

**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. 76/2016
In
CPLA No. 22/2015.**

1. Umar Khan Son of Khuda Yar & 112 others **Petitioners.**

Versus

1. All Jumla Malikan Zangari Heti Goharabad Tehsil Chilas through Lumberdar Ghulam Haider son of Sayed Ali & 11 others. **Respondents.**

PRESENT:-

1. Mir. Ikhlaq Hussain Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Rai Muhammad Nawaz Kharal Advocate alongwith Mr. Rehmat Ali Advocate and Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondents.

DATE OF HEARING: - 28.09.2016.

DATE OF DETAIL JUDGMENT: - 03.11.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned judgment dated 18.08.2014 in Civil Revision Petition No. 54/2012 passed by the learned Gilgit-Baltistan Chief Court, whereby the petition filed by the present petitioners was accepted, by setting aside the judgment of the 1st Appellate Court while maintaining the judgment/Decree of the learned Trail Court. The petitioners being aggrieved filed this petition. This court issued notices to the respondents vide order dated 15.10.2015 and the case was heard on 28.09.2016.

Consequently this petition was converted into an appeal and the same was dismissed vide our short order dated 28.09.2016.

2. Briefly the facts of the case are that the petitioners/plaintiffs filed Civil Suit No. 14/1997 and 34/99 in the learned Civil Judge 1st Class Chilas for seeking declaration that the petitioners/plaintiffs are also entitled to get "Maalikana"/Royalty and other benefits as owners of Zangari Heti Goharabad Chilas. According to the averments of above plaint that all the petitioners are lineal decedents of one Mirza Khan who was the alleged owner of the Heti and who migrated to Chakarkot Sai Juglote marrying there and his property was remained with the off-springs of his brothers undivided. On 19.08.2001 the above persons handed over the share of the petitioner's property. It was further claimed in the plaint that the petitioners/plaintiffs like the present respondents are getting the Malikana/Royalty etc but about 5/6 years before the filing of the suit in hand, some persons from respondents denied payment of royalty in respect if Gais Nallah whereupon the parties got a decision on oath from the Raja Mir Baz Khan (late) and on the basis of which the petitioners were paid the above royalty as per their share.

3. The learned counsel for the petitioners submits that their clients are the off-springs of one Mirza Khan who was an owner of Zangari Heti at Goharabad but due to his marrying with a lady at Chakarkot in Juglote Sai District Gilgit used to reside there because the lady had her own property at Juglote whereas his own property

from paternal side remained undivided with his co-sharers at Zangari Heti, Goharabad, District Diamer and now these co-sharers have returned the share of land to the petitioners on 19.08.2001. He further submits that they being owners of Zangari Heti have been receiving benefits like Malikana and royalty therefrom. They also submits that five years prior to the institution of the Suit the Malikans of Goharabad had received some amount as Malikana in respect of a forest situated at Gais Nallah. Later on the respondents denied to pay the same share to the petitioners/plaintiffs in the said amount. The dispute, however, was resolved by one Raja Mir Baz Khan who told to the respondents that the petitioners/plaintiffs are owners of Zangari Heti like of the respondents/defendants. He also submits that the petitioners have paid their shares of amount to the respondents to meet expenses of the litigation cropped up between Goharabad and Gunar Farm over Kinodas. He further submits that three days prior to the filing of suit in question when the royalty and Malikana amount in respect of Gayal forest was being distributed among the Malikans of Goharabad, the respondents again refused to pay the share to the petitioners and this denial constrained the parties to the instant litigation. He reiterates that the respondents themselves admitted in their evidence that the petitioners are the owners of Zangari Heti being the off-spring of one Mirza Khan who later on shifted to Chakarkot Juglote Sai long time ago while not waiving his rights in the ancestral property situated at Zangari Heti Goharabad nor the said Mirza Khan sold out his

property to anyone. He finally argued that the learned Chief Court fell in error while deciding the Civil Revision and passing the Impugned Judgment dated 18.08.2014 filed by the petitioners which according to them is not sustainable and liable to be set aside being the result of misconception of law and facts.

