

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

1. Civil Appeal No. 76 of 2016
(PLA filed on 12.1.2016)

Usman Ali s/o Farzand Ali, caste Bhans Rajput,
r/o Islamgarh, Tehsil and District, Mirpur.

.... APPELLANT

VERSUS

1. Naseer Ahmed,
2. Kaneez Akther,
3. Parveen Akhtar, daughters of Ch.
Muhammad Sharif, caste Bhans Rajput,
r/o Islamgarh, Tehsil and District Mirpur.

..... RESPONDENTS

4. Anayat Ali s/o Ibrahim,
5. Fatima Bibi, widow,
6. Muhammad Naeem,
7. Amjad Shaheen, sons,
8. Kaneez Akhter,
9. Rizwan Firdoos,
10. Anjum Rahna daughters of Dewan Ali.
11. Parveen Akhter, widow,
12. Sajjad Ali,
13. Shahid Mehmood,
14. Ibrar Ali,
15. Israr Ali, sons,
16. Sameena Ali,
17. Sarwat Ali, daughters of Kafayat Ali.
18. Muhammad Bashir,

19. Muhammad Khalil, sons,
20. Irshad Begum,
21. Riaz Begum, daughters of Raham Ali.
22. Noor Begum, widow
23. Muhammad Shoaib,
24. Anees Ahmed Raza, sons,
25. Mahmooda Hussain d/o Ch. Farzand Ali.
26. Muhammad Tariq s/o Reham Ali.
27. Safeena Zia, widow,
28. Easa Arman Zia, son,
29. Raheesa Zia,
30. Aleesha Zia,
31. Anam Zia,
32. Ramya Zia, daughters of Zia Islam, caste
Bhans Rajput r/o Islamgarh, District
Mirpur.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated
12.11.2015 in Revision Petition No. 34 of 2015)

FOR THE APPELLANT: Sardar Muhammad Azam
Khan, Advocate:

FOR THE RESPONDENTS: Raja Hasan Akhtar,
Advocate.

1. Civil Appeal No. 77 of 2016
(PLA filed on 8.2.2016)

1. Naseer Ahmed son.
2. Kaneez Akhter,
3. Parveen Akhter d/o Ch. Mohammad Sharif
r/o Islamgarh, Tehsil and District Mirpur.

.... APPELLANTS

VERSUS

1. Anayat Ali s/o Ibrahim (Deceased)
represented by following legal heirs:-
 - i) Raqia Begum, widow,
 - ii) Anwar-ul-Haq, son,
 - iii) Maria,
 - iv) Jawaria,
 - v) Haiza, daughters.
2. Fatima Bibi, widow,
3. Mohammad Naeem,
4. Amjad Shaheen, sons,
5. Kaneez Akhter,
6. Rizwana Firdoos,
7. Anjum Rahna, daughter of Dewaan Ali,
8. Parveen Akhter, widow,
9. Sajjad Ali,
10. Shahid Mehmood,
11. Ibrar Ali,
12. Israr Ali, sons,
13. Sameena Ali,
14. Sarwat Ali d/o Kafayat Ali,
15. Mohammad Bashir,
16. Mohammad Khalil, sons,
17. Irshad Begum,
18. Riaz Begum d/o Raham Ali,
19. Noor Begum, widow,
20. Mohammad Shoaib,
21. Anees Ahmed Raza,
22. Usman Ali, sons,
23. Mohmoona Hussain d/o Ch. Farzand Ali,
24. Mohammad Tariq s/o Rustam Ali,
25. Safeena Zia, widow,
26. Eesa Arman Zia, son,
27. Raheesa Zia,
28. Aleesha Zia,
29. Anam Zia,
30. Ramya Zia, d/o Zia Islam r/o Islamgarh,
Tehsil and District Mirpur.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
12.11.2015 in Revision Petition No. 33 of 2015)

FOR THE APPELLANTS: Raja Hassan Akthar,
Advocate.

FOR THE RESPONDENTS: Sardar Muhammad Azam
Khan, Advocate.

Date of hearing: 19.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— Both the titled appeals by leave of the Court arise out of the even dated judgments of the High Court dated 12.11.2015, whereby the revision petitions No. 33 of 2015 filed by Usman Ali, respondent, herein, has been accepted while revision petition No. 34 of 2015 has been dismissed. Since identical question of law and facts is involved in both the appeals, therefore, these are being disposed of through the consolidated judgment.

2. At the outset, Sardar Muhammad Azam Khan, Advocate, the counsel for respondents in appeal No. 77/2016 titled *Naseer Ahmed and others vs. Anayat Ali and others*, raised a preliminary objection that petition for leave to appeal is hopelessly time barred.

