

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 18 OF 2014

Madarsa Darul Uloom through
Its Chairman .. Petitioner

Versus

Shaikh Lalmiya Aminsab and others. . Respondents

Shri Zafar M. Pathan, Advocate for the Petitioner.
Shri Naseer Shaikh, Advocate for the Respondent No. 1.
Shri Sameer Patel, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 02ND SEPTEMBER, 2015.**

PER COURT :

. Mr. Pathan, the learned counsel for the petitioner submits that, the respondent No. 1/plaintiff has instituted suit for declaration that the lease deed in favour of the present petitioner is void and for possession bearing R. C. S. No. 26 of 2010 before the Wakf Tribunal. The learned counsel submits that, the same person i. e. respondent No. 1 has earlier instituted civil suit bearing R. C. S. No. 240 of 1979 for the same relief i. e. possession of the suit property. In the said suit the Court negatived the contention of the present respondent No. 1. The said judgment is confirmed in appeal also. According to the learned counsel, in view of the fact that, the rights of the parties were crystallized in the earlier proceedings, the present suit for the same purpose is not

maintainable. As such the applicant had filed an application under Order VII Rule 11 (a) and (b) of the Code of Civil Procedure read with Section 7 Sub.-Sec. (2) and (5) of the Wakf Act. However, the Court in a cursory manner rejected the said application. The learned counsel submits that, the copy of the judgment in earlier suit was placed on record before the Wakf Tribunal, however, the same is not considered.

2. The learned counsel for the respondent No. 1 submits that, in absence of any pleadings and judgment, the Tribunal could not have considered the said application. The Tribunal has rightly rejected the same. The issue in the present case would be, whether the possession of the defendant No. 2 is lawful or not, which can be decided by the Tribunal.

3. I have considered the submissions, so also the application and the judgment.

4. The application was filed for rejection of plaint basically on the ground that, the plaintiff does not have cause of action, in view of the decision in the earlier suit R. C. S. No. 240 of 1979. The counsel for the petitioner states that, the copy of the judgment in the earlier suit was filed before the Tribunal. The order says otherwise. In the order it is specifically observed that, no pleadings of the earlier suit is placed on record. So also, the copy of the judgment is also not placed on record.

5. In case, the rights of the parties have been determined in the earlier suit, the Wakf Tribunal is required to consider the effect of the said litigation. Of course, it is for the petitioner to place on record the necessary pleadings and the judgment in that regard. In that case, the principle of *res-judicata* may apply. Of course, that would be depending upon the pleadings and the judgment of the earlier suit.

6. In light of the above, I pass the following order.

7. In case the petitioner has filed the pleadings and the copy of the judgment in earlier suit bearing R.C.S. No. No. 240 of 1979, the judgment which is stated to be confirmed up to this Court. The petitioner may file the copy of the pleadings and the judgments of the earlier suit. In case, the same is filed the Tribunal shall frame the necessary issue with regard to the effect of the said judgment in the present suit along with all other issues. The order impugned in the present Revision would not be an impediment for the Tribunal to frame the issues and decide the same. The civil revision application accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]