

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.219 of 2018

(PLA filed on 10.08.2018)

1. Inhabitants of village through Muhammad Yousaf s/o Gulab,
2. Muhammad Riaz,
3. Muhammad Latif,
4. Muhammad Rafique,
5. Muhammad Arif,
6. Muhammad Iqbal,
7. Muhammad Maqsood, sons,
8. Shamim Begum daughter of Ch. Munshi,
9. Muhammad Tariq s/o Faqeer Alam, caste Jatt, residents of Chahwala, Tehsil Charhoi, District Kotli.

....APPELLANTS

VERSUS

1. Fazeelat Begum, widow,
2. Sikandar Khan,
3. Kamran Khan, sons,
4. Tajamal Begum,
5. Shazia Begum,

6. Nighat,
7. Saeeda,
8. Tallat,
9. Iffat daughters of Mehram Dad,
10. Sahib Dad Khan s/o Wali Dad Khan,
11. Shaista Khan, widow,
12. Waqar Hamza,
13. Zeeshan Ali
14. Waqas Khan, sons,
15. Farzand Kousar,
16. Shagufta,
17. Noreen,
18. Yasmeen,
19. Ibrar Begum daughters of Jabbar Akhtar, caste Rajpoot, r/o Chahwala, Tehsil Charhoi, District Kotli.

....RESPONDENTS

(On appeal from the judgment and decree of the High Court dated 05.07.2018 in Civil Appeal No.29 of 2012)

FOR THE APPELLANTS: Mr. Mehboob Ellahi
Chaudhary, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Younas
Tahir, Advocate.

Date of hearing: 19.02.2020

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment and decree dated 05.07.2018, passed by the Azad Jammu & Kashmir High Court in Civil Appeal No.29 of 2012.

2. The facts forming the background of the captioned petition for leave to appeal are that two suits i.e. suit No.21/2008 and 23/2008 for declaration and perpetual injunction were filed by the appellants, herein, in the Court of Civil Judge Charhoi, on 23.03.2008, whereby, the legality and correctness of the gift-deed dated 19.07.1992, was challenged. A cross suit No.22/2008 for perpetual injunction was also filed by Mehram Dad & others in the same Court on the same date. All the suits were contested by the parties by filing separate written statements. The learned trial Court consolidated all the 3 suits and framed issues vide order dated 13.09.2001. Thereafter, the parties were directed to lead evidence in support of their respective claim. At the

conclusion of the proceedings, suit No.22/2008 filed by Mehram Dad Khan & others and suit No.23 filed by the appellants, herein, against Deputy Commissioner & others were dismissed for want of cause of action, whereas, suit No.21/2008 filed by the appellants, herein, against Jabbar Akhtar & others was decreed vide judgment and decree dated 30.03.2010. Resultantly, the gift-deed dated 19.07.1992 was cancelled. Feeling aggrieved from the judgment and decree passed by the learned Civil Judge Charhoi, dated 30.03.2010, Mehram Dad Khan & others filed an appeal before the learned District Judge Kotli on 28.04.2010. The learned District Judge after hearing the parties, through the judgment and decree dated 07.12.2011, upheld the judgment and decree of the trial Court passed in suits No.22/2008 and 23/2008, whereas, with partial modification, the judgment passed in suit No.21/2008 was maintained. Feeling dissatisfied from the judgment and decree recorded by the learned District Judge Kotli, second appeal was filed before the Azad Jammu & Kashmir High Court on 06.03.2012 by

Fazeelat Begum & others. The learned High Court through the impugned judgment dated 05.07.2018, has accepted the appeal and remanded the case to the trial Court for deciding the applications filed for impleading the legal heirs of Jabbar Akhtar.

3. Mr. Mehboob Ellahi Chaudhary, the learned Advocate appearing for the appellants argued that the impugned judgment of the learned High Court badly suffers from misreading and non-reading of the record and the same has been handed down without hearing the arguments of the parties properly. The learned Advocate further argued that deceased, Jabbar Akhtar, died on 23.03.2009, and the appellants, herein, filed application for impleading his legal heirs on 08.06.2009. The learned Advocate further argued that the respondents also filed an application for impleading the legal heirs of Jabbar Akhtar, deceased, on 21.12.2009. He added that the legal heirs of Jabbar Akhtar, deceased, also filed an appeal before the learned District Judge Bhimber, therefore, defect, if any, stood cured. In support of his submissions,

the learned Advocate has placed reliance on the cases reported as *Muhammad Ilyas & 2 others vs. Ikramullah Khan & 6 others* [2017 SCR 1079] and *Muhammad Sadiq vs. Muhammad Sakhi* [PLD 1989 Supreme Court 755.

4. Conversely, Mr. Muhammad Younas Tahir, the learned Advocate appearing for the other side has defended the impugned judgment passed by the learned Shariat Appellate Bench of the High Court.

5. We have heard the learned counsel for the parties and have gone through the record of the case. It is admitted position that the application for impleading the legal heirs of Jabbar Akhtar, deceased, was filed by the parties in both the suits on 08.06.2009. The learned trial Court has not passed any order on this application, as a result whereof, the judgment and decrees have been passed against a dead person. The learned High Court remanded the case to the learned trial Court for passing order on the application for impleadment of the legal heirs of Jabbar Akhtar, deceased. We are of the view that the there is no legal infirmity in the impugned judgment

of the learned High Court because judgment and decree cannot be passed against a dead person and it was imperative for the learned trial Court to decide the application and bring the legal heirs of Jabbar Akhtar, deceased, on record before decision of both the suits. The case law referred to and relied upon by Mr. Mehboob Ellahi Chaudhdary, the learned Advocate for the appellants, have distinguishable facts and the rule of law laid down therein is not applicable to the facts of the case in hand. In the case reported as *Alam Din vs. Chairman, Municipal Committee, Mirpur, and 3 others* [PLJ 1992 SC (AJK) 62], during pendency of the writ petition, an application seeking amendment of the writ petition was filed which was neither taken into consideration by the learned High Court nor the respondents, therein, were asked to file objections. This Court on appeal remanded the case to the High Court for considering the amendment application and to decide the matter one way or the other.

In view of the above, finding no force in this appeal, the same is hereby dismissed. No order as to

costs. However, the learned trial Court is directed to expedite the matter and decided the controversy not later than 6 months as the parties are litigating since long.

Mirpur
19.02.2020.

JUDGE

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JUDGE

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