

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Civil Review No.34 of 2015
(Filed on 26.12.2015)

1. Lal Begum, widow,
2. Muhammad Farooq,
3. Dawood Ahmed,
4. Khalid Mehmood,
5. Waheed Ahmed,
6. Mahboob Ahmed,
7. Mahmood Ahmed, sons
8. Tasveer Akhtar,
9. Shamim Akhtar,
10. Nasreen Akhtar,
11. Shaheen Kousar, daughters of Muhammad Din,
(deceased), Caste Gujjar, r/o Khore, Tehsil &
District Kotli.
12. Anayat Begum, widow,
13. Rahim Dad,
14. Faryad,
15. Liaqat,
16. Muhammad Aslam,
17. Muhammad Zahid, sons,

018. Fazilat Begum,
19. Akhtar Begum,
20. Khalida Begum,
21. Tasleem Akhtar,
22. Shaheen Akhtar,
23. Robina Kousar,
24. Shazia Kousar, daughters of Alif Din (deceased),
Caste Gujjar, r/o Village Khore, Tehsil & District
Kotli.
25. Muhammad Hussain,
26. Sher Muhammad,
27. Naik Muhammad, sons of Lal Din, Caste Gujjar,
r/o Khore, Tehsil & District Kotli.

..... PETITIONES

1. Qayyum Khan,
2. Mehmood Khan,
3. Sarfraz,
4. Gul Raza, sons,
5. Khalida Begum,
6. Kousar Begum, daughters,
7. Sandal Begum, widow of Taj, Caste Khakhreel,
r/o Village Khore, Tehsil & District Kotli.

..... RESPONDENTS

[In the matter of review the judgment of this Court
dated 14.11.2015 Civil Appeal No.200 and 2014]

FOR THE PETITIONERS: Ch. Muhammad Ilyas,
Advocate.

FOR THE RESPONDENTS: Mr. Riaz Naveed Butt,
Advocate.

Date of hearing: 21.12.2016.

JUDGMENT:

Mohammad Azam Khan, C.J.— The above titled review petition has been filed from the judgment of this Court delivered in Civil Appeal No.200 of 2014, decided on 26th November, 2015, whereby appeal filed by the petitioner, herein, has been dismissed.

2. The necessary facts for disposal of the review petition are that the plaintiff-respondents, herein, filed a suit for cancellation of the decree dated 16th May, 1968, in respect of the *Shamilat-deh* land, measuring 10 *kanal*, comprising (old) survey No.984 (new) 2269, 2252 and 2270, situate in village Khore, Tehsil Kotli, against the defendant-petitioners, herein, in the Court of Civil Judge Kotli on 2nd December, 1973, alleging therein that the land measuring 33 *kanal* comprising survey no.984, measuring 33 *kanal* was transferred in

their favour through a gift-deed registered on 10th May, 1968, by their father. After registration of the gift-deed they are owners of the land. Defendants No.1 to 5, filed a suit against defendants No.6 and 7, in respect of the land falling under survey No.984, measuring 10 *kanal* on 16th May, 1968. The defendants therein filed cognovits on the same day and the trial Court passed the decree. They are owners of the land. They were minors. The defendants later on, snatched the possession of the land from them and got sanctioned mutation No.2843. They also sought possession of the disputed land. During pendency of the said suit after a period of around 14 years, the petitioners, herein, filed a suit for cancellation of the gift-deed dated 10th May, 1968, on the ground that they are in possession of the land since 1952. Their adverse possession has been matured into ownership. They have also obtained the decree of the land in their favour. The trial Court consolidated both the suits and framed additional issues. After necessary proceedings, the trial Court vide its judgment and decree dated 24th May, 2003, passed the decree in favour of the

plaintiffs Qayyum Khan and others, respondents, herein, dismissed the suit filed by the rival plaintiff-petitioners, herein, cancelled the decree dated 16th May, 1968, and also cancelled mutation No.2843. The appellants, herein, filed an appeal in the Court of the Additional District Judge Sehnsa, Camp Kotli. The appeal was dismissed through judgment and decree dated 25th September, 2007. The petitioners filed second appeal in the High Court. The High Court vide its judgment and decree dated 26th October, 2013, dismissed the appeal. The appeal was dismissed through the judgment under review on 26th November, 2015.

