

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

BEFORE:

*Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge*

CPLA Under Objection No.17/2020

(Against the judgment dated 31.10.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 70/2019)

1. Darwesh, 2. Ali Haider, sons of Baqar, residents of Guru Juglote, Tehsil Danyore, District Gilgit

Petitioners

Versus

1. Syed Arbaz ul Hassan s/o Syed Rehan Ali Shah
2. Syeda Tehdiya Hassan d/o Syed Rehan ul Hassan r/o House No. 52 Muhallah Westridge No. 1, Rawalpindi Cantt, Tehsil & District Rawalpindi
3. Syeda Naumana Hassan wd/o Syed Rehan ul Hassan r/o House No. 52 Muhallah Westridge No. 1, Rawalpindi Cantt, Tehsil & District Rawalpindi
4. The Deputy Commissioner Gilgit
5. The Assistant Commissioner Tehsil Danyore
6. The Tehsildar, Tehsil Danyore
7. Girdawar, 8. Halqa Patwari Guru Juglote Tehsil Office Danyore Gilgit

Respondents

PRESENT:

For the Petitioners : Mr. Johar Ali Khan Sr. Advocate

Date of Hearing : **03.09.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This Civil Petition for Leave to Appeal arises out of the impugned judgment dated 31.10.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 70/2019, whereby the civil revision filed by the present petitioners was dismissed and the concurrent judgment/orders of the learned lower Courts were maintained.

2. Brief facts giving rise for institution of the instant civil petition for leave to appeal are that the present petitioners filed a Civil Suit for declaration and permanent injunction before the learned Civil Judge Gilgit. Alongwith the suit, an application under Order 39 Rule 1 & 2 CPC was also filed for grant of temporary injunction. The application under Order 39 Rules 1 & 2 CPC was dismissed by the learned Trial Court on 25.09.2017. This order/ judgment was not challenged by the present petitioners and attained finality. The present petitioners filed another application under Order 39 Rule 1 & 2 CPC before the learned Vacation Civil Judge by concealing the fact of filing and dismissal of earlier application by the learned Civil Judge, Gilgit and were successful to obtain stay order on 26.12.2018. When learned Vacation Civil Judge came to know of factum regarding filing of earlier application under Order 39 Rule 1 & 2 and its dismissal, the learned Vacation Judge Gilgit vacated the stay order and dismissed the application under Order 39 Rule 1 & 2 CPC on 10.01.2019. This judgment/order of the learned Vacation Civil Judge Gilgit was challenged before the learned Additional District & Sessions Judge Gilgit by way of C.F.A. No. 05/2019. The learned First Appellate Court, after hearing the parties, dismissed the C.F.A. No. 05/2019 and maintained order dated 10.01.2019 passed by the learned Vacation Civil Judge. The present petitioners impugned the judgment passed by the learned First Appellate Court before the learned Gilgit-Baltistan Chief Court by means of Civil Revision No. 70/2019, which was also dismissed on 31.10.2019 and concurrent judgments/orders of the Courts below were maintained. This judgment of the learned Chief Court has now been impugned before this Court by way of the instant civil petition for leave to appeal.

3. Perusal of record and circumstances prevailing with the instant civil petition for leave to appeal reveals that one question of law is involved for determination and decision by this Court. The question is whether when the present petitioners already availing legal remedy before the Courts law by filing of an application under Order 39 Rule 1 & 2, could invoke jurisdiction of another Court for redressal of the same grievance? In

view of legal position, the question can safely be answered in negative because the present petitioners in their first round of litigation had filed application under Order 39 Rule 1 &2 CPC for grant of temporary injunction which was dismissed by the learned Trial Court. Then by suppressing and concealing this fact, the present petitioners filed another application before the learned Vacation Civil Judge. The learned Vacation Civil Judge when came to know filing and dismissal of earlier application before the learned Trial Court rightly dismissed the said application filed before it. Under the principle of *res judicata*, no issue can be agitated twice before the same forum or another forum by suppressing and concealing the facts regarding earlier decision of the issue except availing the remedy against the first decision in appellate jurisdiction of another Court provided under the law. This principle is contemplated in Section 11 CPC which is reproduced below:

11. *Res Judicata:* *No Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

The Hon'ble Supreme Court of Pakistan in a case reported as Muhammad Sharif Vs Settlement Commissioner, Bahawalpur 1981 SCMR 1048 has been pleased to hold as under:

“the petitioner filed Writ Petition No. 751-R of 1974 to obtain a direction for the re-verification of their entitlement which was dismissed by the High Court on the ground that on the same allegations the earlier writ petition and the review petition were dismissed and that it found no reason to entertain this writ petition for the same relief”.

In another case reported as Muhammad Saleem Vs Rashid Ahmed 2004 SCMR 1144, the Hon'ble Supreme Court of Pakistan has also been pleased to hold as under:

"There are concurrent findings of fact that the issue raised by the petitioners in relation to the suit-land had been finally heard and decided by a competent Court of law and, thus, issue raised in the subsequent suit was hit by the principle of Res judicata within the contemplation of section 11, C.P.C."

4. In view of the above factual and legal position, it is observed that the petitioner has already availed the legal remedy by way of filing of application under Order 39 Rule 1 & 2 before the learned Trial Court in the first round of litigation which was dismissed by the learned Trial Court. Against the dismissal Order, the petitioner did not file any appeal before the Appellate Forum, thus the Order attained finality. Filing of a fresh application before the learned Vacation Civil Judge Gilgit by concealing the factum of dismissal of his earlier application tantamount to playing of fraud on the Court of law. Upon attaining finality by the Order of learned Trial Court and non-filing of any appeal against that order, the matter stood settled between the parties hence, once a matter is settled between the parties, it could not be reopened for adjudication afresh which is against the spirit of law. The petitioner has not come to the Court with clean hands therefore; on this score as well he does not deserve any relief from this Court.

5. For what has been discussed above, we do not find any illegality or infirmity in the impugned judgment. Therefore, leave in the above CPLA Under Objection NO. 17/2020 is refused. The impugned judgment dated 31.10.2019 passed by the learned Gilgit-Baltistan Chief Court in Civil Revision No. 70/2019 is maintained. These were the reasons for our short order dated 03.09.2020, which are reproduced below:

"The learned counsel for the petitioners has been heard at some length. For the reasons to be recorded later, this CPLA is dismissed being devoid of merit and legal force"

Chief Judge

Judge

Whether fit for reporting (Yes / No)