3. Raja Hassan Akhtar, Advocate the counsel for the appellants submitted that the appeal is within time. The impugned judgment was announced on 12th November, 2015. The application for obtaining the copy of the judgment and decree was filed on 10th November, 2015 and the copy was delivered on 11th December, 2015. After deducting the time consumed in obtaining the copy, the appeal is within time.

4. While controverting the arguments, Sardar Muhammad Azam Khan, Advocate, submitted that the judgment was announced on 12th November, 2015, how the application can be filed on 10th November, 2015, two days prior to announcement of the judgment. In fact, it is a clerical error. Instead of 10th December, 2015, 10th November, 2015 has been written.

5. After hearing the arguments of the counsel for the parties we have perused the record. The judgment was announced on 12th November, 2015. There is original application on

the file of the High Court. Naseer Ahmed filed an application through Munir Ahmed, Clerk of his counsel for obtaining the copy of the impugned judgment on 10th December, 2015. The copy was delivered on 11th December, 2015. The requisite court-fee in form of stamps has been purchased in the name of Naseer Ahmed on 10th December, 2015. It is clear from the application and order passed by the Deputy Registrar on the application that the application was moved on 10th December, 2015 and the copy was issued on 11th December, 2015. Two days were consumed in obtaining the copy. The petitioner is entitled for condonation of delay of two days. The judgment was announced on 12th November, 2015. The petition for leave to appeal was filed on 8th February, 2015, which comes 88 days. After deducting two days which were consumed in obtaining the copy of the judgment, there remain 86 days. The appeal has been filed on 86th day. The limitation for filing a petition for leave to appeal under Order XIII of the Azad

Jammu & Kashmir Supreme Court Rules, 1978, is 60 days. It is 26 days beyond the period of limitation. No plausible explanation whatsoever has been furnished by the counsel for the appellant for filing the instant appeal beyond the period of limitation. The appeal is hopelessly time barred. Its merits dismissal.

6. The facts of appeal No. 76 of 2016 are that the predecessor of the appellant, Usman Ali and others filed a declaratory suit in the Court of Senior Civil Judge, Mirpur on 30th April, 1992 alleging, therein, that land measuring 24 kanal, 4 marla comprising survey Nos. 325, 327, 328 and 343, *Khata* No. 22/57, *Khewat* No.1-min/9, situate in village *Dangaliyan*, Tehsil and District Mirpur was in the ownership of their grandfather, which according to family partition, has come in their shares. The defendants have no concern with the land. The plaintiff and proforma-respondents are paying land revenue since *Dogra* regime. They are also in the possession of the suit land. The record of new

settlement pertaining to year 1991-92 in favour of defendants is against law, facts and inoperative against the rights of the plaintiffs and proforma-respondents and also liable to be corrected. The gift-deed executed in the year 1985-*Bik*, in favour of defendants was also challenged. After necessary proceedings, the trial Court dismissed the suit for want of proof vide judgment and decree dated 2.2.2007. An appeal was filed in the Court of District Judge, Mirpur. During the pendency of appeal in the Court of District Judge, Mirpur, the appellant filed an application for bringing an amendment in the suit to the effect "that grandfather of the respondents died during life time of his father Ch. Masahib, therefore, the respondents were not entitled for inheriting the legacy of Ch. Masahib". They alleged that this fact came in their knowledge from the suit filed by the father of the defendants, Muhammad Sharif. The District Judge, after seeking objections and hearing the arguments, dismissed the application for

amendment. A revision petition filed by the appellant, herein, was also dismissed by the High Court through the impugned judgment dated 12th November, 2015, hence, this appeal.

7. Sardar Muhammad Azam Khan, Advocate, the learned counsel for the appellant argued that the judgment of the High Court is against law and the record. It is proved from the suit filed by the father of respondents, Muhammad Sharif, that the father of Muhammad Sharif died during life time of Ch. Masahib, his grandfather, therefore, he was not entitled for inheriting the legacy of Ch. Masahib and as such he was not entitled to make a gift of property of Ch. Masahib. The learned counsel submitted that another suit regarding the property of Ch. Masahib was filed by the father of the appellant and others in respect of land measuring 10 kanal 19 marla on the same ground. The said suit was also dismissed. During the pendency of appeal in the Court of District Judge, Mirpur, an application for

