

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.89 of 2020

(Filed on 18.03.2020)

1. Shameem Akhtar widow of Muhammad Suleman caste Jatt r/o village Thara Tehsil Dadyal District Mirpur A.K.
2. Shafique Hussain s/o Imam Ali caste Jatt r/o village Thara Tehsil Dadyal District Mirpur A.K.

.....PETITIONERS

**VERSUS**

1. Muhammad Sharif s/o Ghulam Muhammad,
2. Munawar Hussain,
3. Karamat Hussain,
4. Liaqat Hussain,
5. Rifaqat Hussain,
6. Shafqat Hussain,
7. Khalid Hussain sons of Muhammad Sharif caste Jatt residents of village Thara Tehsil Dadyal District Mirpur Azad Kashmir.
8. Additional District Judge Dadyal.
9. Civil Judge Dadyal.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated  
24.01.2020 in Writ Petition No.41 of 2014]

FOR THE PETITIONERS: Ch. M. Sabir, Advocate.

FOR THE RESPONDETS: Mr. Reaz Ahmed Alam,  
Advocate.

Date of hearing: 25.11.2020

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been filed against the judgment dated 24.01.2020, passed by the Azad Jammu & Kashmir High Court in Writ Petition No. 41 of 2014.

2. The facts forming the background of the captioned petition for leave to appeal are that respondents No. 3 to 5, herein, filed a writ petition before the Azad Jammu & Kashmir High Court stating therein that plaintiff-respondent No.1, herein, filed a declaratory suit against the other respondents, herein, for cancelation of gift-deed dated 02.05.2001 alongwith mutation No. 274, in the Court of Civil Judge Dudyal. It was averred that the other side contested the suit by

filing written statement and thereafter the petitioners, herein, moved an application for impleading them as party in the line of defendants. The learned trial Court after hearing the arguments dismissed the application vide order dated 25.05.2012. Feeling dissatisfied from the aforesaid order, the petitioners, herein, filed a revision petition before the Additional District Judge Dudyal which after hearing was accepted through the order dated 28.12.2013. The learned High Court after necessary proceedings has accepted the writ petition through the impugned judgment dated 24.01.2020.

3. Ch. Muhammad Sabir, the learned Advocate for the petitioners argued with vehemence that the petitioners, herein, moved an application for impleading them in the line of respondents on 18.02.2012, on the ground that a criminal case against respondents No. 3,5 & 7 under section 302, 147, 148, 149 APC was pending before the District Criminal Court Dadyal. He argued that respondents No. 3 & 7, have been bailed out by the

learned Additional District Criminal Court, whereas, respondent No. 5 has been released by the Shariat Court of Azad Jammu & Kashmir on statutory ground. The learned Advocate argued that respondents No. 5 & 7 have absconded and the learned Additional Court of Criminal jurisdiction, Dadyal has passed an order on 19.12.2011 for proceedings against them under section 512 Cr.PC and 87 & 88 Cr.PC. He submitted that respondent No. 5 has also absconded himself from the proceedings. He further submitted that an application was filed in the suit in order to protect the property of the respondents which is ultimately likely to be attached by the Court in view of the process under section 87 & 88 Cr.PC, therefore, the petitioners were necessary party but the learned trial Court has erroneously rejected the application vide order dated 25.02.2012. He submitted that the learned Additional District Judge Dadyal on revision has accepted the same but the learned High Court through the impugned judgment has allowed the

writ petition illegally. The learned Advocate submitted that the petitioners, herein, have right to defend the collusive suit which was filed to defeat the process of Court, therefore, they are necessary party in the suit, hence, were rightly ordered to be arrayed by the learned Additional District Judge Dadyal, which has illegally been vacated by the learned High Court.

4. Conversely, Mr. Muhammad Reaz Alam, the learned Advocate for the respondents argued that no any interest of the petitioners is likely to be affected by the judgment of the Civil Court which is to be passed on different grounds on the evidence of the contesting parties. The learned Advocate argued that the process issued in the criminal case has to be completed under the provisions of Code of Civil Procedure and for that matter the petitioners have no right to be impleaded as party in a civil suit.

