

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Review Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL REVIEW NO. 87 OF 2023

(from the judgment of this
Court dated 27.11.2023,
passed in civil PLAs No.
661 & 662 of 2023)

Syed Noor Hussain Shah s/o Syed Akbar Shah caste Syed
r/o Mozia Nagrah Tehsil and District, Muzaffarabad.

...Petitioner

VERSUS

Syeda Nargis Bibi and others.

...Respondents

Appearances:

For the Petitioner: Sardar Pervaiz Akhtar, Advocate.

For the Respondents: Mr. Mudassar Hussain Abbasi,
Advocate.

Date of hearing: 16.02.2024

JUDGMENT:

Raza Ali Khan, J:- The captioned petition has been filed for review of the judgment of this Court dated 27.11.2023, whereby, the PLA filed by the petitioner and others, have been dismissed.

2. According to the facts of the case Syed Manzoor Ali Shah filed a suit for declaration against Syed Nazir Hussain Shah and others in the Court of Sub Judge Muzaffarabad, wherein, it was alleged that the land comprising survey Nos. 257, 342, 343, 344, 346, 456/1, 386, 387, 391, 399, 398, 433, 434, 435, 609, 660, 660/1, 688/1, 689, 690, 700/344 & 721/436, total measuring 290 *kanal*, 4.1/2 *marla*, situate in village Lawasi, Tehsil and District Muzaffarabad, was in the ownership and possession of predecessor-in-interest of the parties namely Ahad Shah. After death of Ahad Shah, the suit land was inherited to Ghulam Ali Shah, Farman Ali and Akbar Shah, his sons, in equal shares. It was stated that Ghulam Ali Shah died issueless and transferred his whole share to the plaintiff being his adopted son and mutation Nos. 100, 101 were attested in Dogra Regime and plaintiff possessed the suit land as owner. It was further contended that on the death of Farman Ali, his legacy alienated to plaintiff and defendant No.1 in equal share being his legal heirs and total share of father of plaintiff in suit land was measuring 96 *kanal*, 15 *marla*, out of which defendant No.1 was owner to the extent of half of property. It was alleged that Akbar Shah father of defendants No. 2 & 3, sold his land measuring 96 *kanal*, 15 *marla*, to plaintiff for consideration of Rs.3000/- and a stamp paper was written on 15.05.1946, since then the plaintiff is in possession of the suit land. He prayed for decree of declaration. Defendants were summoned, Noor Hussain Shah, defendant No. 2 filed cognovits on 03.12.1995 and rest of defendants did not appear before the Court, hence, were proceeded ex-parte.

Syed Manzoor Ali Shah also filed a suit against Syed Noor Hussain Shah and others for declaration and cancellation of sale deed dated 17.05.1984 and prayed for decree of possession on the basis of right of prior purchase. The suit was contested by the other side. The learned trial Court vide judgment and decree dated 31.12.2002, decreed the suit to the extent of Noor Hussain Shah on the basis of admission, to the extent of Syed Nazir Ahmed Shah on the basis of compromise and to the extent of rest of defendant proceeded ex-parte, and also cancelled the sale deed date 17.05.1984. Feeling aggrieved from the said judgment and decree, Mst. Sharaf Hussain, Syed Noor Hussain Shah and Abdul Rasheed filed separate appeals before the Additional District Judge Muzaffarabad. The learned Additional District Judge Muzaffarabad after necessary proceedings through the impugned judgment and decree dated 01.06.2015, accepted the appeal filed by Mst. Sharaf Hussain and remanded the suit filed by Syed Manzoor Ali Shah to the trial Court for fresh decision after recording of evidence while setting aside ex-parte order dated 13.12.2002 and the judgment and decree dated 31.12.2002 to her extent, whereas, the appeal filed by Syed Noor Hussain Shah was dismissed. Feeling aggrieved from the judgment dated 01.06.2015, Syed Noor Hussain Shah, Ibrar Hussain Shah & others and Syeda Nargis Bibi & others filed separate appeals before the High Court, which were dismissed through the impugned consolidated judgment dated 17.07.2023. The aforesaid judgment was called in question before this Court by filing two separate petitions for leave to appeal. This Court through the impugned judgment dated 17.07.2023, dismissed both the petitions, hence, this review petition.