bringing an amendment was filed on the same ground. The said application was also dismissed. The appellant filed a revision petition bearing register No. 33 of 2015 in the Azad Jammu & Kashmir High Court. The High Court accepted the said revision petition and allowed the amendment. He submitted that the High Court delivered the contradictory judgments on the same facts. Revision petition No. 33 of 2015 was accepted and amendment was allowed, while Revision Petition No. 34 of 2015, on the same facts, was dismissed and the amendment application was disallowed. The learned counsel argued that the dispute between the parties is in relation to the land which was the property of Ch. Masahib, the ancestor of the appellant and the respondents as well. They want to bring an amendment in the suit to the effect that grandfather of defendants died during life time of Ch. Masahib, as such their father was not entitled to inherit the property of Ch. Masahib. This is such a question which goes to the root of

the case and without bringing on record such an amendment, the real controversy between the parties could not be resolved. The amendment is necessary for the just decision of the case. No new case is being introduced by the plaintiff-appellants. The learned counsel submitted that the rule of propriety demands that if in one case having similar facts amendment has been allowed and appeal against the said judgment of the High Court has been dismissed being time barred, the amendment in the present appeal may also be allowed.

8. While controverting the arguments, Raja Hassan Akhtar, Advocate, the counsel for the respondents argued that there were two different pieces of land. The land in dispute in the present suit was in the ownership of Ch. Masahib, while the land in another suit was not in his ownership. Ch. Masahib has occupancy rights in the said land, therefore, the amendment application cannot be considered at par. The learned counsel further argued that

amendment is not necessary for the just decision of the case. The plaintiff tried to introduce a new case. The learned counsel defended the judgment of the High Court.

9. We have heard the learned counsel for the parties and also perused the record. The father of the appellant and others filed a declaratory suit in respect of land measuring 24 kanal 4 marla, to the effect that the land was in the ownership of Ch. Masahib, their great grandfather, which according to the family partition has come in their share and they are in the possession of the land since long. The defendant, Muhammad Sharif has no concern with the land. They have been paying land revenue since *Dogra* regime. The record of rights pertaining to the year 1991-92 is against law. They also challenged the gift-deed executed in the year 1985-*Bik* in favour of defendant Muhammad Sharif by his father. The Senior Civil Judge, Mirpur dismissed the suit. An appeal was filed in the Court of District Judge,

Mirpur. During the pendency of appeal, the appellant filed application for amendment stating, therein, that Baga Khan, the father of Muhammad Sharif, died during life time of his father Ch. Masahib, therefore, he was not entitled to inherit the property of Ch. Masahib. The appellant, therefore, wants to bring on record the fact that Baga Khan, father of Muhammad Sharif died during life time of Ch. Masahib. If Baga Khan, the father of Muhammad Sharif died during life time of Masahib Khan, the grandfather of the respondents, herein, it directly affects the litigation between the parties and the real controversy between the parties cannot be resolved without bringing on record this fact.

10. Order VI rule 17, C.P.C., postulates that pleadings can be amended by a party at any stage of proceedings if new case is not being introduced by the party. The amendment appears to be necessary for the just decision of the case. The application for amendment has not

been filed with mala-fide intention to prolong the proceedings. If these conditions are fulfilled then the amendment can be allowed at appellate stage even in this Court. It was observed in para 4 of the judgment reported as *Abdul Rashid & another vs. Munir Akthar* (2016 SCR 128) as under:

“4. Rule 17 of Order VI, C.P.C., empowers the Court that it may at any stage of the proceedings allow either party to alter or amend its pleadings in such a manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. However, the amendment, whereby the fundamental character of the suit is altered or right accrued to a party by lapse of time is taken away, is not allowed by the Courts. While allowing the application for amendment, the Court has to take into consideration that by the proposed amendment a new case is not built up or the complexion of the suit is not changed and the proposed amendment is necessary for just decision of the controversy involved in the case. No doubt, amendment can be allowed on the ground of some subsequent even which may occur during the

pendency of the suit/appeal. Amendment even can be allowed during pendency of appeal in the Supreme Court.”

11. As the amendment has been allowed in another suit between the parties, therefore, the rule of propriety demands that amendment should also have been allowed in the instant suit. Thus, we draw the conclusion that amendment is necessary for the just decision of the case. No new case is being introduced by the party nor the application has been filed with mala-fide intention to prolong the litigation. The application for amendment filed by the appellant, herein, is allowed. The impugned judgment of the High Court is set aside and appeal No. 76 of 2016 titled *Usman Ali vs. Naseer Ahmed and others* is accepted while appeal No. 77/2016 titled *Naseer Ahmed vs. Anayat Ali and others* is dismissed with no order as to costs.

CHIEF JUSTICE
Mirpur.
___.12.2016

JUDGE