

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN AT
SKARDU REGISTRY.**

Before:

**Mr. Justice Rana Muhammad Shamim, Chief Judge.
 Mr. Justice Javed Iqbal, Judge.**

**Civil Appeal No. 12/2015
In
CPLA. No. 57/2015.**

1. Ali Hassan & 06 others **Petitioners.**

Versus

1. Akhon Ismail & 02 others. **Respondents.**

PRESENT:-

1. Mr. Muhammad Issa senior Advocate for the petitioners.
2. Mr. Ali Khan Advocate on behalf of the respondents.

DATE OF HEARING:- 16.11.2016.

DATE OF DETAIL JUDGMENT:- 05.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned order dated 09.09.2014 in Civil Second Appeal No. 15/2002 passed by the learned Gilgit-Baltistan Chief Court whereby the said Civil Second Appeal of the respondents was dismissed by maintaining the judgments/orders of the learned courts below, hence, this petition for leave to appeal.

2. Briefly the facts of the case are that the respondents /plaintiffs filed a suit for Declaration, Consequential Relief and Permanent Injunction” regarding the “Chulichen Channel” situated in Zhoq Kachura Nallah. As per the pleading of the case the said channel was constructed/executed by the forefather of the respondents /plaintiffs to irrigate their lands bearing Khasra No.

3398. The petitioners/defendants want to dig out a sub channel from the said channel as according to the respondents the petitioners have no right to dig out another channel. Subsequently the respondents filed the said suit for permanent injunction to restrain the petitioners in interfering into their water rights etc. The petitioners denied the claims of the respondents and contested the suit by producing evidence on record. The learned Trial Court after hearing both the parties and examining the evidence on record, decreed the suit in favour of the respondents vide judgment/decree dated 28.04.2001. The petitioners feeling aggrieved filed Civil First Appeal No. 05/2001 before the learned District Judge Skardu which upon hearing was dismissed vide judgment dated 28.10.2002 and the same was upheld by the learned Gilgit-Baltistan Chief Court vide impugned order dated 09.09.2014, hence, this petition for leave to appeal. This court vide order dated 19.11.2015 granted leave to appeal. Consequently, notices were issued to the respondents and the case was heard on 16.11.2016. We after hearing the respective parties dismissed the appeal by maintaining the concurrent findings of the learned three courts below vide our short order dated 16.11.2016.

3. The learned counsel for the petitioners submits that although there are three concurrent findings of the learned courts below in favour of the respondents, however, all the three courts below failed to apply their judicial minds while passing the impugned judgments/orders. He also submits that the petitioners

have nothing to do with the Channel of Chulichen Nallah. In fact the petitioners want to dig out a channel from Biyamachan Nallah in order to irrigate their fields and trees. According to the learned counsel for the petitioners no channel exists at Chulichen Nallah since long time and the land of the respondents under Khasra No. 3398 measuring 03 Kanal 08 Marla is also a barren land. Whereas the petitioners want to irrigate their lands measuring 90 Kanal and 10 Marla by digging out a channel from Biyamachan Nallah not from Chulichen Nallah. He further submits that the learned Gilgit-Baltistan Chief Court as well as the learned First Appellate Court and the learned Trial Court have misconceived the provisions of Limitation Act and the Specific Relief Act, therefore, the impugned order dated 09.09.2014 passed by the learned Gilgit-Baltistan Chief Court as well as the judgments of the learned courts below are not tenable and liable to be set aside.

4. On the other hand the learned counsel appearing on behalf of the respondents supports the impugned order dated 09.09.2014 in Civil Second Appeal No. 15/2002 passed by the learned Gilgit-Baltistan Chief Court. He contends that the same has been passed in accordance with law and facts of the case, hence, the said impugned order may graciously be maintained being well reasoned and well founded.

5. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned order dated 09.09.2014 in Civil Second

Appeal No. 15/2002 passed by the learned Gilgit-Baltistan Chief Court as well as the concurrent findings of the courts below. The learned Gilgit-Baltistan Chief Court has rightly held that the question involved in the matter framed by the learned Trial Court are purely question of facts which were resolved after appreciating the evidence & material on record by the learned Trial Court. Furthermore, the learned counsel for the petitioners could not point out any illegality and infirmity in the impugned order passed by the learned Gilgit-Baltistan Chief Court.

6. In view of the above discussions, we dismissed this appeal vide our short order dated 16.11.2016. Consequently, the impugned order dated 09.09.2014 in Civil Second Appeal No. 15/2002 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 28.10.2002 in CFA. No. 05/2001 passed by the learned District Judge Skardu and the judgment dated 28.04.2001 in Civil Suit No. 31/1999 passed by the learned Civil Judge Skardu were maintained. These were the reasons for our said short order.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?