

**IN THE SUPREME APPELLATE COURT GILGIT- BALTISTAN
AT GILGIT**

**Before:- Mr. Justice Javed Iqbal, Judge.
Mr. Justice Shabaz Khan, Judge.**

**C. APPEAL NO. 16/2015
C.P.L.A. NO.89/2014**

Raja Shahduran Ali s/o Hamayoon r/o Sher Qila Tehsil Punial District Ghizer. **Petitioner/Plaintiff.**

VERSUS

Habib-ur-Rehman s/o Khalil-ur-Rehman r/o Basin Tehsil & District Gilgit. **Respondent.**

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN (EMPOWERMENT AND SELF GOVERNANCE ORDER) 2009 AGAINST THE JUDGEMENT/ORDER DATED 10-04-2014 PASSEDE BY THE CHIEF COURT GILGIT- BALTISTAN IN CIVIL REVISION NO. 13/2011

Present:-

Mr. Ehsan Ali, Advocate on behalf of the petitioner.
Mr. Johar Ali, Advocate for the respondent.
Mr. Rehmat Ali, Advocate on record.

Dateed of Hearing:- 18-04-2016.

JUDGMENT

Javed Iqbal, JThis petition for leave to appeal has been preferred by one Raja Shah Duran, petitioner/judgment debtor has challenged the order dated 10-04-2014, passed by the Single Bench of the Chief Court, Gilgit- Baltistan, in Civil Revision No. 13/2011.

2. The brief facts of the case are that the present petitioner namely Raja Shah Duran has preferred a Civil Suit No 156/98 in the Civil Court at Gilgit on 22-12-1997 for declaration and possession of suit land. The defendant/ respondent after appearing before the trial Court remained absent. The trial Court after proceeding ex-parte against the defendant allowed the plaintiff/ petitioner to prove his case through evidence. The trial court passed ex-parte decree in favour of the petitioner/plaintiff, in the light of evidence produced by the plaintiff/petitioner. The defendant/Respondent after expirey of limitation filed and application under Order 9 rule 13 Civil Procedure Code for setting aside ex- parte decree. The Trial Court up to the learned Chief Court dismissed the application of defendant/respondent as meritless and time barred.

3. That the present respondent filed petition for leave to before the Hon'able Northern Areas Court of Appeal against the judgment/decree of the Chief Court Gilgit-Baltistan. The Hon'ble Apex Court by partially accepting the petition for leave to appeal allowed the respondent/defendant for adducing evidence if any in-favour of the application under Order 9 Rule 13 civil Procedrure Code.

4. The learned Trial Court on the basis of evidence once again dismissed the application of the respondent for setting aside of ex-parte decree. The learned 1st Appellate Court upheld the judgement/ order of the trial Court. The respondent filed revision petition before the Gilgit- Baltistan Chief Court against the judgment/ order of the lower Courts.

5. That the learned Chief Court accepted the revision petition of respondent and set aside both judgment/ orders and also set aside ex parte decree and ordered for De-novo Trial. Hence this petition for leave to appeal.

6. We have heard both the learned counsel for the parties, perused the record of the case file and gone through the impugned judgment/orders, passed by the Chief Court as well as the judgment/order passed by the learned lower courts, minutely. The contention raised by learned counsel of petitioner/appellant, that, despite, the directions of this August Court dated 30-06-2008. The respondents again failed to substantiate his case properly. The trial court on the basis of evidence once again dismissed the application of respondent for setting aside ex-parte decree. The learned Chief Court Gilgit- Baltistan allow the petition under order 9 rule 13 C.P.C and remitted back the case to trial court for denovo – trial, which is incorrect against the facts and law, and also mis- applied the law in passing impugnd judgment/ order. The learned counsel for the peltitioner referred the following judgments of various courts.

References,

2005 CLC 522.

1996 SCMR 596.

2011 GBLR 334.

2008 SCMR 287.

The above references discussed, limitation for ex-parte decree, as instant case falls under Article 164. On the other hand, counsel for the respondent referred the forllowing case laws.

Refernces

PLD 1991 SC 1104

2007 SCMR 834.

PLD 1986 QUETTA 121.

2004 YLR 1536.

1980 CLC 1261.

1999 YLR 2465.

PLD 1976 SC 208.

1992 SCMR 207.

All the referred cases are discussed on date of hearing, in which no limitation is provided.

7. We have gone through the case file orders/ judgments of lower courts, and also perused the evidence provided by the respondent before trial court, the evidence so produced by the respondent, could not establish the absence of respondent in Gilgit City. The evidence produced by the respondent before learned trial court, could not established and substantiate, the case, considering the evidence as a whole and arriving at a certain conclusion on the basis thereof, these are three things which are kept in view of the volume of evidence and probability of evidence. It is cumulative effect of all three aspects of evidnce that finally determines a certain question of fact. The respondent has badly failed to substantiate his non availabilty at Gilgit City . We are in opinion that, the respondent could not established his case.

We are inclined to accept the petition for leave to appeal convert, into appeal and the same is allowed , setting aside the

judgment /order of Chief Court Gilgit – Baltistan, by maintaining the judgments/orders of learned lower courts dated 13-4- 2011 and 16-9-2010.

Parties bear their own cost.

Announced:-

05-08-2016

Judge

Judge