5. I have heard the learned Advocates for the parties and gone through the record of the case. A Civil

suit has been filed by *Muhammad Sharif* against his sons in the Court of Civil Judge Dadyal regarding the suit land mentioned therein. On 18.02.2012, the petitioners, herein, moved an application for impleading them in the line of respondents which was rejected by the learned trial Court, however, the order dated 25.05.2012 passed by the Civil Judge was challenged through revision petition before Additional District Judge Dadyal on 18.05.2013. The revision was accepted and the petitioners, herein, were impleaded as party vide order dated 28.12.2013. The order dated 28.12.2013 was further assailed by the respondents, herein, through writ petition which is allowed and the order passed by the Additional District Judge Dadyal has been set-aside. After hearing the learned Advocates for the parties, I am of the view that a party to the suit can be impleaded if it is shown that in absence of such party no effective decision can be given by the Civil Court. In the present case, there is no interest of the petitioners in the suit property

except that the process issued by the Criminal Court would ultimately be defeated. The Criminal Court can adopt various other modes for procuring the attendance of the accused, therefore, on this ground the application for impleading the petitioners in line of respondents in a civil suit is not maintainable and has rightly been disallowed by the Civil Judge as well as by the learned High Court.

No legal question of public importance is involved in the case, leave is therefore, refused.

**JUDGE**

Mirpur  
25.11.2020

We have heard the learned Advocate for the parties and gone through the record of the case. It may be stated that *Muhammad Hussain* filed a suit for possession against *Muhammad Yousaf and others* before Civil Judge *Sehnsa* on 25.04.2008. During pendency of the suit on 11.08.2008, the plaintiff filed an application for withdrawal of the suit which was objected to by the other side, however, after hearing the parties, vide order dated 18.09.2018, the learned trial Court allowed the withdrawal of the suit subject to payment of Rs. 4000/-. It has been argued by the learned Advocate that *Muhammad Hussain* has not made payment, however, the second suit was filed by *Ali Dad* in which *Muhammad Hussain* has been listed as proforma-respondent No. 25. This suit has been contested by the respondents. During pendency of the suit, an application has been filed for amendment in the written statement. It was craved that two objections may be allowed to be raised: i) that the suit has been filed in violation of the provisions contain in

Order XXIII Rule 1 and Rule 2 of CPC; ii) that the suit is barred by constructive resjudicata read with Order II Rule 2. The learned trial Court heard the arguments and rejected the application for amendment vide order dated 27.06.2018. The order was challenged through revision petition before the Additional District Judge Sehnsa, who after hearing the parties vide order dated 11.10.2018 dismissed the same and the writ petition filed against the said order also met the same fate and has been dismissed through the impugned judgment dated 19.02.2020.

6. The argument of Mr. Zulfiqar Ahmed Raja, the learned Advocate for the petitioners that the suit was not maintainable on account of violation of order XXIII Rule 1 and is also hit by doctrine of constructive resjudicata, has no substance in it. Had the suit been filed by *Muhammad Hussain* who has obtained permission from the Court for filing the suit then of Course the bar contained in Order XXIII for filing suit without fulfilling the condition stipulated in the order of the Court would have come into play. In the present case, the subsequent suit has been filed by proforma respondent and in the earlier suit, no final decision was made, therefore, the decision regarding the filing of the suit has rightly been upheld by the learned High Court. Moreover, this Court has already remanded the case for decision on evidence in the same circumstances and without obtaining evidence no such decision can be rendered in civil litigation where factual inquiry is necessary. The judgments referred to and relied

upon by the learned Advocate for the petitioners have distinguishable facts. It may be stated that the Rule of resjudicata or Order II Rule 2 are purely of legal nature and can be enforced by the Court itself if the same are attracted. Therefore, no legal question of public importance is available in the light of earlier decision of this Court dated 28.10.2015. Leave is therefore, refused.