

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ghulam Mustafa Mughal, J.

Civil PLA No.54 of 2020
(Filed on 12.02.2020)

Ameer Nazim Hussain,

.... PETITIONER

versus

Shafique and others.

... RESPONDENTS

[On appeal from the judgment of the High Court,
dated 20.01.2020 in writ petition No. 27 of 2018]

FOR THE PETITIONER: Raja Khalid Mehmood
Khan, Advocate.

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

Date of hearing: 26.11.2020.

ORDER:

GHULAM MUSTAFA MUGHAL, J.—This petition for leave to appeal arises out of the judgment passed by the High Court, dated 20.01.2020, whereby the writ petition filed by the petitioner, herein, has been dismissed.

2. The brief facts forming the background of the captioned petition for leave to appeal are that the petitioner, herein, filed a writ petition before the Azad Jammu and Kashmir High Court stating therein that he filed a suit before Civil Judge Kotli, which was transferred to Civil Judge Khuiratta wherein, the plaintiff sought possession on the basis of right of prior purchase, regarding the suit land bearing survey No. 690 min, measuring 2 kanal situated in village Bayal Tehsil Khuiratta. It was stated that the defendants contested the suit by

filing written statement. During pendency of the suit, the plaintiff-petitioner submitted an application on 13.12.2016, seeking amendment in the plaint, whereupon the objections have also been filed by the other side. The learned Civil Judge after hearing both parties, rejected the amendment application vide order dated 31.05.2017. Feeling aggrieved, the petitioner, herein, preferred a revision petition before the District Judge Kotli on 08.06.2017. The learned District Judge, after hearing the arguments of the learned counsel for the parties dismissed the revision petition vide order dated 07.04.2018. the said order was challenged by the petitioner, herein, before the Azad Jammu and Kashmir High Court. The learned High Court after necessary proceedings has also dismissed the writ petition through the impugned judgment dated 20.01.2020.

3. Raja Khalid Mehmood Khan, the learned Advocate for the petitioner argued with vehemence that there is no limitation for filing an application for grant of amendment in the pleadings, therefore, all the Courts below have misconstrued the provisions contained in Order VI rule 17 and arbitrarily rejected the application. The learned Advocate further argued that the learned High Court has also illegally held that the matter pertains to the question of Sharia could not be raised before the Civil Court as the same was to be referred to the proper Court for decision. The learned Advocate argued that the amendment sought was of purely legal nature which can be allowed to be argued even without formal amendment but the Courts below have not taken into consideration the principles granting or refusing the amendment in the pleadings.

4. Conversely Mr. Mehboob Ellahi Chaudhdary, the learned Advocate for the other side argued with vehemence that in this case, the sale was affected on 25.07.2015 and the suit was filed on 21.09.2015, whereas, the pre-emption law was amended and promulgated with effect from 20.09.2015. The learned Advocate argued that under section 13 of amended law, it was imperative for the plaintiff to seek *Talb-i-muwathibat, talb-i-ishhad and talb-i-khusumat* which was mandatory and without this suit is not maintainable. He further argued that the amendment for incorporating the aforesaid grounds cannot be allowed after the prescribed period for filing the suit.

After hearing the learned counsel for the parties and going through the record at some length, I am of the view that the questions raised in the petition as well as by the respondents, herein,

are of first impression requiring disposal in regular appeal. Leave is therefore granted. The petitioner is directed to deposit security of Rs. 1000/- within 10 days, failing which, the leave granting order shall automatically be deemed to have been rescinded. The filing of concise statement is dispensed with, however, the parties may file any document if they so intend. The office is directed to fix the case on the very first day of next tour after seeking approval from the Hon'ble Chief Justice.

JUDGE

Mirpur
26.11.2020