

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

GILGIT.

**Appeal No.47/2015 in
C.P.L.A NO.25/2014.**

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

Mr. Justice Raja Jalal-Ud-Din Judge.

Mr. Justice Muzaffar Ali Judge.

Syed Faiz Ali Shah & others

Petitioners

Versus

Iqbal Aman & others

Respondents

CIVIL PETITION FOR LEAVE TO APPEAL AGAINST THE JUDGMENT/ORDER DATED 19-09-2013 PASSED BY CHIEF COURT GILGIT-BALTISTAN.

Present :-

1. **Mr.Muhammad Issa Sr. Advocate alongwith Mr. Johar Ali AOR for the petitioners.**
2. **Malik Shafqat Wali Sr. Advocate on behalf of the respondents.**

Date of Hearing :- 04-11-2015:-

JUDGMENT:-

Mr. Justice Muzaffar Ali, J..... Through this petition for leave to appeal, the petitioner assailed the impugned judgment dated 19-09-2013, whereby a learned Single Judge of the Chief Court Gilgit-Baltistan has set aside the judgments/decrees passed by the Courts below and remanded the case to the learned Civil Judge concerned with the direction to implead the Government in the list of defendants.

The present petitioners felt dissatisfaction and being aggrieved from the impugned judgment invoked the jurisdiction of this Court and solicited through the present petition for grant of leave to appeal and to accept the same by setting aside the impugned judgment passed by the learned Chief Court Gilgit-Baltistan. We after hearing the learned counsel for the petitioners deemed proper to issue notices to the respondents to attend the Court and defend themselves before granting the petition and heard both the learned counsel for the parties.

The petition holds facts behind it are, summarized as under, that the present petitioners filed a suit for declaration with the consequential reliefs that the defendants be dispossessed from a partial part of the disputed property and also be restrained from interference into the remaining suit property perpetually. The trial Court concerned after going through the procedure finally dismissed the suit of plaintiffs on merits. The present respondents filed 1st appeal against the impugned decree passed by the learned Civil Court but faced the same consequences and their appeal was dismissed by the 1st appellate Court. The present respondents did not stop there but, filed a Revision petition against both the decrees

passed by the learned lower Courts before the learned Chief Court Gilgit-Baltistan. Hence this petition before this Court against the impugned judgment passed by the Chief Court Gilgit-Baltistan.

Today, we heard both the learned counsel for the parties. The learned counsel for the petitioners urged that, (a) the plaintiffs have claimed the ownership over the disputed land and the defendants have claimed the collective ownership of the village Gahkuch. Both the learned lower Courts have thoroughly gone into the facts of the case and finally dismissed the suit, rejecting the claim of plaintiffs and declared the ownership of the defendants over the suit land but the learned single Judge of the Chief Court traversed beyond the facts and pleadings of the suit and reached into the finding that the Provincial Government is necessary party and directed the trial Court to implead the Provincial Government in the list of defendants as necessary party.

(b) The ownership of the disputed property might be decided either in favour of the plaintiffs or in favour of the defendants and the lower Courts have very rightly dismissed the suit and accepted the ownership of the defendants. The Government has nothing to do with disputed land as it is not "Khalisa Sarkar" but it is "Shamilat Deh." The learned single Judge has misconceived and failed to differentiate between "Shamilat Deh" and "Khalisa Sarkar."

On the other hand the learned counsel for the respondents defended the impugned judgment with the contention that the learned Single Judge has rightly reached into the conclusion that the disputed land is "Khalisa Sarkar" and the Provincial Government is necessary party which has not been impleaded as such the learned Single Judge impleaded the necessary party on his own accord and rightly remanded the case to the trial Court.

We have thoroughly gone through the record of the case at length and also have considered the learned legal assistance of both the learned counsel for the parties and we are, afraid that, the learned counsel for the respondents supports the impugned judgment contrary to the contention wrapped with the plaint filed by the plaintiffs. The plaintiffs, as has stated in Para No.3 of this judgment, contended in the plaint that they are owners of the suit land, but the learned counsel for the respondents/plaintiffs seconds the impugned judgment passed by the learned Chief Court.

It is pertinent to note here "**that, District Ghizer is not a settled area and if looked the lands in the District Ghizer, as per view taken by the learned Single Judge of the learned Chief Court ,then every inch of the land therein would be presumed to be "Khalisa Sarkar" because no ownership of the inhabitants has been determined through settlement by the Provincial Government. The learned**

Single Judge of the Chief Court Gilgit-Baltistan has ignored the fact that, the dispute between the parties pertaining to the suit land has been taken before the Revenue authorities and Tehsildar of the District, being the Revenue Court, has given a decision dated 15-5-1997 between the parties, we without going into the merits of the same just refer it that, if the land was “Khalisa Sarkar” then the Revenue court was well within jurisdiction to declare the disputed land as “Khalisa Sarkar” or at least the Tehsildar could tackle the matter with higher authorities of the Provincial Government but he did not do so and determined the rights of the parties before him.”

The litigant public and the Government or the Government Departments are equal before the Courts of Law and the Courts are not supposed to protect the rights of Governments or the authorities unless the Government comes before the Courts of Law to protect the interest of the Governments. The dispute between the present parties started since 1997, first it was taken before the Revenue authorities, then before the Civil Courts, finally it reached before the Chief Court Gilgit-Baltistan in the year 2013 but the custodians of the Provincial Government remained mum and no claim from their side reached into the record of the case, asking to be party to defend the Provincial Government. It shows that the Government has no interest over the disputed land as such we are disagreed with the finding of the learned Single Judge of the Chief Court in this matter.

The upshot of the above discussion, is that the petition for leave to appeal is converted into appeal and the impugned judgment is set aside , the judgments and decrees passed by the learned Civil Judge and learned District Judge are restored. The case is remanded to the learned Chief Court for adjudicating the Revision petition submitted before, and adjudicate the same on merits between the parties without being prejudice by this judgment in regard to determination of the rights of the parties. This judgment is announced today in open Court in the presence of the parties/counsel

Judge

Chief Judge

Judge

Whether the case is fit to be reported or not?