

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT.
C.P.L.A. No.05/2010**

Before:- **Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.**
Mr. Justice Syed Jaffar Shah, Judge
Mr. Justice Muhammad Yaqoob, Judge.

1. **The Chief Secretary Gilgit-Baltistan.**
2. **Settlement Officer Gilgit.**
3. **Deputy Commissioner Gilgit.**
4. **Tehsildar Gilgit.**

Petitioners/Appellants

VERSUS

1. **Abdul Ghani**
2. **Sajjad Khan s/o Rahim Noor r/o Jutial Gilgit.**

Respondents/Plaintiffs

PETITION FOR LEAVE TO APPEAL AGAINST THE IMPUGNED ORDER/JUDGMENT DATED 24-08-2009, PASSED BY THE HON'BLE CHIEF COURT GILGIT-BALTISTAN, WHEREBY THE APPEAL OF APPELLANTS HAS BEEN REJECTED AND THE ORDER OF DISTRICT JUDGE GILGIT DATED 01-04-2008, AND ORDER/JUDGMENT OF CIVIL JUDGE GILGIT DATED 24-08-2009, HAVE BEEN UPHELD.

**Present:- Advocate General Gilgit- Baltistan for petitioners.
Malik Shafqat Wali, Senior Advocate, for Respondents.**

Date of Hearing:- 06-07-2010.

JUDGMENT:-

Mr. Justice Muhammad Yaqoob, J.... This appeal by leave of the Court has been directed by the Provincial Government against the impugned judgment dated 24-08-2009, passed by the learned Single Bench of Chief Court Gilgit-Baltistan, whereby second appeal preferred on behalf of appellants has been dismissed and impugned judgments/decrees passed by the learned lower Courts below has been kept intact.

The brief background of the litigation as narrated by the Respondents/Plaintiffs are, that the Plaintiffs/Respondents filed a declaratory suit with consequential relief to the effect, that the Plaintiffs/Respondents are the owners and in possession of suit land Khasra No. 1683 measuring 37 kanal 11 marlas as per allotment file No.112, situated at Muza Jutial Tehsil and district Gilgit. It is further been narrated in the plaint that the defendants/petitioners may be restrained from interfering and forcibly taking possession of the suit land. It has been mentioned in the plaint, that the defendants/petitioners have wrongly made entries in Revenue record for the year 2002, which needs cancellation, for the sake of justice. Moreover, defendants/respondents No.2 may be directed to correct the revenue record and restore the ownership of plaintiffs/respondents

The suit was resisted by defendants/petitioners No.1 to 4 who denied the plea of ownership of the plaintiffs and also the plea regarding the un-disputed possession over the suit land. Petitioners/defendants filed their written statement on 05-08-2005. In view of the divergent pleadings of the parties twelve issues were framed by the learned trial Court and directed both the parties for adducing their evidence in pro and contra.

Plaintiffs/Respondents relied on their statements of (3) three PW,s and also produced documentary evidence Ex.P/1 to P/4, which relates to the allotment proceedings. They further relied on Exh.P/6 and Exh.P/7, as the copies of revenue record prepared in 1978, in favour of plaintiffs/respondents on behalf of petitioners/defendants. While the defendants/petitioners adduced three DW,s and they do not filed documentary evidence with written statement.

We have heard the arguments of the learned counsel for the parties and also perused the relevant record with full care and caution. The learned Advocate General argued and pointed out that during pendency of second appeal before the Chief Court Gilgit- Baltistan, the petitioners/defendants No.3&4 conducted an inquiry regarding the allotment order issued by the then Assistant Political Agent in 1974. The through inquiry has made. It crystal clear that the allotment order in favour of plaintiffs/respondents is fake and bogus one. The said inquiry report dated 06-03-2009, was presented before the Hon'ble Chief Court Gilgit- Baltistan for consideration, the learned Single Bench received the same and made the same as part of file. But the learned Single Bench did not consider the same which resulted in a great miscarriage of justice, as such the impugned judgment/decree is not maintainable. He further argued that the land in question was allotted in the year 1974, through Assistant Political Agent Gilgit. This version of the plaintiffs/respondents is totally wrong and mis-statement, because the F.C.R. system was abolished vide notification No.Reg-HC-NTF-32/72 dated 01-10-1972. It reveals that the F.C.R. was abolished quite a considerable period before the approval of the impugned Misel. The respondents/plaintiffs submitted that the allotment file has been approved by the Assistant Political Agent, whereas the same post was re-designated as S.D.M (Sub Division Magistrate), as such the allotment order alongwith its enclosures submitted by the respondents/plaintiffs are based on malafide, therefore, all the impugned judgments/decree passed by the learned Lower Courts are vague, ambiguous and misconceived as such not maintainable and liable to be set aside. The learned Advocate General concluded with the last submission that this leave to appeal may kindly be accepted, to meet the end of justice.

