

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

GILGIT

C.P.L.A NO.52/2014.

Before :- Mr.Justice Dr.Rana Muhammad Shamim Chief Judge.

Mr.Justice Raja Jala-Ud-Din, Judge.

Mr.Justice Muzaffar Ali Judge.

1.Hussain 2. Mahboob 3. Ghulam ss/o Hussain 4. Mussa 5. Husain Ali
6. Jaffar Ali ss/o Taqi 7. Naqi 8. Ghulam Hussain ss/o Hamza Ali 9.
Muhammad Iqbal ss/o Muhammad 10. Mst.Hajira Bi d/o Rajab 11. Ali.
12 Hadi ss/o Rozi Ali 13. Jaffar s/o Haider 14 Bashir 15. Nazir 16.
Kazim 17. Mehdi minors through Bashir brother ss/o Ahmed , all
residents of Mouza Shigar Bala Tehsil Gamba Skardu

Petitioners.

Versus

1.Syed Muhammad Ali Shah s/o Syed Ghulam Ali Shah r/o Tolti Tehsil
Kharmang at present residing at Patu Wal Olding Skardu.2. Raja Nasir
Ali Khan s/o Raja Fateh Ali Khan 3. Mst.Zahra d/o Raja Mahboob Ali
Khan 4. Mst.Nasira d/o Iftikhar Ali Khan 5. Mst.Roshan Ara Begum 6.
Ghulam Ara Begum 7. Sosan Ara Begum ds/o Raja Fateh Ali Khan 8.
Tehwar Ali Khan 9. Hidayat Ali Khan 10. Alamdar Ali Khan ss/o Raja
Itikhar Ali Khan r/o Khaplu Tehsil Khaplu District Ghanche.

Respondents.

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF
GILGIT-BALTISTAN (EMPOWERMENT & SELF GOVERNANCE)
ORDER 2009 AGAINST THE JUDGMENT/DECREE DATED 23-
10-2013 PASSED BY CHIEF COURT GILGIT-BALTISTAN.

Present :- 1. Mr. Munir Ahmed Advocate for the petitioners

2. Mr. Javed Iqbal Advocate alongwith Mr.Shah Baz Khan
Advocate for the respondents.

Date of Hearing :- 21-10-2015.

JUDGMENT :-

Mr. Justice Muzaffar Ali J,.....The application for leave to appeal No.22/2014 was converted into appeal, after being tentatively satisfied from the arguments advanced by the learned counsel for petitioner on 17-09-2014 of this Court. To day, we heard the counsel for the parties pro and contra on the appeal. The appeal assails the judgment/decree dated 23-10-2013 passed by the learned Chief Court Gilgit-Baltistan in civil second appeal No.01/2012, whereby the learned Chief Court disagreed with the judgment /decree dated 26-05-2012 passed by the learned Ist appellate court and set the same aside, maintained the impugned judgment/decree dated 09-11-2011 passed by the learned trial court.

The facts wrapped with this appeal are as such that, the present appellants filed pre-emption suit No 46/65/10 before the court of learned Civil Judge Shigar claiming their **Prior Right of Purchase** over the property sold to the present respondent No.4 by the respondent No.2 to 10 . The appellants pre-empted the subject matter of the suit on the basis of their possession over it as **Occupancy Tenants** since their forefathers.

The respondent No.4 just after attending the trial court stand to attack the suit holding the sword of **Order 7 Rule 11 C.P.C.** the

learned trial court acceded the application and suit was thrown as rejected. The respondent went to Ist appellate court to save their suit and succeeded. The learned Ist appellate court accepted the appeal and remitted the case to the trial court to adjudicate the same on merits. The respondent No.4 feeling aggrieved from, approached to the learned Chief Court in Second appeal and received the impugned judgment/decree in his favour against the appellants. Hence the appeal in hand before this court.

The learned counsel for the appellants re-iterated the points as he raised during his arguments for converting the petition for leave to appeal into appeal and urged that, both the learned Chief Court and the trial court have misconceived the law under which the appellants claim their pre-emption right to purchase the land under the suit. The appellants being Occupant Tenants of the suit land having their right of Prior Purchase of the same under the prevailing law at the time of institution of the suit but the courts below have erroneously dealt the suit under Islamic Law and rejected the suit.

The learned counsel for the respondent denied the legal sanction of the above point raised by the learned counsel for the appellant and tried to fortify the impugned decrees with the force of Islamic Law of **Shia** faith with the plea that, the **Islamic Law of Shia faith** does not recognize pre-emption Right of Occupancy Tenants.

He again urges that, the suit is being hit by Section 34 of the Gilgit-Baltistan Pre-Emption Act 2010.

