

**IN THE SUPREME APPELLATE COURT GILGIT BALSTAN
C.P.LA NO.36/2009**

**Before: - Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob, Judge.**

Meharban Ali s/o Hatim Baig r/o Sher Qillah Tehsil Punial District Ghizer.

Petitioner

VERSUS

Shakoor Khan s/o Mir Salam Khan r/o Danyore (Muhammad Abad Tehsil and District Gilgit.

Respondent

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF
GILGIT BALSTAN (EMPOWERMENT AND SELF
GOVERNANCE ORDER 2009) AGAINST THE JUDGMENT
DATED 25-8-2009 PASSED BY THE CHIEF COURT IN CIVIL
SECOND APPEAL NO.03/2007.**

Present :- Mr. Ehsan Ali Advocate for the petitioner
Mr. Shah Zaheer Khan Advocate on special permission for respondent.

Date of Hearing: - 29-04-2010

JUDGMENT:-

Mr. Justice Muhammad Yaqoob...J. This appeal by leave of the Court has been preferred by the petitioner against the judgment/order dated 25-8-2009, passed by learned Single Bench of Chief Court Gilgit-Baltistan, where in the learned Chief Court has set aside the judgment/Order of Additional District Judge Ghizer dated 24-4-2007, by upholding the Judgment/decrees passed by Civil Judge 1st Class Punial/Ishkoman dated 25-11-2009, hence this leave to appeal.

The background of the litigation is, that the plaintiff/respondent was sold a patch of land measuring Eight (8) kanals alongwith its constructed structure situated at village Sherqilla Tehsil Punial, District Ghizer, in consideration of Rs.3,35000/-. Parties entered into an agreement of sale of the suit property described at the heading of the amended plaint. Possession of the suit property was handed over to the petitioner/defendant on partial payment of Rs.1,88,000/- to plaintiff, (Shakoor Khan) while remaining amount of Rs.1,47,000/- was agreed to be paid to plaintiff by the end of September 2001. Plaintiff/respondent continuously demanded and requested for payment of remaining amount of sale but petitioner/defendant did not pay outstanding amount to plaintiff as agreed. Resultantly plaintiff filed a declaratory suit with consequential relief to the effect "that the plaintiff is entitled as per agreement to get the sale agreement revoked against a fine of Rs.20,000/- and is entitled to suit property, as a consequential relief has prayed for the possession of suit land. Plaintiff has also prayed for an alternate relief that in otherwise, case, a decree for the price of suit property according to prevailing market rate may be passed in his favour. The present petitioner/defendant contested the suit on legal as well as factual grounds. In view of controversial stance of the parties, the dispute was put to issue and recording evidence. Plaintiff /respondent in support of issues has recorded his own statement and examined three PW's and one RW. Muhammad Hussain, the scribe of document Exh.D/1(agreement to sale). On the other hand petitioner/defendant filed the deed Exh.D-1 and examined one DW beside his own statement.

At the conclusion of trial the learned Civil Court decided the suit in favour of plaintiff and passed the decree in civil suit No.82/2004, felt aggrieved and dissatisfied the present petitioner/defendant filed first appeal before the Additional District Judge, Ghizer. The learned Additional District Judge has accepted the first appeal and set aside the impugned judgment/decree passed by the learned Civil Judge, in Civil suit No.82/2004. Plaintiff /respondent filed second appeal against the judgment/decree passed by the learned Judge of first Court of appeal, before the learned Chief Court Gilgit-Baltistan. The learned Single Bench of Chief Court Gilgit Baltistan has set aside the impugned judgment/decree passed by the learned Additional District Judge Ghizer and upheld the judgment/decree passed by the Civil Judge first class Punial/Ishkoman dated 25-11-2006, hence this leave to appeal.

Petition for leave to appeal has been admitted for hearing on merits subject to deposit of sum of Rs.80,000/- in the office of Registrar as fixed by the Arbitrators. Short order dated 5-4-2010, is reproduced herein below for clarification:-

"Notice to respondent for a date in office, the petitioner in the meanwhile deposit a sum of Rs.80,000/- (eighty thousand only) in the office of Registrar as fixed by the Arbitrators".

Arguments heard and relevant record perused. Learned counsel for the petitioner Mr. Ehsan Ali Advocate vehemently argued and submits that the defendant/petitioner with held the remaining sale amount of Rs.1, 47000/- . He justified his act of non payment on the ground that the plaintiff/respondent had showed him a patch of land measuring 8 kanals but subsequently when he measured the same it was less than 8 kanals. Hence he stopped the remaining amount.