4. On the other hand the learned counsels for the respondents support the impugned judgment dated 18.08.2014 in Civil Revision Petition No. 54/2012 passed by the learned Gilgit-Baltistan Chief Court. They contend that neither Mirza Khan nor any other petitioners are the Malikan of Goharabad as the said Mirza Khan left the Goharabad approximately 200/250 years ago. They further contend that their off-springs have also remained unconcerned with the affairs of the said hethi. They argued that the land given to the petitioners by their co-shares was the result of collusion and who have never received any share in the Malikana/royalty from the Zangari hethi nor they have paid any amount to the respondents to meet the expenses of litigation over kinodass Goharabad as such the question of refusal of the respondents/defendants with regard to the payment of royalty/Malikana to the petitioners received by them against Gayal Forest does not arise. They finally contend that the suit of the petitioners has rightly been dismissed by the learned Trial Court Chilas District Diamer which was barred by time. They pray that the Impugned Judgment dated 18.08.2014 in Civil Revision Petition

No. 54/2012 passed by the learned Gilgit-Baltistan Chief Court 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 Judgment dated 18.08.2014 in Civil Revision Petition No. 54/2012 passed by the learned Gilgit-Baltistan Chief Court as well as the Judgments of the learned courts below. The perusal of the materials available on the record of the case file transpires that the grand-father of the petitioners/plaintiffs had migrated from Goharabad District Diamer to Chakarkot Juglote Sai District Gilgit approximately 200/250 years ago. The said Mirza Khan/ grand-father of the petitioners during his life time never turned up and claimed the rights of royalty/Malikana nor his first generation claimed for the said collective rights of the said village from where their grand-father migrated to another District. All of sudden and after lapse of a considerable period of two and half century, the third/fourth generation of the said Mirza Khan alleged that they have the rights of royalty/Malikana from the forest of the said area merely on the basis of a story that an arbitration was conducted by one Raja Mirbaz Khan who reportedly decided the matter in question in favour of the petitioners but the same has not been corroborated by any reliable evidence or any statement of any prosecution witness. The plaintiffs/petitioners even could not prove their ancestral property located at Zangari Heti Goharabad owned, possessed and looked after by any of their relatives residing at the

said village. The learned Trial Court has rightly held that the suit of the plaintiffs is barred by time which was upheld by the learned Gilgit-Baltistan Chief Court. Moreover, the petitioners themselves admitted that their fore father has willfully abandoned the rights long time ago which cannot be regained without obtaining its basic source. The perusal of the available record further reveals that the petitioners are themselves ignorant about the actual quantity of land and its status and even the fact that how many Kanals and Marlas of land of their forefather is situated in the three suit villages of Goharabad District Diamer. Their attorney during the cross-examination of PWs has failed to identify that where the land of his forefather is situated and where the share of his grandfather lies among the off-springs of the brother of grandfather Mirza Khan. Similarly, the petitioners are also ignorant regarding the initiation of the project of water channel to Gais Pain Dass. The petitioners do not have any knowledge with regard to the maintenance of Damalchal water channel and their participation in it thereto. It is rightly held by the learned Gilgit-Baltistan Chief Court that an inhabitant of a village can get his share of royalty as Malik, if he is temporally out of his village for 20/30 years and he is otherwise connected with the local affairs of locality.

6. In view of the above discussion, we converted this petition into an appeal and the same was dismissed vide our short order dated 28.09.2016 as the learned counsel for the petitioner could not point out any illegality, infirmity and mis-appreciation of

evidence on record. Consequently, the impugned judgment dated 18.08.2014 in Civil Revision No. 54/2012 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 01.12.2005 in Civil Suit No. 14/97 & 34/99 passed by the learned Civil Judge 1st Class Chilas District Diamer were maintained. These were the reasons of our short order dated 28.09.2016.

7. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?

which upon hearing was dismissed vide judgment dated 01.12.2005. Whereafter the petitioners feeling aggrieved filed Civil First Appeal No. 02/2006 before the learned District Judge Chilas which upon hearing was accepted vide judgment dated 06.08.2012 and the judgment/decree of the learned Civil Judge 1st Class Chilas was set aside. The respondents being aggrieved by and dissatisfies with made impugned the judgment of the learned District Judge Chilas before the learned Gilgit-Baltistan Chief Court which upon hearing was accepted vide impugned judgment dated 18.08.2014 in Civil Revision No. 54/2012 while setting aside the judgment/decree dated 06.08.2012 passed by the learned District Judge Chilas and by maintaining the judgment of the learned Trial Court, Chilas District Diamer.