

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
(REGISTRY BRANCH SKARDU)**

C.P.L.A. NO. 04/2009

**Before: - Mr. Justice Syed Jaffar Shah, Judge
Mr. Justice Muhammad Yaqoob, Judge.**

- Abdul Ghafoor son
- Mst. Fatima.
- Mst. Haleema daughters of late Mst. Hajira Bibi r/o Markunja Tehsil and Sub Division Shigar District Skardu.....**petitioners.**

VERSUS

- Ghulam Muhammad.
- Bashir sons of Ghulam Ali.
- Sanaullah.
- Ghulam Nabi.
- Ghulam Abbas sons of Mst. Hajira Bibi r/o Markunja Tehsil Shigar.
- Ghulam Mehdi s/o Ghulam Muhammad r/o Marapi Shigar.
- Manager Zari Taraqqiyati Bank, Skardu.....**Respondents.**

PETITION FOR LEAVE TO APPEAL AGAINST THE JUDGMENT/ORDER OF LEARNED SINGLE BENCH GILGIT-BALTISTAN CHIEF COURT DATED 17-04-2009 DISMISSED MAINTAINING THE PETITIONERS WAS 30-03-2007 AND 23-11-2007, OF LEARNED DISTRICT JUDGE SKARDU.

Present:-

Mr. Muhammad Issa, Senior Advocate for petitioners.
Mr. Shaukat Ali, senior Advocate for respondent.

Dated of hearing:- 30-06-2010.

JUDGMENT.

Muhammad Yaqoob Khan, J..... This petition for leave to appeal has been preferred by the plaintiffs/petitioners against the impugned judgment/order dated 17-04-2009, passed by the learned single bench of Chief Court Gilgit-Baltistan, where by the learned single bench has dismissed the appeal filed by the petitioners/plaintiffs (Abdul Ghafoor) etc, by maintaining the concurrent findings of the lower Courts dated 03-03-2007 and 23-12-2007, hence this leave to appeal.

The brief back ground of the litigation is that a Civil suit bearing No. 14/97 was filed by the petitioners on 11-04-1997 in Civil Court, wherein they seeking declaration with consequential relief to the extent of $\frac{1}{4}$ of share, in the in-heritance of mother and her paternal uncle (Muhammad Ali).

On 04-06-2002 when the case was fixed for the examination of PW,s the petitioner/plaintiff filed an application under Order 6 Rule 17 CPC, seeking amendment in the plaint. On 17-09-2002 the same party submitted another application for withdrawal of the previous one, but without pressing the withdrawal application, arguments on the application was heard on 22-06-2004, resultantly the learned trial court allowing the petitioner/plaintiff to amend the plaint vide order dated 06-07-2004.

Respondents/defendants discontent from the order and the same was called in question before the District Court, Skardu but during hearing of the revision petition, the petitioner/plaintiff came to know that the learned trial Court, while disposing of the application for amendment has mistakenly inserted mutation No. 1406 instead of mutation No. 1038 and 974. Hence, the learned counsel for petitioner/plaintiff made a statement at bar, that he will have no objection if by accepting the said revision petition, setting aside the impugned order dated 06-07-2004 learned counsel for the petitioner/plaintiff submitted that he has consented to get the said order set aside with an understanding that this court shall direct the lower Court to pass a fresh order after curing up the said clerical mistake.

Anyhow, the case remanded back to the trial Court. The learned counsel for the petitioner/plaintiff requested the trial Court for the correction of the clerical mistake but the learned trial court refused to do so, vide his order dated 23-04-2005, saying that such direction lacks in the remand order.

This order was made impugned before the District Judge Gilgit, but of no avail vide order dated 30-08-2005. The said order dated 30-08-2005, was challenged before the Hon'ble Chief Court, but again no fruit full result achieved by petitioner/plaintiff vide order dated 21-09-2009.

The petitioner/plaintiff filed a fresh application under Order 6 Rules 17 CPC read with section 151, seeking amendment to the extent of mutation numbers 974 and 1038 attested on 12-11-2006.

The respondents/defendants filed a revision petition seeking reversal of the same. The learned District Court after hearing the parties reversed the order passed by the learned trial Court on 16-10-2006, being aggrieved and dissatisfied the petitioner/plaintiff filed an appeal before the Hon'ble Chief Court Gilgit-Baltistan, whereby the learned single bench of Chief Court Gilgit-Baltistan dismissed the appeal, with the observations, that **"no one can be vexed twice for the cause which has been disposed of and has got finality"** hence this leave to appeal.

We have carefully attended the arguments advanced by the learned counsel for the parties, and minutely scrutinized all the judgments/orders alongwith amendment applications dated 22-06-2004, 17-09-2002, and 24-09-2005. We found that the learned lower courts below failed to consider and apply its judicious mind to the main controversial points agitated by the petitioner/plaintiff in his first application dated 04-06-2002. It is conceded by the learned counsel for the parties that no findings have been given by the courts to the extent of mutation No. 1038 and 974, which was the subject matter to the amendment application dated 04-06-2002. It is also evident from the perusal of judgments/orders that the learned trial Court has mistakenly inserted mutation No. 1406 instead of mutation No. 1038 and 974, while mutation No. 1406 was mentioned in subsequent amendment application dated 17-09-2002. Which was not pressed by the counsel for plaintiff/petitioner, whereas concurrent findings of the learned lower Courts mainly based upon subsequent amendment application dated 17-09-2002, while the initial application for amendment dated 04-06-2002 is still pend without adjudication and proper order.

