

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 24 of 2021
Civil Misc. No. 31 of 2021
(Filed on 18.02.2021)

Muhammad Qurban s/o Mohammad Hussain r/o
Khadhala Tehsil Barnala District Bhimber.

.....PETITIONER

VERSUS

1. Muhammad Rasheed s/o Faqir.
2. Muhammad Kabir s/o Muhammad Rasheed through
Muhammad Akram Attorney caste Jarral Barnala
Chaper Tehsil Barnala District Bhimber.
3. Muhammad Akram s/o Ch. Muhammad Ibrahim
caste Jutt r/o Khandhala Tehsil Barnala District
Bhimber.
4. Pervaiz Iqbal,
5. Javaid Akhtar,
6. Zaheer Iqbal,
7. Muhammad Abdullah sons of Muhammad Sharif.
8. Muhammad Ramzan.

9. Arshad Mehmood.
10. Allah Ditta.
11. Zeeshan Hussain Sons.
12. Nahid Akhtar.
13. Zubaida Akhtar.
14. Attiya Khanum.
15. Shagufta Rani.
16. Mehwish Hussain.
17. Saba Husain.
18. Kaiynat Hussain daughters.
19. Jamil Akhtar widow of Muhammad Hussain Jarral
r/o Khandhala Tehsil Barnala District Bhimber.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated
10.12.2020 in civil Appeal No. 138 of 2018]

(Application for interim relief)

FOR THE PETITIONER: Mr. Kamran Tariq,
Advocate.

FOR THE RESPONDENTS: Mr. Laeeque Mahmood
Aamer, Advocate.

Date of hearing: 15.06.2021.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been directed against the judgment of the High Court of Azad Jammu & Kashmir dated 10.12.2020, passed in civil appeal No. 138 of 2018.

2. The relevant and necessary facts forming the background of the captioned petition for leave to appeal are that the plaintiff-petitioner, herein, filed a suit for declaration and revocation of sale-deed dated 26.12.2014, on 30.08.2017, against the defendants-respondents, herein, in respect of suit land comprising khewat No. 225, khata No. 1729, 1735 survey No. 747, measuring 1 kanal, 2 marla, situated in Mozia Khadhala, Tehsil Barnala, District Bhimber. It was stated that the defendants-respondents No. 4 to 7 through their attorney transferred the aforesaid land

in favour of defendant-respondent no. 8, herein, in excess of their share. It was further stated that the aforesaid sale-deed was executed fraudulently in connivance with concerned Patwari, which is against the rights of the plaintiff-petitioner, herein, hence, the same may be set-aside. On filing of the suit, the defendants were summoned who appeared before the trial Court and filed written statement on 11.09.2017 alongwith an application under Order VII Rule 11 of Civil Procedure Code. It was stated in the application that the plaintiff has no cause of action to file the suit against the defendants while the same was filed just to drag the defendants in a baseless and frivolous litigation, hence, the same may be rejected. The learned trial Court after hearing the learned counsel for the parties rejected the suit under Order

VII, Rule 11 of Civil Procedure Code, vide judgment and decree dated 09.02.2018 with costs of 20,000/-.

The said judgment and decree was challenged by way of appeal before the learned District Judge, Bhimber, on 01.03.2018, who vide judgment, dated 26.09.2018, accepted the appeal while remanding the case to the trial Court for decision afresh after recording evidence. Against the said judgment, respondents No. 1 to 3, herein, preferred an appeal before the learned High Court. The learned High Court after necessary proceedings while accepting the appeal has set-aside the judgment of the District Judge, Bhimber and restored the judgment and decree of the learned trial Court dated 09.02.0218.

