

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 5 of 2016
(PLA Filed on 25.2.2015)

1. Muhammad Rasheed,
2. Khursheed Ahmed,
3. Saeed Ahmed, sons,
4. Muhammad Bi, widow,
5. Shameem Akhtar,
6. Shaheen Akhtar,
7. Tahira Parveen, daughters of Nazir Ahmed,
caste Mughal, r/o Mandi Dhrang Tehsil and
District Kotli,
8. Muhammad Bi d/o Said Muhammad son of
Niaz Ali, caste Mughal r/o Mandi Dhrang,
Tehsil and District Kotli.

.... APPELLANTS

VERSUS

1. Chief Administrator of Auqaf,
Muzaffarabad, Department of Azad Govt. of
the State of Jammu & Kashmir.
2. Assistant Administrator of Auqaf/Manger
Auqaf, Kotli.
3. Collector District Kotli/XEN, Settlement of
Kotli.
4. Tehsildar, Kotli.
5. Girdawar Circle Kotli.
6. Patwari Halqa Mandi Dhrang, Kotli.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
22.12.2014 in Civil Appeal No. 43 of 2012)

FOR THE APPELLANTS: Ch. Muhammad Ilyas,
Advocate.

FOR THE RESPONDENTS: Mr. Mehmood Hussain
Chaudhry, Additional
Advocate General.

Date of hearing: 23.1.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arise out of the judgment dated 22.12.2014 passed by the Azad Jammu & Kashmir High Court in civil appeal No. 43 of 212.

2. The precise facts forming the background of the captioned appeal shortly stated are that a suit for declaration and perpetual injunction was filed by the appellants, herein, against the defendants-respondents, herein, in the Court of District Judge, Kotli on 3.11.2010. The precise stand of the appellants, herein, was that their predecessor-in-interest was recorded as owner in possession of the suit

land and the defendants have no concern with the same. The defendants are claiming the ownership of the property by posing the same as waqaf property because the same is adjacent to the shrine of Shah Hanas Diwan Badsha. The fact of the matter is that this shrine has no concern with the suit land. It was further stated that the said land has been entered in the ownership of the predecessor-in-interest of the plaintiffs in the revenue record prepared in 1961-62. The suit was contested by the respondents by filing written statement whereby they refuted the claim of the plaintiffs and raised some objections including the plea of res-judicata. The learned trial Court framed issues, heard the parties on legal issues and vide judgment and decree dated 10.3.2012 dismissed the suit on account of res-judicata. An appeal was filed before the Azad Jammu & Kashmir High Court against the aforesaid judgment and decree, which has been dismissed through the

impugned judgment and decree dated 22.12.2014.

3. Ch. Muhammad Ilyas, the learned Advocate appearing for the appellants has contended that the land in dispute was recorded in the ownership of the predecessor-in-interest of the appellants, herein, in the revenue record (مساحیت) in 1961-62 B.K and a mutation to the same effect was also attested and is placed on the record, which clearly proves that the suit land was not possessed by the Shrine rather is in the ownership of appellants, herein. The learned Advocate argued that the suit was wrongly dismissed on account of res-judicata because the plaintiffs and their predecessor-in-interest were not a party in the earlier round of litigation and they have not signed the *Wakalatnama*. He referred to the power of attorney filed on behalf of some of the persons in the earlier round of litigation. The learned Advocate argued that in the circumstances of the case fraud was pleaded and the question of

res-judicata is not applicable and the suit was liable to be disposed of on merit after taking evidence. The learned Advocate submitted that the question of limitation was also a mixed question of facts and law, hence, the suit could have been disposed of only after recording evidence.

4. Mr. Mehmood Hussain Chaudhry, the learned Additional Advocate General has not seriously disputed the record referred to and relied upon by the learned Advocate appearing for the appellants.

5. We have heard the learned Advocates representing the parties and have gone through the entire record of the case. We are of the view that there is old revenue record in which the appellants, herein, have been recorded as the owners of the suit land. Moreover, the plaintiffs have pleaded fraud claiming therein that they have not signed any *Wakalatnama* in the earlier round of litigation and their names have been entered fraudulently by someone, which fact,

prima-facie finds supports from the copy of the power of attorney/ *Wakalatnama*. In addition to that the notification alleged to have not been published. In such circumstances, the suit was liable to be decided on merit after providing the parties an opportunity of leading evidence in support of their claim. The dismissal of the suit on any technical ground was not justified. The appeal is, therefore, accepted and the judgment and decree passed by the District Judge dated 3.11.2010 and that of the learned High Court dated 22.12.2014 are set aside. The case is remanded to the learned District Judge for disposal on merit in accordance with law.

JUDGE

JUDGE

Mirpur.
24.1.2019.

