

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 304 OF 2013

Maimuna Bee W/o Shaikh Sandu,
 Age : 75 years, Occu.: Agriculuture,
 R/o.: Near Bus Stand, Sultanpur,
 Tq. Khultabad, Dist. Aurangabad ..Petitioner

VERSUS

1. Gulam Zainuddin S/o Nooruddin
 Shaikh, Age : 58 years, Occu.:Service,
 R/o. Mohalla Saliwada, Khuldabad,
 Tq. Khuldabad, Dist. Auarnagabad
2. Syed Bashir S/o Syed Yousuf,
 Age : 50 years, Occu.: Business,
 R/o. Mohalla Azam Shahipura
 Kuldabad, Dist. Aurangabad
3. Ibrahim [Ibbushah] S/o Anwar Shah,
 Age : 40 years Occu.: Business,
 R/o. Near Bus Stand, Sultanpur,
 Tq. Khuldabad, Dist. Aurangabad
4. Gulam Ahmed S/o Miya Saheb,
 Age : 60 years, Occu.: Business,
 R/o. Mohalla Saidani Maa, Kuldabad,
 Tq. Khuldabad, Dist. Aurangabad
5. Maharashtra State Board of Wakfs
 through its Chief Executive Officer,
 Panchakki, Aurangabad ..Respondents

Mr. M.A. Khan, Advocate for the petitioner
 Mr. Mujdaba Gulam Mustafa, Advocate for respondents
 No. 1, 2 and 5
 Mr. Afzal Husain M. Vakil, Advocate for respondent No.3
 Mr. Afzal Husain M. Vakil and Mr. Mustafa Momin,
 Advocates for respondent No. 4
 Mr. Y.B. Pathan, Advocate for respondent No. 6

CORAM : M.T. JOSHI, J.

DATE : 25/03/2015

ORAL JUDGEMENT :

1. Heard both sides.

2. Aggrieved by the decree passed by the Maharashtra Wakf Tribunal in the suit, the present appeal is preferred by the original defendant No. 2.

3. The respondents No. 1 and 2 are the original plaintiffs. They came with a case that they filed a suit on the following grounds:-

. That, the land old survey No. 41 now gut No. 59 of village Sultanpur, Taluka Khuldabad, totally admeasuring 13 acres 48 Rs was granted for rendering services to the registered wakf – Dargah Hazrat Syed Shah Raja Quttal Hussaini alongwith Masjid, Grave Shah Maramatkha and Khankha, situated at Khuldabad. The suit is, however, concerned with four gunthas of land as given in the sketch-map. The plaintiffs are the inamdars/mutawalli alongwith the defendants No. 3 and 4. As they were not available to put signatures to the plaint, they were joined as defendants. So far as

defendant No. 2 i.e. present petitioner is concerned, when her husband i.e. her predecessor was alive, the Deputy Collector (Atiyat) had directed him and other cultivators to deliver possession to the plaintiffs. The said order was challenged in writ petition No. 2190 of 1995, which came to be dismissed as withdrawn. The defendant No.2's husband has died six years prior to filing of the suit. Neither the defendant No.1 nor defendant No. 2 or her deceased husband had right, title over the suit land. However, they attempted to raise construction over the suit property. Therefore, the complaint was made to the Tahsildar. The Talathi inspected the site and thereupon, these defendants No. 1 and 2 stopped the activities in view of the complaint made to the Tahsildar. In that view of the matter, the perpetual injunction was sought against them.

4. Earlier, the suit was decreed. However, in Civil Revision Application No. 114/2010, this High Court has set aside the said decree on 1st December, 2010, granting liberty to the petitioner in the said revision application to file an application before the Wakf Tribunal for impleading the said petitioner as party-

defendant and directed the Tribunal to decide the said application on merit. Thereafter again, notices were issued to all the parties and the trial continued. The learned Presiding Officer of the Wakf Tribunal held that the suit property is the wakf property. The suit was decreed. Hence, the present revision application by the original defendant No. 2.

5. The learned counsel for the petitioner submits that no notice after remand of the case was issued to her. She was not heard after the remand of the case and the judgement and decree came to be passed against her.

6. Upon perusal of the record, it is seen that while the notices by registered post acknowledgement due were sent to all the parties, including the plaintiffs and defendants and the present petitioner, the acknowledgement regarding the envelope containing the notice is not on record as regards the petitioner though the rojnama would show that the Exhibit-53 was there on record, which would show that the defendant No. 2 had refused to accept the same. In the circumstances, learned counsel for the petitioner/defendant No. 2 submitted that in absence of any acknowledgement or any

documentary evidence regarding the refusal to accept the notice or the envelope containing the notice therein, the decree passed by the learned Wakf Tribunal suffers. He, therefore, took me through the judgement and the record and submitted that the matter be remanded back to the learned Tribunal.

7. On the other hand, learned counsel for the respondents No. 1 and 2 i.e. the original plaintiffs, opposed the revision application.

8. On the basis of above material and the submissions advanced on behalf of both the sides, the following point arises for my determination :-

“Whether the case deserves to be remanded back to the Wakf Tribunal ?”

My finding to the above point is in the negative. The civil revision application is, therefore, dismissed without any order as to costs, for the reasons to follow:-

R E A S O N S

9. It should be noted that the earlier decree was set aside by this Court due to the intervention of the third party by way of civil revision application. In view of that intervention, earlier decree was set aside and the matter was remanded back to the Wakf Tribunal. The present petitioner – defendant No. 2 did not challenge the then decree passed against her. The record of the Wakf Tribunal clearly shows that all the parties, including the present petitioner i.e. defendant No.2 were issued notices by registered post acknowledgement due. The rojnama would show that vide Exhibit-53, the learned Tribunal has received the acknowledgement with endorsement "refused". That document, however, is not on record. It is, however, clear that the notice was sent by the registered post acknowledgement due to the defendant No.2 i.e. the present petitioner. There is no denial that the address recorded on the said postal receipt is wrong. Even in the earlier round of proceedings also, same address of the petitioner remained there. Considering all these facts on record,

merely because one of the documents is not found on record, that would not mean that the decree deserves to be set aside, more particularly when the present petitioner has not challenged the earlier decree passed against her. In that view of the matter, the revision application is liable to be dismissed. Hence, the following order:-

10. The civil revision application is dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

npj/cra304-13