3. Mr. Kamran Tariq, advocate the learned counsel for the petitioner after narration of necessary

facts submitted that the impugned judgment of the learned High Court is against law, facts and the record. He argued the learned High Court has not appreciated the record in its true perspective and has accepted the appeal on wrong assumption of law. He further argued that the learned High Court has also ignored that another suit titled "Allah Ditta vs. Parviaz Iqbal", is pending before the High Court which should have been consolidated with the titled case and both the suits ought to have been decided through single judgment. He further argued that the learned High Court has observed in the impugned judgment that the petitioner has failed to specify the description of the property, rather, the learned High Court has not noticed this fact that this is an evacuee land which has been described by the Khewat and khatas given in

proprietary rights register and mutation register and the numbers were also written in the suit, hence, the observation made by the learned High Court is not sustainable. The learned advocate submitted that the on application under Order 2 Rule XI, CPC, a specific issue was to be framed and the same should have been decided after recording of the evidence. In this regard, the learned Advocate placed reliance on a reported judgment titled *Allah Ditta & others vs. Muhammad Sharif & others [2012 SCR 60]*. He submitted that the learned High Court has observed in the impugned judgment that the plaintiff has no cause of action to file the suit which is illegal, unlawful and liable to be set-aside. He further submitted that if any further transaction i.e. transfer, alienation or gift-deed has been made on the basis of sale-deed date

26.12.2014, the whole super structure built on the said sale-deed will automatically collapse. He further submitted that the learned High Court had no jurisdiction to pass any verdict on the suits which were not pending before it and for the sake of arguments, even if they were pending why those had not been consolidated. He added that the judgment of the learned High Court is no judgment in the eye of law; it does not fulfil the requirements of a judgment as the judgment did not contain the arguments of the learned counsel for the parties. From the judgment it could not be ascertained that which points have been raised by the learned counsel for the parties. In this regard, the learned Advocate placed reliance on the case titled *Ch. M. Sadiq vs. Mujahid Hussain Naqvi & others* [2008 SCR 406]. He finally prayed that the while

accepting the petition for leave to appeal, leave may be granted for ends of justice.

4. Conversely, Mr. Laeeq Mehmood Amir, the learned advocate for the respondents forcefully defended the impugned judgment and submitted that the learned High Court has passed the impugned judgment after due appreciation of the record and facts of the case. He raised a preliminary objection that this petition for leave to appeal is ten days beyond the period of limitation. The learned High Court passed the impugned judgment on 10.12.2020 and this petition has been filed on 18.02.2021. If one day is deducted from the period of limitation for obtaining the attested copies, even then the petition is time barred by nine days. He further argued that the reason advanced for delay is also not satisfactory and

the petitioner was well aware of the impugned judgment. In this regard, the learned Advocate placed reliance on the judgments reported as *Development Authority Muzaffarabad vs. Iqbal Hussain Nizami [2002 SCR 121]*, *Azad Govt. and another vs. Mujahid Hussain Naqvi [2002 SCR 302]* and *Abdul Khaleel Ganaie and others vs. Sabir Hussain & others [2002 SCR 428]*. The learned Advocate further argued that through the impugned judgment, the learned High Court has made a deep scrutiny of record and after detailed deliberation has passed the same. No illegality has been committed. He further argued that the plaintiff-petitioner has got no cause of action to file the instant suit and the same has been filed with mala-fide intention just to harass the respondents. He further argued that total land is 1 kanal, 4 ½ marla, out

of which 1 kanal, 2 marla, has been transferred and the petitioner should have stated that how much excess land has been transferred. The learned trial Court has rightly rejected the suit under Order VII Rule 11 of Civil Procedure Code. The learned Additional District Judge while setting aside the judgment and decree of the trial Court, remanded the case to the trial Court for decision on merit, which is not according to law and the learned High Court has rightly set-aside the judgment of the Additional District Judge. Therefore, this petition for leave to appeal is also not maintainable which is liable to be dismissed.

5. After hearing the learned counsel for the parties and going through the record of the case, I am of the view that there are certain questions of public

importance involved in the case which can only be resolved in regular appeal. The learned counsel for the respondents has also raised the objection that the petition for leave to appeal is time barred. This point shall also be considered at the time of hearing of appeal. Leave is therefore, granted. The petitioner shall deposit security of Rs. 1000/- within one month, otherwise, the leave granting order shall automatically be deemed to have been rescinded. The office shall proceed further according to rules.

JUDGE

Mirpur,
15.06.2021.