

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

Before:-

- 1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**
- 2. Mr. Justice Jalal Ud Din, Judge**
- 3. Mr. Justice Muzaffar Ali, Judge.**

CPLA NO.40/2011

1. Mst. Gumboori w/o Saleem Khan, d/o Mulki khan
2. Mst. Gul Zareen w/o Katoor Khan d/o Mulki Khan residents of Sher Qillah Tehsil Punial District Ghizer.

Petitioner/appellants

VERSUS

1. Maherban Shah s/o Bakdur.
2. Bakhdur Khan s/o Jangi Khan, residents of Sher Qillah Tehsil Punial District Ghizer.

Respondents

**PETITION FOR LEAVE TO APPEAL AGAINST THE
JUDGMENT/DECREE DATED 28-06-2011 WHEREBY THE
LEARNED JUDGE CHIEF COURT HAS DISMISSED THE
REVISION PETITION AND MAINTAINED THE
JUDGMENTS/DECREES OF BOTH THE LEARNED LOWER
COURTS.**

For setting aside the impugned judgment/decree by granting leave to appeal in favour of the petitioner/appellant for the ends of justice, law and equity.

PRESENT:-

1. Mr. Ali Khan advocate along with Mr. Ali Nazar Khan AOR for the petitioner.
2. Mr. Johar Ali Khan Advocate on behalf of Respondent.

DATE of HEARING: - 16-10-2015.

JUDGMENT

Dr. Rana Muhammad Shamim, CJ..... That the petitioners/appellants preferred a revision petition before the Hon'ble Chief Court GB Gilgit against both the judgments/decrees of the learned lower Courts, but the same has been dismissed by upholding both the judgments/decrees of the learned Courts below.

That during the pendency of revision petition before the Hon'ble GB Chief Court dated 24-05-2007, the petitioner/appellants submitted an application under order 6 rule 17 CPC for amendment of plaint and the learned Chief Court allowed the application.

That after allowing application for amendment the learned Chief Court invited amended plaint from the petitioner/appellants and after submission of amendment plaint the respondent also filed amended written statement.

That the petitioner/appellants raised factual point in this amendment application and in the light of application the learned Chief Court was bound to frame proper issues in the light of amended plaint, but the learned Chief Court has not bother to

frame issue and given due opportunity to prove the case in the light of amendments, hence the judgment/decrees of the learned Chief Court dated 28-08-2010 is not maintainable and liable to be set aside.

That the respondent vehemently alleged in his written statement that disputed property was gifted by the father of the petitioners/appellants to the respondents, and the petitioners/appellants challenged the gift deed and the learned trial Court also framed issue No.9, but the respondents were failed to prove the factual of the gift in accordance with law but the learned Chief Court has not followed the Mohammadan Law, therefore, the judgments/decrees of the learned lower Courts are not maintainable and liable to be set aside.

That accordingly to Mohammadan Law it is essential of a gift that there should be a declaration of a gift by the donor, **a. An acceptance of gift express or implied by or on behalf of the done,** **b. Delivery of possession of the subject of gift by the donor to the done as mentioned in law.** If these conditions are complied with the gift is complete.

That the respondents have failed to substantiate the gift in accordance with law, hence the judgments/decrees of learned Chief Court, GB Gilgit and two courts below are not maintainable and liable to be set aside.

That all the courts below are failed to draw inference of law point of gift, hence the judgments/decrees of all the courts below are not maintainable and liable to be set aside.

That the respondent stated in his statement before the court that the disputed land is in possession of namely (1) Akhbar Shah (2) Shukoor Khan and (3) Mehr Ali. Those persons are necessary party of the suit, but the learned Civil Judge has not impleaded the said persons as party of defendants, hence great miscarriage of justice has been occasioned.

It is therefore, very humbly prayed that this appeal may graciously be accepted by converting petition for leave to appeal into appeal and by setting aside the impugned judgment/decree of the learned courts below i.e.

Judgment/decree of the learned chief Court dated 28-06-2011

Judgment/decree of the learned additional district judge Ghizar
dated 02-09-2009

Judgment/decree of learned civil judge Punial dated 17-02-2006 to
meet the ends of justice, law and equity.

Chief Judge.

Judge.

Whether the case is FIT to be reported or NOT?