

**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. 09/2018
In
CPAL No. 11/ 2017**

Ali Gohar & others

Petitioners.

Versus

Yousuf Ali

Respondent.

PRESENT:-

1. Mr. Manzoor Ahmed Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Johar Ali Khan Advocate for respondents.

DATE OF HEARING: - 11.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has been directed against the impugned order dated 16.09.2016 in Civil Revision No. 60/2014 passed by the learned Chief Court whereby the said Civil Revision filed by the respondent was allowed by setting aside the judgment dated 17.05.2014 in Civil First Appeal No. 31/2013 passed by the learned District Judge Hunza-Nagar and judgment/decrees dated 30.09.2012 in Civil Suit No. 01/1996 passed by the learned Civil Judge 1st Class Gilgit. The petitioners being aggrieved by and dissatisfied with, filed this petition for leave to appeal. This court vide order dated 30.03.2017 issued notice to the respondent and the case is heard today.

2. Briefly, the facts of the case are that the respondent filed Civil Suit No. 01/1996 for declaration etc in the Court of learned

Civil Judge 1st Class Gilgit contending therein that the suit land was his ancestral legacy and the gift made in respect of petitioner No. 01 is incorrect, baseless and without any right/authority. Upon hearing the suit in question was dismissed vide judgment/decrees dated 30.09.2012 which was subsequently upheld by the learned First Appellate Court vide judgment dated 17.05.2014. On Revision, the learned Chief Court was pleased to reverse the concurrent findings of the learned two Courts below, hence, this petition for leave to appeal.

3. The learned counsel for the petitioners submits that the ancestry is admitted but the dispute was only remaining half portion of the suit property of Mst. Zainaba daughter of Kasir. Mst. Zainaba is the real owner of the disputed property. He also submits that the respondent is the son of Meharban and grandson of Mst. Zainaba. After demise of Meharban, Mst. Zainaba had to look after her grandson i.e. Yousuf Ali (respondent). Per learned counsel, Mst. Zainaba got married with Ali Gohar (petitioner No. 01). He further submits that no illegality was committed by the petitioner and his act was according to Sharia in contracting marriage with Mst. Zainaba. He adds that Mst. Zainaba has brought up the respondent when he was about 4/5 years of age being wedlock with Ali Gohar (petitioner) and the petitioner No. 01 rendered full time services to the respondent and his grandmother till her death. Per learned counsel, Mst. Zainaba gave him half share of her legacy in lieu of his services vide Gift Deed (Registry No. 43/95). He submits that

the learned Chief Court did not consider the aforementioned facts while passing the impugned order dated 16.09.2016 and has wrongly reversed the concurrent findings of the learned two Courts below. He contends that the impugned order is the result of misreading and mis-appreciation of evidence and material on record. He prays that the impugned order passed by the learned Chief Court may graciously be set aside.

4. On the other hand, the learned counsel for the respondent supports the impugned order passed by the learned Chief Court. He contends that there is no Gift Deed executed by Mst. Zainaba in favour of the petitioners. He also contends that the possession is also disputed between the parties and both the parties claim that the property in question is in their possession. Since, the possession of the suit land i.e. about 4/5 Kanals is in dispute. Consequently, the learned Trial Court appointed 03 receivers namely Fida Ali, Rajab Ali and Shaban Ali r/o pisan Nagar to receive income of the property in question and the said income be deposited in court accordingly. He further contends that the possession of the disputed land has been proved from the statements of Shaban Ali and Nawroz who stated that the possession of the said land is with the respondent. He reiterates that the petitioners failed to prove the issue No. 10 and as such the learned Chief Court has rightly reversed the concurrent findings of the learned Courts below. He prays that the impugned order dated

16.09.2016 may pleased be maintained being well reasoned and well founded.

5. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order passed by the learned Chief Court, the judgment dated 17.05.2014 in Civil First Appeal No. 31/2013 passed by the learned District Judge Hunza-Nagar and judgment/decree dated 30.09.2012 in Civil Suit No. 01/1996 passed by the learned Civil Judge 1st Class Gilgit. In our considered view, the impugned order dated 16.09.2016 in Civil Revision No. 60/2014 passed by the learned Chief Court is the result of misappreciation of the evidence and other material on record which is not sustainable whereas the concurrent findings of the learned Courts below are well reasoned and well founded. The petitioners have successfully proved issue No. 10 by producing documentary as well as oral evidence which have rightly been appreciated by the learned two Courts below.

In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned order dated 16.09.2016 in Civil Revision No. 60/2014 passed by the learned Chief Court is set aside. The concurrent findings of the learned two Courts below are maintained.

The appeal is allowed in above terms.

Chief Judge.

Judge.