3. Sardar Pervaiz Akhtar, the learned Advocate appearing for the petitioner submitted that this Court

dismissed the petitions for leave to appeal on the ground of non-appending the list of legal heirs along-with the petition for leave to appeal, whereas, no list of legal heirs was placed before the trial Court at the time of filing of plaint due to which, the certified copy of the same was not provided to the petitioner by the trial Court. He further argued that the same like eventuality arose before this Court in the case of *WAPDA and others vs. Taj Begum and others*, [2014 SCR 588] wherein, a direct appeal was filed instead of filing of PLA and the Court relaxed the requisite by awarding one week time for conversion of the PLA into appeal, thus, in the present case, non-compliance of the provisions of Order 13(1-A), of the Supreme Court Rules, 1978, may be relaxed for the ends of justice. He argued that valuable rights of the parties are involved in the case, hence, the Courts should be liberal enough to decide the matter on merits instead of throwing it on technical grounds. He also relied on the case reported as *M. Khaliq vs. Fatima Bi and others*, [2022 SCR 351], and submitted that the impugned judgment may kindly be reviewed.

4. On the other hand, Mr. Mudassar Hussain Abbasi, the learned Advocate representing respondents No. 1 to 18, submitted that the judgment under review passed by this Court is quite in accordance with law and the facts of the case. He submitted that the the provisions of Order 13, Rule 3-1-A, are mandatory which was not complied with at the time of filing the petition for leave to appeal, therefore, the petitions for leave to appeal have rightly been dismissed. He finally prayed for dismissal of the instant review petition.

5. We have heard the learned Advocates representing the parties and gone through the record made available along with the judgment under review. The perusal

of the judgment under review reveals that this Court has dismissed the petitions for leave to appeal on the ground that according to the Order XIII, Rule 3(1-A), of the Supreme Court Rules, 1978, the filing of list of legal heirs is mandatory, therefore, the petitions for leave to appeal were not maintainable. The learned counsel for the petitioner while relying on the case laws' supra, submitted that the aforesaid list of legal heirs was not available before the trial Court, hence, he was not provided reason that of the same could not be appended with the PLA. Be that as it may, however, if the same was not available, this Court in a series of cases has observed that if the list of legal heirs were not filed before the trial Court then the certification of the trial Court to that effect should be filed at the time of filing of the petition for leave to appeal. For ready reference, the latest case titled Muhammad Aslam vs. Fazal Hussain, (Civil PLA No. 91 of 2023), is reproduced hereunder: -

“Whether the list of legal representatives was filed before the trial Court or not can only be determined either from the objection raised by the other party or from the certification issued by the trial Court.”

The wording of the abovementioned judgment is self-speaking that the Court cannot assume that the list of legal heirs was not filed in the trial Court, rather, it can only be adjudged by the certification issued by the trial Court that whether the same was filed or not. In such state of affairs, the impugned judgment has rightly been passed.

6. During the course of arguments, the learned counsel for the petitioner also stated that the Court should be reasonably liberal to attend the case on merits rather than throw them on hyper technical grounds. So far this argument is concerned, we have no cavil with this argument, however, the Court has to maintain the legal

certainty, uniformity and integrity of the legal system and also adhere to the rules and the laws meant for better administration of justice. In this case, the requirement of filing of a list of legal heirs is mandatory. To cater justice parties to the list are reciprocated for their omissions and commission of requisites emanating from dictates of substantive and procedural laws. Once a party to the list fails to mandatory requirement, a valuable right is occurred in other party by award of a favourable order by the Court and by dismissing the case due to failure of the petitioner to abide by the rules, the Court demonstrates the adherence of the strict procedural requirements. It also shows that the Court takes the procedural requirements seriously. Besides the decision of the cases on technicalities also saves time and effort that would have been spent on a case with incomplete documentation, instead, the Court can focus its resources on the cases where all the necessary information is provided, which leads to a more streamlined and effective administration of justice. So far the cases referred to and relied upon by the learned Advocate for the petitioner is concerned, the same having distinguishable facts, are not attracted to the case in hand.

In such state of affairs, the judgment under review has rightly been passed, therefore, the review petition stands dismissed.

JUDGE

JUDGE

Mirpur,
20.02.2024