Counsel for petitioner refer the deed Exh.D/1, wherein it is mentioned that the quantity of suit property (8) kanals. He further submits that the suit is incompetent, no cause of action as alleged in the plaint is available against the petitioner/defendant. Plaintiff/respondent has failed to comply the condition imposed in the deed Exh.D/1, hence the plaintiff is not entitled for the relief prayed for. He further added, that the parties jointly submitted an application on 19-12-2008, before the Hon'ble Chief Court, requesting therein for referring the matter to the Arbitrators. The learned Single Bench of Chief Court was referred the matter to Arbitrators on 13-4-2009, the nominated arbitrators submitted award on 14-5-2009, which was read over to the parties , parties jointly requested, that they are not inclined to file objections on the award.

The present petitioner was deposited the amount but the respondent/plaintiff has refused to receive the same. Concluding his arguments learned counsel for the petitioner prayed, that by accepting this leave to appeal impugned judgment/decree dated 25-8-2009 may be set aside and suit may be dismissed.

On the other hand counsel for respondent/plaintiff (Mr. Shah Zahir Advocate) seeks special permission to appear and argue the case in Supreme Appellate Court. Permission was granted by their Lordship Chief Judge" Mr. Justice Muhammad Nawaz Abbasi." The learned counsel for the respondent/plaintiff strongly opposed and submits, that the petitioner/defendant has utterly failed to comply the condition imposed in the deed Exh.D/1 and failed to pay remaining amount of Rs.1, 47,000/- to the plaintiff/respondent by the end of September 2001. Due to non payment on stipulated time plaintiff have

no option except to file present suit for possession of disputed land. The violation of agreement to sale and non payment of remaining amount is admitted on record. He further submits that the suit for declaration with consequential relief for possession of suit land is legally tenable, because petitioner/defendant himself admits the agreement of sale deed and its partial execution. He further argued that the disputed land as well as the lands of whole District Ghizer is un-settled, as such no revenue record is available through which quantity of land can be ascertained. Therefore, the plaintiff/respondent has sold the property within the described boundaries mentioned in Ex.D/1, but parties were at variance, therefore the learned Single Bench of Chief Court was referred the matter to the arbitrators on 13-4-2005. Arbitrators submitted award on 14-5-2009, parties jointly requested to the Chief Court for compliance of arbitration award just to avoid further unbearable litigation. At the end of his arguments the learned counsel for plaintiff /respondent request that this leave to appeal may be dismissed as meritless, to meet the ends of justice.

We have anxiously considered the arguments advanced by the learned counsel for the parties and carefully examined the record available on file which shows that both the parties admit the agreement to sale and its execution. Petitioner/defendant has utterly failed to pay the remaining amount of Rs.1, 47,000/- with in stipulated period as indicated in Exh.D/1. Admittedly transaction regarding disputed land has taken place on the basis of an Iqrar Nama "agreement to Sale" between the parties, wherein exact figures have been showed about 8 kanals. Although it is an admitted fact that the area is unsettled and with out proper demarcation, a common man can not mention quantity

of land. Moreover it is prime duty of Vendor to confirm the quantity of land before release of its first installment of Rs.1, 88,000/- beside this petitioner was in knowledge that except this patch of land no land is in possession of plaintiff/respondent in the vicinity. Petitioner/defendant is in possession of land alongwith house, cattle sheds and is enjoying the benefits of the land by using the delaying tactics. Notwithstanding this, petitioner/defendant failed to comply the orders of Single Bench of Chief Court dated 14-5-2009, wherein the present petitioner/defendant was directed to deposit the amount of Rs.80, 000/- till 25-5-2009 but he failed to comply the orders of Court rather he tried to misrepresent by presenting a fake purcha peshi. Therefore, the awarded amount of Rs.80.000/- was returned back to him due to non compliance and non payment in time, as such the arbitration award dated 10-5-2009, has become in fructuous and rightly set aside the same by the learned Single Bench of Chief Court Gilgit- Baltistan.

As discussed above, we agreed with the judgment/decrees passed by the Single Bench of Chief Court Gilgit-Baltistan dated 25-8-2009, and dismissed petition for leave to appeal as meritless. Deposit of Rs.80,000/- (Eighty Thousand only) will be released to the petitioner/defendant after fulfillment of codal formalities. File.

Leave refused.

Announced:-
29-04-2010.

Chief Judge

Judge