Unfortunately neither the learned counsel for the parties, nor the courts below properly applied its judicious mind toward the first amendment application filed by the petitioner/plaintiff on 06-04-2002.

Resultantly the litigants who bring their dispute to the law courts with incidental hardship and expenses involved, do expect, a patent and judicious treatment of their cases and their determination by proper orders. A judicial order must be a speaking order, shall manifest that the court has applied her mind to the resolution of the issue involved for their proper adjudication and the ultimate result may be arrived at by a laborious effort, but lit has not been done in the instant case.

The present petitioner again submitted application for amendment dated 24-09-2005, in the trial court, with the submission that the mutation No. 1038 and 974 attested on 12-11-1959 and 24-02-1963 respectively, may be allowed to insert in the heading of plaint for the purpose of determining the real question in controversy. The learned Civil Judge 1st Class Shigar has accepted the fresh application filed by the petitioner under order 6 Rule 17 CPC and has allowed to amend the plaint as prayed for.

It is proper to mention here that without going into the merits of the case we would like to inspect the relevant provision of amendment enshrined in Civil Procedure Code. So we have visited towards the relevant **“Order 6 Rule 17 C.P.C.”** which can be divided into two parts.

“ The language used in the order 6 Rule 17 CPC to the effect that all such amendments shall be made as may be necessary for purpose of determining the real question in controversy” is mandatory in nature”.

Once the Court decides that amendment is necessary for the said purpose

of determining the real question, the court is required by law, to not only to allow an amendment application made by a party in that behalf, but is also bound to direct the amendment for the said purpose.

In the cases filing under the first part the court has discretion **to allow or not to allow** the amendment, but under the second part once the court comes to a finding that the amendment is necessary for the purposes of determining the real question, it becomes the duty of the court to permit the amendment. In this case the two mutations referred above reflects the inheritance claimed by the petitioner/plaintiff and for which amendment seeks in the plaint is the real question for determining the controversy in between the parties. Further it becomes the duty of the court to permit the amendment. But in this particular case the amendment which was allowed by the trial court is set aside by the court of appeal without going into the real question of controversy, which caused a great hardship for both the parties.

Moreover, Proper place of procedure in any system of administration of Justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. All Rules of courts are nothing but provisions intended to secure the proper administration of Justice, so that full power of amendment must be enjoyed and should always be liberally exercised. In this case it has not been done so. Moreover, it is proper to mention here that when allowing the amendment in the plaint the respondent's right should also be kept in view.

What has been stated above is, however, subject to very important condition that the nature of the suit in, so far as its cause of action is concerned is not changed by the amendment, whether it falls “Under the first part of Order 6 Rule 17 or in the second part” because when the cause of action is changed, the suit itself would become different from the one initially filed.

The original documents vide mutation No. 1038 and 974 relied upon by the petitioner/plaintiff, whether or not it pertains to inheritance of the petitioner/plaintiff which will be determined by the trial court after inserted in the original plaint filed by the petitioner/plaintiff, if allowed these amendments would not have caused any embarrassment to the respondents/defendants either in seeking and making similar amendments in their written statement.

The inconvenience caused to the respondents as the provision itself visualizes is not only natural but would ordinarily be occasioned in almost every case, that is why the law visualizes the award of adequate compensation as expenses which shall be paid to the respondents/defendants.

So far as the fresh application dated 24th September 2005, is concerned the same is fully identical with the contents of first application for amendment dated 04-06-2002, moved by the petitioners/plaintiffs. **It is well recognize principle of law that dismissal of application on technical grounds, without touching merits and without determining right to**

amend the pleading, is no bar for maintaining second application for the same purpose, as even under the provisions of section II CPC or principles, there under, second application should only be barred, when earlier is decided on merits, but this contention is strongly opposed by the learned senior counsel Mr. Shaukat Ali, Advocate for respondents and submits, that plaintiff filed consecutive application under Order 6 Rule 17 CPC including the present application. Once a decision given on an application regarding the same subject matter similar application could not be filed again on the same ground. The learned counsel for respondents/defendants has referred cases on the point of “**resjudicarta**”. We have carefully examined the above contention and judgments referred by the learned counsel for respondents and **formed our view** that the case law referred by the counsel for respondent have no relevancy with the instant case, as such contention of learned counsel has no force at all.

The ultimate result is, that the petitioner/plaintiff proved a genuine case for amendment, which is permissible and should otherwise liberally allowed in view of the grounds high-lighted in the amendment application and would not create enormous difficulties for the petitioners/plaintiffs.

In the light of the forgoing discussion this leave to appeal is converted into appeal and allowed. The impugned judgment is set aside. Fresh application made by the petitioners/plaintiffs dated 24-09-2005, in the trial court for amendment of their plaint is allowed, subject to payment of the Rs. 5000/- (five thousand) as cost of the amendment. The case is remanded back to the trial court, with direction that after the amendment of plaint the defendants/respondents shall also, if they so request, be allowed a proper opportunity to amend their written statement. The case in hand may be expedite to avoid further delay for its disposal on merit.

Appeal is allowed.

JUDGE

JUDGE