We, before going to discuss the legal points raised by both the learned counsel for the parties pro and contra, deem it proper to understand the legal consequences of order 7 Rule 11 C.P.C. Order 7 Rule 11 enables a court to reject a plaint when the court comes to the conclusion that, a plaint (a) does not disclose a cause of action (b) where the relief claimed is under valued and despite the court has given time to correct the valuation, failed to comply and (c) where the suit is properly valued but the plaint is written upon paper insufficiently stamp paper and the plaintiff failed to cure the legal deficiency, despite the court granted time to cure the same (d) where the suit appears from the statement in the plaint to be barred by any law.

Since in the case in hand, the courts below have declared the suit barred by law, therefore, clause (d) of the Rule 11 requires to look into and interpreted here under but before going into interpretation of the provision. It is pertinent to note here, that “Order 11 envisages rejection of plaint and does not deals with the dismissal of the suit and when Order 7 Rule 11 C.P.C. is read along-with Order 7 Rule 13 C.P.C. it becomes evident that, the rejection of plaint does not preclude the plaintiff from filing fresh plaint on the same cause of action unless the earlier suit disposed of by an order

which in substance was dismissal. While a dismissal order in a suit debars fresh suit on the same cause of action under principle of resjudicarta.

In clause (d) of Order 7 Rule 11 C.P.C. the word statement in the plaint signifies , that, to exercise powers under this clause of the Rule, it requires the court to look into the statement in the plaint and if it is apparent from the plain reading of the averments of the plaint that, the plaint is barred by any law then the court shall reject it, meaning thereby is that, the plaint is prima facie barred by any law from a perusal of the statement in the plaint without entering into a legal inquiry. The term any law in the clause construes statute law and not the case law as the case law might be held divergent even by the same courts or by the learned upper courts.

Keeping in view the supra legal interpretation in respect of the powers conferred on the courts by order 7 Rule 11 C.P.C. to exercise, let us go through the application under Order 7 Rule 11 C.P.C. submitted by the respondent No.4 in the case in hand. The plain perusal of the application it reveals that, the respondent No.4 seeks rejection taking plea in the application as;

The respondent has referred an untitled decision of the **August Supreme Court of Pakistan**, whereby, as per statement of the respondent No.4 in the application, the **Supreme Court** has held the right of pre-emption to be against injunction of Islam and the Legislatures has been directed to do legislation in this regard. The application lacks reference of any enactment under which the suit is barred but both the lower courts jumped to rely on the statement made in the application without a deep assessment and looking vires of the statement. The courts below also forgotten to look into the persuasive legal status of the referred judgment of the **August Supreme Court of Pakistan** without any title, presuming the same binding to follow, while the case law made by the August Supreme Court of Pakistan having no binding force for the courts established in Gilgit-Baltistan. Both the learned courts below also ignored the legal aspect of the case that even if the judgment had binding force then too, the courts below were to inquire about the enacted law prevailed at the time the suit was instituted, as **Order 7 Rule 11 C.P.C.** construes statute law and do not the case law.

Both the learned courts below have gone one step ahead in their judgments than that of the plea taken by the respondent No.4 in the application .The respondent has not taken any plea about the parties to the suit, being **Shia in faith**. The plaintiffs have also not made such like statement in the plaint but the courts below have held

the parties to be “Shia Muslim by Faith” without inquiring into after framing an issue in this regard. It seems that, the learned courts below have presumed the parties to be “Shia” on the basis of their personal knowledge but they ignored the law which does not recognize personal knowledge of the courts but demands proof. The learned courts below did not bother to record statements of the parties, in case if they had admitted to be Shia during course of arguments but debarred the plaintiffs from filing the suit under Islamic Law of Shia Muslims.

The plea of learned counsel for the respondent No.4, about the extension of the Gilgit-Baltistan pre-Emption Act 2010 even to the suits of pre-emption filed before promulgation of the said Act, has been discarded by the learned Chief court and we are in consonance with the views held by the learned chief Court in the impugned judgment in this regard. The learned counsel for respondent No.4 wrongly interpret **Section 34 of the Act.**

Last but not the least, we are of the opinion, that all the legal points supra require judicial inquiry in proof and rebuttal, for instance (a) what kind of law was prevailing at the time when the suit was instituted (b) whether the parties to the suit are **Shia Muslim in faith** and if so whether the Shia law precludes occupancy tenants from right of pre-emption (c) what is legal sanction of the judgment referred in the application and whether the referred judgment

defeats the enacted law prevailing at the time the suit was instituted. All the above points required to be proved as being mix question of law and facts, therefore do not come within the ambit of Order 7 Rule 11 C.P.C. but require thorough judicial inquiry, so the trial court was to proceed with the suit and finally adjudicate the matter on merits after framing the issues of law and facts under order 14 Rule 1 C.P.C. rather to go in hurry to reject the plaint.

The upshot of the above discussion is that, the case is remitted to the trial court by setting aside both the impugned judgments/decrees with the directions to proceed the suit on merits, after framing the issues including the legal points discussed above if the same are taken in the written statement or otherwise. These were the reasons for our short order dated 21-10-2015.

Date of Reasoning.

04-11-2015.

Judge

Chief Judge

Judge