On the other hand the learned counsel for the respondents/plaintiffs (Malik Shafqat Wali Senior Advocate) strongly opposed the arguments advanced by the learned Advocate General Gilgiot-Baltistan and submitted that the main contention of the plaintiffs/respondents is, that suit land was allotted to them by the then competent authority in the year 1974. They were in possession of the suit land and accordingly, mutation No.1038 dated 18-10-1978 was attested in their favour, while defendant/petitioner No.2 & 4 illegally and without their knowledge have entered mutation No.4374 in favour of petitioners/defendants No.1, as such the act of petitioner/defendant No.2 to 4 is based on malafide, ex parte and against revenue record, therefore, liable to be cancelled. He further argued that the possession of plaintiffs/respondents is substantiated by Exh.P/6 (Khasra Girdawari) dated 28-12-1979, beside this PW No.1 & 2 have deposed in favour of plaintiffs/respondents un-disturbed possession over the disputed land, it is a strong piece of evidence which could not be shattered in cross examination by state counsel. Resultantly, the plaintiffs/respondents proved their possession over the disputed land without any shadow of doubt. Therefore, concurrent findings of the learned lower courts are correct, legal and not liable to be set aside. So far as additional issue is concerned, the learned trial court has already framed material issue regarding allotment order, as such no further issues are required to be framed in this belated stage, therefore, the contention of the learned Advocate General in respect of additional issue has no force at all. The learned counsel for the respondents further emphasized that the Petitioners/Defendants have admitted the allotment of suit land in para No.2 written statement presented on 05-08-2005. The petitioners/defendants have also admitted that fact that neither the petitioners/defendants have cancelled allotment, nor the validity of the same allotment has been challenged in the written statement submitted by the petitioners/defendants, and even no pray has been preferred by the petitioners/defendants for cancellation of impugned allotment before the learned lower courts. So, the title of plaintiffs/respondents to the extent of suit land is almost admitted, as such the instant leave to appeal is liable to be dismissed with costs.

We have carefully attended the arguments advanced by the learned counsel for the parties at length and have minutely perused the available record alongwith impugned judgments/decrees of the learned lower courts with due care and caution. We found that the learned lower courts have failed to exercise its jurisdiction so vested in it for the following reasons.

Both the learned lower courts including the Single Bench of Chief Court Gilgit-Baltistan have failed to apply its mind towards framing of important and necessary issues regarding the allotment order dated 12-10-1974, in the eye of law the findings of the Courts without framing of issues have no legal sanctity at all. The same pattern has been applied in the present case. Resultantly, concurrent findings of the lower courts shall not remain intact on the field. Therefore, legally all efforts made by the lower judiciary may not be considered without framing of necessary issues.

Keeping in view the legal importance of the points which needs attention of this apex Court, so we visited through order 14 Rule 3 & 5 of C.P.C, which is being reproduced to understand the same.

(A) ORDER 14 RULE 3 OF C.P.C.

Materials from which issues may be framed:-

The Court may frame the issues from all or any of the following material:-

- (a) **Allegation made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties.**
- (b) **Allegation made in the pleadings or in answers to interrogatories delivered in the suite.**
- (c) **The contents of documents produced by either party.**

(B) ORDER 14 RULE 5 OF C.P.C.

Powers to amend and strike out, issues :-

- (1) **The court may at any time before passing a decree amend the issues or framed additional issues on such terms as it think fit and all such amendments or additional issues as may be necessary for determining the matters, in controversy between the parties shall be so made or framed.**
- (2) **The court may also, at any time before passing a decree, strike out any issues that appears to it to be wrongly framed or introduced.**

A careful study of the above relevant provision of law, it is very much clear, amend, or strikeout issues. The first part of Rule 5 vest discretion in the court, whilst the second part is mandatory in its term. Therefore, the court has inherent powers to take cognizance of questions going to the root of the case at any stage of the proceedings. For this purpose proper issues must be framed i.e. "Whether the suit land was allotted in favour of plaintiffs/respondents in the year 1974". If so, whether the system of Assistant Political Agent was enforced at that time.

Likewise, the next and core issue is “Whether F.C.R was abolished quite a considerable period before the approval of the allotment file dated 12-10-1974” if so, whether the said allotment file No.112 is based on fraud, forgery, and factitious act” the last and important issue is “Whether the impugned Misel No 112 shows as has been approved by the Assistant Political Agent, whereas, the same post was re-designated as S.D.M. (Sub Division Magistrate) after abolishing of F.C.R.

Theses important issues and materials questions should be solved in first round of litigation but unfortunately it has been done so. It is undisputed that the trial courts enjoys ample of jurisdiction to try all civil suits, but it needs determination here, whether the instant case has been disposed of by using

jurisdiction, so vested or not, all the judgments/decrees impugned herein, are unfortunately perfunctory giving the impression of hasty off hand decisions, which are not incorrect in their result but also deficient in their contents. Although it is pertinent to mention here that specifically in appeal able cases findings should be given after framing of necessary issues but the learned lower courts below have failed to frame important and necessary issues regarding allotment file No.112 sanctioned in favour of plaintiffs/respondents, whereas it is recognized principle of law, to frame issues and followed by judgment based on discussing each and every issue in detail, but the learned lower courts have violated the recognized principle of law. We are feeling with the painful result that in the instant case justice has neither been done nor seems to have been done which is inescapable.

Testing the entire proceeding of the case on the touchstone of the procedural law referred to above, the ultimate result would be, that the entire exercise adopted by the Courts below was without framing of necessary and core issues and mere abuse of process of law.

Consequently, what has been discussed above, this petition is converted into appeal and allowed. The impugned judgments/decrees of the Courts below is set aside and case is remanded back to the trial court with the direction, to decide the suit after framing of above quoted issues, which *prima facie* depends on the factual inquiry as well as the other issues arising out of the pleadings of the parties.

Since the matter is under litigation for a long time, the learned trial court is directed to dispose of the matter expeditiously to avoid further delay. There shall be no order as to costs.

Case Remanded

Chief Judge

Judge

Judge