

**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. 63/2017
in
CPLA No. 61/2016.**

Hassan Abad Shah & others

Petitioners.

Versus

Yadwar Khan & others

Respondents.

PRESENT:-

1. Mr. Muhammad Issa senior Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record for the petitioners.
2. Mr. Latif Shah Advocate on behalf of the respondents.

DATE OF HEARING: - 29.09.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Civil

Petition has arisen out of the impugned judgment dated 29.03.2016 passed by the learned Chief Court whereby the Civil Revision No. 37/2012 filed by the petitioners was dismissed, hence, this petition for leave to appeal. This court vide order dated 05.08.2016 issued notices to the respondents and the case is heard today.

2. Briefly, the facts of the case are that the respondents/plaintiffs filed Civil Suit No. 20/2005 in the learned Court of Civil Judge Gupis seeking declaration and possession of the suit land. Originally the suit land was the property of one Bulbul Khan who had three (03) daughters namely Mst. Dudi, Jamali and Zahra. After the death of Bulbul Khan his legacy was devolved upon his three daughters. At that time customary law was prevailing in the area as such the disputed land remained with the

descendant of Muhammad Ali, the real brother of Bulbul Khan. The property in question was devolved upon the legal heirs of Muhammad Ali. Earlier the property was divided between the two (02) brothers but possession of land of Bulbul Khan came to the respondents because Bulbul Khan had no male issue. It has contended that out of the three (03) daughters of late Bulbul Khan Mst. Dudi died issueless as such her share of land had devolved equally upon the remaining two daughters i.e. Mst. Jamali & Zahra but the offspring of Mst. Zahra did not join the suit, therefore, they have been impleaded as defendant whereas defendant 07 to 12 & 14 to 18 are the persons whom some of the disputed land out of the common legacy have been sold out. The nutshell of the suit is that the plaintiffs claimed for 1/2 share of the landed property devolved upon Bulbul Khan from his father. The learned Trial Court upon hearing partially decreed the suit against defendant No. 01 to 05 and dismissed against rest of the defendants/respondents. The petitioners being aggrieved filed Civil First Appeal No. 31/2009 in the learned District Judge Ghizer which upon hearing was dismissed vide judgment dated 10.05.2012 which was upheld by the learned Chief Court vide impugned judgment dated 29.03.2016.

3. The learned counsel for the petitioners submits that although there are three concurrent findings against the petitioners yet the learned courts below failed to appreciate the evidence produced by the petitioners and passed the impugned judgments/orders. He submits that the Civil Suit filed by the

respondents was barred by time and the suit was amended due to non-joinder of the necessary part, hence, the suit was liable to be dismissed under Order 7 Rule 11 CPC as the plaintiffs have no locus standi to file the suit in question. Per learned counsel, the dispute is an old one and at that time there was customary laws were prevailing in the society. According to which the female were not entitled for their share in the legacy of their late father. He further submits that the respondents are in the possession of the disputed property since long time as the petitioners did not raise any objection at the time of affecting transactions between the petitioners and other parties. He submits that the impugned judgment as well as the judgments passed by the learned Courts below have been passed contrary to the evidence on record, facts and law, hence, the same are not sustainable and liable to be set aside.

4. On the other hand, the learned counsel for the respondents supports the impugned judgment passed by the learned Chief Court as well as the concurrent findings of the learned Courts below. He contends that the respondents have admitted that the property of Mr. Bulbul Khan (Late) was in their illegal possession and the legal heirs of the said Bulbul Khan have not been given their sharer(s). He also contends that customary laws do not preclude the Shari share of the respondents from the legacy of their father. Per learned counsel, the respondents have proved their contentions by adducing credible evidence before the learned

Trial Court. Per learned counsel, the suit was filed well within time as the provisions of Section 28 of The Limitation Act, have been declared contrary to the injunctions of Islam by the Hon'ble superior Courts. He prays that the impugned judgment passed by the learned Chief Court may pleased be maintained to meet the ends of justice.

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

6. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequent thereto, the impugned judgment dated 29.03.2016 passed by the learned Chief Court is affirmed.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.