

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 26 OF 2014

K.K. Sonone Kachru Sonone & Ors.**Applicants**

Versus

Mirza Rafat Baig s/o. Mirza Abdullah
Bail & Ors.**Respondents.**

Mr. S.S. Kazi, Advocate for applicants.

CORAM : T.V. NALAWADE, J.
DATED : 23rd November, 2015.

ORDER :

1. The revision is filed against the judgment and order of Waqf Suit No. 14/2007, which was pending before the Waqf Tribunal, Aurangabad. The suit filed by respondent - Mirza Rafat Baig, Mutawalli, for the relief of injunction is decided in favour of the Waqf Institution. Heard the learned counsel for the petitioners, who are few defendants of the aforesaid suit.

2. The suit was filed in respect of the property bearing C.T.S. No. 940 situated at Vaijapur, Tahsil Vaijapur, District Aurangabad. It is contended that it is open space and it belongs to Waqf Institution by name Dargah Hazrat Habib Idris. Plaintiff is a Mutwalli of this Waqf Institution. It is contended that the property is registered as waqf property long back and property is

owned by Dargah. It is contended that the defendants are having no right whatsoever in respect of this property, but they are trying to make encroachment over the open space and they are putting up their kiosk on their open space. It is contended that even defendant No. 10 - Waqf Board had asked them to stop such activities, but the defendants are not paying heed and the structures, which they are putting up, are encroachment on the road also. It is contended that in the past, Municipal Council had taken action and these structures were removed, but the defendants are trying to again put up their kiosk on this open space and so, the cause of action arose.

3. Defendants filed written statement and they contested the suit. They denied that the open space belongs to Dargah. They contended that only the space over which there is construction of tomb belongs to Dargah. They had contended that Local Body had given them permission and there was lease in their favour.

4. On the basis of aforesaid contentions, issues were framed. Both the sides gave evidence. The city survey record was produced by the plaintiff and the documents like certified copy of registration of Waqf Institution showing that C.T.S. No. 940 is registered as waqf property was produced. Old record like

Khasra Pahani Patraks are also produced at Exh. Nos. 71 to 73 showing that from many years the property is treated as waqf property. As against this evidence showing the area of the property as 883.1 Sq. fts., the defendants could not produce any record to show that anybody had given permission to put their kiosk on this property. Even when their is specific defence that lease was in their favour, no such record was produced. All these circumstances are considered by the Waqf Tribunal. As the defendants have no right in respect of the suit property and as the defendants are claiming some right, there was cause of action for the suit and so, the relief of injunction is given.

5. The power of this Court in revision is very limited. In view of the aforesaid circumstances, this Court holds that nothing can be achieved by issuing notice to other side and seeing the record.

6. In the result, the revision stands dismissed. The learned counsel for the applicants requests for status-quo. No such relief can be given. Prayer for such relief is also rejected.

[T.V. NALAWADE, J.]

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