned Guardian Court regarding depositing of monthly pension and freezing of bank account have already been set aside by the learned Chief Court. Even otherwise, it is observed that order of the learned District/Guardian Judge regarding depositing of the said amount of *Shari Share* of the respondent in the Guardian Court could not be construed to be an adverse order against the present petitioners because the said Court has not ordered payment of the said amount to the present respondent rather ordered depositing of *Shari Share* in the said Court, so is the position with regard to orders of the learned Chief Court. Decision as to payment of the said amount to the respondent as her *Shari Share* or otherwise is subject to final decision of the learned District/Guardian Court in Civil Misc. 54/2019 pending adjudication before the said learned Court.

9. For what has been discussed above, we do not find any illegality or infirmity in the impugned judgment. Therefore, leave in the above CPLA No. 160/2019 is refused. The impugned judgment dated 28.09.2019 passed by the leaned Gilgit-Baltistan Chief Court in Civil Revision No. 72/2019 is maintained. These were the reasons for our short order dated 02.04.2021 which is reproduced as under:

“Case heard and record perused. We did not find any illegality or infirmity in the impugned judgment. Therefore, for the reasons to be recorded later, leave in the above CPLA No. 160/2019 is refused. The impugned judgment dated 28.09.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 72/2019 stands maintained”

Chief Judge

Judge

Whether fit for reporting (Yes / No)