

**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 10/2016

in

CPLA. No. 06/2015.

1. Mst. Hamida daughter of Rooh Hamza Begum & another

Petitioners.

Versus

1. Ali Mardan Khan son of Muhammad Murad r/o Gamba
Skardu, Tehsil Gamba.

Respondent.

PRESENT:-

1. Mr. Muhammad Iqbal Advocate alongwith Mr. Wazir Walayat Ali Advocate-on-Record for the petitioners.
2. Mr. Amjad Hussain Advocate alongwith Mr. Ali Khan Advocate-on-Record on behalf of the respondent.

DATE OF HEARING:- 14.11.2016.

DATE OF DETAIL JUDGMENT:- 05.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned order dated 02.04.2015 in Civil Revision No. 24/2014 passed by the learned Gilgit-Baltistan Chief Court whereby the said Civil Revision filed by the respondent was accepted by setting aside the concurrent findings of the learned courts below. Consequently, the case was remanded back to the learned Trial Court for trial of the case from any appropriate stage.

Furthermore it was also directed to the learned Trial Court to afford chance to the parties for necessary amendments in the pleadings or even parties or either of the parties are free to file fresh suit, if so advised, hence, this petition for leave to appeal. This court vide order dated 01.10.2015 granted leave to appeal and the case was finally heard on 14.11.2016.

2. Briefly facts of the case are that the petitioners /defendants filed a Civil Suit No. 06/2010 seeking possession of the 1/3 of the suit land on the ground that the same land belonged to their father Muhammad Rafi. After the death of the said Muhammad Rafi his properties were registered in the name of his son Muhammad Murad. On the death of Muhammad Murad the said property was devolved upon his son Ali Mardan Khan who is the grandson of Muhammad Rafi. Whereas Mst. Rooh Hamza Begum was daughter of Muhammad Rafi besides his son Muhammad Murad. Mst. Rooh Hamza Begum was the mother of Mst. Hamida whose name was not entered in the documentation of Revenue Authorities. Mst. Hamida Begum petitioner/defendant No. 01, Mr. Rustam Ali and Muhammad Hussain Baig are the heirs of Mst. Rooh Hamza Begum. In the year 2001, Mr. Rustam Ali who was then residing in held Kashmir, came to Skardu and gifted his share to Mr. Ghulam Muhammad respondent No. 02 through

mutation No. 1857 accordingly entries were made in his name. Whereafter the said mutation was cancelled by the Collector on 14.02.2006. The petitioner being aggrieved filed the said suit in the learned Trial Court which upon hearing was decreed vide judgment dated 27.05.2003 and the same was upheld by the learned Additional District Judge Skardu vide judgment dated 25.06.2014. The respondent being aggrieved filed Civil Revision No. 24/2014 before the learned Gilgit-Baltistan Chief Court. Upon hearing the said Civil Revision was accepted vide impugned order dated 02.04.2015 by setting aside the concurrent judgments of the courts below.

3. The learned counsel for the petitioner submits that Mst. Rooh Hamza Begum mother of Mst. Hamida Begum was the daughter of Muhammad Rafi who cannot be deprived from her legal Sharia share as per injunction of Islam. He also submits that the respondent himself conceded this fact in his statement that Mst. Rooh Hamza was the daughter of Muhammad Rafi. He further submits that the contentions of the respondent that according to the prevailing customs of the then regime the females were not entitled for their Sharia Share which is according to the learned counsel for the petitioner is against the principle of Islamic injunction. As per the learned counsel for the petitioner this

ambiguous denial by the respondent amounts to admission and thus the petitioners are entitled to have the due share from the legacy left by their late father namely Muhammad Rafi. He submits that the property left by late Muhammad Rafi was under the possession of one Muhammad Murad as Rustam Ali son of Mst. Rooh Hamza petitioner was residing in occupied Kashmir who later on came back to Skardu and gifted his share from the suit disputed land to one Ghulam Muhammad in the year 2001. Whereas the name of Mst. Rooh Hamza the legal heir of Muhammad Rafi was not mentioned in the Revenue record. He submits that later on her name was also included in the list of legal heirs of the late Muhammad Rafi vide mutation No. 1857 with the due consent of the respondent but unfortunately the said mutation was cancelled by the then Collector, therefore, the petitioners compelled to file the suit before the learned Trial Court Skardu which upon hearing was decreed in their favour and the same was upheld by the learned Additional District Judge Skardu. He submits that the learned Gilgit-Baltistan Chief Court while deciding the Civil Revision No. 24/2014 fell in error and did not apply its judicial mind in appreciation of the evidence advanced by the petitioners, hence, the impugned order dated 02.04.2015 is not tenable and liable to be set aside being contrary to the facts and law.

4. Conversely, the learned counsel for the respondent supports the impugned order dated 02.04.2015 passed by the learned Gilgit-Baltistan Chief Court. He contends that the learned Gilgit-Baltistan Chief Court has rightly accepted the Civil Revision of the respondent by observing that the suit was filed for possession of the 1/3 share from the entire property left by Muhammad Rafi. The respondent No. 02/plaintiff is not the legal heirs of the Muhammad Rafi the grandfather of respondent No. 01, or Mst. Rooh Hamza Begum, mother of respondent No. 01. As per the averments of the pleadings of the parties, it is evident that the landed properties of Muhammad Rafi were mutated in the name his son Muhammad Murad, and on his death, his son Ali Mardan. He also contends that Rustam Ali and Muhammad Hussain Baig are among the legal heirs of Mst. Rooh Hamza Begum besides the petitioner but they have gifted their share from the properties of Mst. Rooh Hamza in the name of one Ghulam Muhammad. He contends that the share of the petitioner has been transferred to the said Ghulam Muhammad. As per the learned counsel for the respondent the learned Trial Court as well as the learned First Appellate Court failed to apply its judicial minds to appreciate this very important fact of the case whereas the learned Gilgit-Baltistan Chief Court has rightly appreciated this aspect of the matter, hence,

the impugned order dated 02.04.2015 passed by the learned Gilgit-Baltistan Chief Court is sustainable and liable to 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 02.04.2015 passed by the learned Gilgit-Baltistan Chief Court. We are in agreement with the learned counsel for the respondent that the impugned order dated 02.04.2015 passed in Civil Revision No. 24/2014 by the learned Gilgit-Baltistan Chief Court is well reasoned and well founded. In our consider view no interference is warranted into it being passed in accordance with law and facts of the case.

6. In view of the above discussions, we dismissed this Civil appeal vide our short order dated 14.11.2016. Consequent thereto the impugned order dated 02.04.2015 in Civil Revision No. 24/2014 passed by the learned Gilgit-Baltistan Chief Court was affirmed whereas the judgment dated 25.06.2014 in CFA. No. 29/2013 passed by the learned Additional District Skardu as well as the judgment dated 27.05.2013 in Civil Suit No. 06/2010 passed by the learned Civil Judge Skardu were set aside. These were the reasons of 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?