

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

Before:-

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

**Civil Appeal No. 69/2017
In
CPLA No.130/2016.**

Ahliyan Yashoot through representatives

Petitioners.

Versus

Ahliyan Samigal Bala through representatives

Respondents.

PRESENT:-

1. Mr. Sharif Ahmed Advocate for petitioners.
2. Mr. Sher Alam Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for respondents.

DATE OF HEARING & SHORT ORDER: -19.09.2017.

DATE OF DETAIL JUDGMENT: - 25.06.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Civil Petition has arisen out of the impugned order dated 24.08.2016 passed by the learned Chief Court whereby the Writ Petition filed by the petitioners was dismissed by maintaining the orders of the learned Courts below, hence, this petition for leave to appeal. This court vide order dated 23.11.2016 issued notices to the respondents and the case is heard today.

2. Briefly, the facts of the case are that the petitioners filed a Civil Suit in the court of learned Civil Judge Chilas and the respondents also filed a Counter Suit against the petitioners in the same Court. The learned Civil Judge 1st Class Chilas on 19.06.2010 disposed off both the Civil Suits on the basis of compromise took

place between the respective parties. Later on, the respondents filed an appeal before the learned District Judge Chilas against the consent decree of the learned Trial Court which upon hearing was dismissed which was upheld by the learned Revisional Court. The respondents assailed the order of the learned Chief Court before this apex court by filing petition for leave to appeal which was later on withdrawn by them. After withdrawal of the said petition, the respondents started second round of litigation and filed an application under Section 12(2) CPC before the learned Civil Judge Chilas contending therein that the consent decree dated 15.06.2010 was obtained by the petitioners through misrepresentation and fraud. Upon hearing the learned Civil Judge Chilas vide order dated 19.12.2014 declared the said application of the respondents as maintainable which was upheld up to the learned Chief Court, hence, this petition for leave to appeal.

3. The learned counsel for the petitioners submits that although there are three concurrent findings in favour of the respondents yet the learned Courts below fell in error while dismissing the appeals of the petitioners and passing the impugned orders. He submits that the application under Section 12(2) CPC filed by the respondents in the learned Trial Court was not maintainable as the final order was passed by the learned Chief Court on 16.12.2011 and no order of the superior court can be challenged in a subordinate courts. Per learned counsel, the learned Civil Court has no jurisdiction to entertain the said

application, hence, the order passed by learned Trial Court is corum-non-judice. He prays that the impugned order passed by the learned Chief Court may graciously be set aside.

4. On the other hand the learned counsel for the respondents supports the impugned order passed by the learned Chief Court as well as the concurrent findings of the learned two Courts below. He contends that the consent decree was obtained by the petitioners at the back of the respondents by not impleading them as necessary party, hence, application under Section 12(2) CPC was maintainable which has rightly been accepted by the learned Trial Court and the said order was upheld up to the learned Chief Court. He prays that the impugned order may pleased be maintained.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order as well as the concurrent findings of the learned Courts below. In our considered view, the impugned order passed by the learned Chief Court as well as the concurrent findings of the learned Courts below are well reasoned as no infirmity & illegality is pointed out by the learned counsel for the petitioners in the said impugned order.

6. In view of the above discussions, we converted this petition into an appeal and the same is dismissed vide our short order dated 19.09.2017. Consequent thereto, the impugned order

dated 24.08.2016 passed by the learned Chief Court is affirmed.

These were the reasons of our said short order.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.