

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 24 OF 2014

- 1) Hanumantrao Ramchandra Kadam,
Age : 63 years,
Occu.: Agriculturist,
- 2) Alka Laxman kadam,
Age : 41 years,
Occu.: Service,
- 3) Subhadra Shankar Kadam,
Age : 56 years,
Occu.: Household,

All R/o. At Post Nasrapur,
Taluka : Bhore,
District : Pune

..Applicants

Versus

- 1) Shaikh Mohammed Hanif Magan Bhai,
Age : 51 years, Occu.: Business,
- 2) Raj Mohammed Gani Bhai Mulani,
Age : 38 years, Occu.: Business,
- 3) Sajid Osman Tamboli,
Age : 41 years, Occu.: Business,

All R/o. : At Post Nasrapur,
Taluka Bhore, District Pune.

- 4) Maharashtra State Board of Waqfs
Through its Chief Executive
Officer,
Panchakki, Aurangabad

..Respondents

Mr. S.V. Suryawanshi, Advocate for the applicants.
Mr. S.A.G. Qureshi, Advocate for respondent nos.1
and 2
Mr. Sameer S. Patel, Advocate for respondent no. 4

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CORAM : M.T. JOSHI, J.

DATE : MARCH 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the dismissal of the application for framing preliminary issue under section 9A of the Code of Civil Procedure by the Waqf Tribunal, present revision application is filed.

3] The respondents came with a case that the suit property is a Waqf property while, present applicants came with a case that it was their ancestral property.

4] Learned counsel for the applicants submits that the Wakf Tribunal has no jurisdiction as the

property is private property owned by the applicants since their forefather. He relied upon the ratio laid down in the cases of (1) ***Shri Rajan Dhansukhlal Vora Vs. Shri Dinesh Bacchubhai Parekh & Ors., 2012(3) ALL MR 56;*** and (2) ***Mukund Ltd. V. Mumbai International Airport and Others, 2011(2) Mh.L.J., 936.***

5] He further relied upon the provisions of section 83(1) of the Wakf Act, which runs as under:-

"83. Constitution of Tribunals, etc.- (1)
The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this

Act and define the local limits and jurisdiction of such Tribunals;

6] It is an admitted fact that the application for temporary injunction was already filed by the respondents and the same is pending for final hearing.

7] Having heard both sides and having gone through the provisions and the case law, in my view, the very issue, as to whether, the property is a Wakf property, is to be decided by the learned Tribunal. There is no question of framing any preliminary issue on this question. Learned Tribunal would be required to go through the merit of the case on the basis of the evidence before it. In that view of the matter, there is no force in the present revision application.

8] The Revision Application is, therefore,
dismissed without any order as to costs.

[M.T. JOSHI, J.]

kbp