3. Ch. Muhammad Ilyas, Advocate, counsel for the petitioners, argued that at page No.8 of the judgment this Court observed that “The trial Court consolidated both the suits and recorded the findings that the father of Qayyum Khan and others, had a share of 45 *kanal* in the *Shamilat-Deh* land. He has lawfully transferred 33 *kanal* of *Shamilat-Deh* land in favour of Qayyum Khan and others.” While observing as such the Court ignored the provisions of Section 5 of the *AJ&K Shamilat-Deh*

Grant of Khalsa Waste Land Act, 1966, which provides that for determining the extent of the rights of a land owner to *Shamilat* land, the area owned or cultivated by him or his predecessor-in-interest in the year 1982 (*Bikrami*) shall be the basis. The area in respect of which occupancy rights are held by any person according to the revenue record in that year should be deducted when working out the entitlement of an individual owner. Benefit of such occupancy areas should go to future land owners. The share of any individual land owner in *Shamilat-Deh* area shall be in proportion to his cultivated owned land in the year 1982 (*Bikrami*) subject to the condition that the total holding of a land owner in a village including his own land and that given to him under this act shall not exceed twenty kanals in the case of a local destitute or four hindered kanal in the case of others, but the Court has not dilate upon such question. This is an error apparent on the face of the record and the review is permissible.

4. While controverting the arguments Mr. Riaz Naveed Butt, Advocate, counsel for the respondents,

argued that there is no error apparent on the face of the record. The petitioners want reappraisal of the evidence and want to reopen the whole case in the guise of review petition.

5. We have heard the learned counsel for the parties and perused the judgment.

6. At the outset it may be observed that under section 42-D of the Azad Jammu & Kashmir Interim Constitution Act, 1974, read with Order XLVI, Rule 1 of the Azad Jammu & Kashmir Supreme Court Rules, 1978, a review is permissible on the ground of an error apparent on the face of the record and in civil matter on the grounds those akin to Order 47 Rule 1 of the C.P.C., on the basis of an error apparent on the face of record, on the discovery of some new evidence or some new facts which was not in the knowledge of the party despite his full effort, but review is not permissible for opening the whole case or putting forward a new case. The counsel for the petitioners has taken a new point in the memo of the review petition and also tried to argue the some new points, which were not taken in memo of

the appeal. For proper appreciation para No.3 of the judgment whereby the arguments of the appellants-petitioners, herein, are reproduced as under:-

“3. Ch. Muhammad Ilyas, Advocate, while argued on behalf of the appellants, submitted that the judgment and decree of the High Court as well as the lower Courts is against law and the record. The trial Court as well as both the appellate Courts, have not properly appreciated the evidence of the appellants and also committed misreading and non-reading of the evidence. The disputed land is a *shamilat-deh* land. The Civil Court has no jurisdiction in the matter. The learned counsel submitted that the appellants are in possession of the land since 1952. The gift-deed was registered on 10th May, 1968. The adverse possession of the appellants had matured into ownership prior to the registration of gift-deed and decree was passed in their favour on 16th May, 1968 on the ground that they have purchased the land from Sakhi Muhammad and others and their possession on the land is matured into ownership. The trial Court as well as the appellate Courts have not appreciated the evidence in its true prespective. He requested for acceptance of the appeal.”

7. All the point that the petitioners have raised in the review petition were not taken in the appeal or argued before the Court at the time of arguing the appeal. The petitioners are putting a new case in the review petition, which is not permissible. It was observed in the case reported as *Sawar Khan vs. Banaras Khan & 2 others* [2004 SCR 506], as under;-

“7. The above stated grounds were neither argued before us when the appeal was taken up for arguments nor do they materially affect the case of the petitioner. The point which has not been agitated or argued at the time of appeal cannot be allowed to be raised for the first time at the time of hearing the review petition. The scope of review petition is very limited and is much more narrow than the appeal, as such we expect for the members of the legal fraternity that in future they would keep in their mind the law relating to review petition. The review petition is permissible only when there is mistake or error apparent on the face of record.”

8. There is no error apparent on the face of the record. New case cannot be allowed to be put forward in the review petition.

The result of the above discussion is that finding no force in this review petition, it is hereby dismissed with no order as to costs.

CHIEF JUSTICE

Mirpur.
16.01.2017.

JUDGE