

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.141 OF 2008

MANAGING COMMITTEE MASJIT AND CHILLA
VERSUS
RAMCHANDRA DHARNIDHAR JOSHI AND OTHERS

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Mr. Ananad Bhandari, advocate for applicants

Mr. A. D. Kasliwal, advocate for respondent nos. 1
to 5

Mrs. S. D. Shelke, AGP for respondent no. 7

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CORAM : M. T. JOSHI, J.

DATE : APRIL 10, 2015

PER COURT :

Heard both sides.

2] Upon hearing both sides, it has become clear that the original plaintiffs i.e. present respondent nos. 1 to 5, came with a case that the decree of declaration that the suit property is Wakf property obtained by the present petitioner i.e. original defendant no. 1 in Regular Civil Suit No. 9 of 1997, was obtained by fraud.

3] Present petitioner, therefore, claimed that the Waqf Tribunal would have jurisdiction to decide the suit under Section 85 of the Waqf Act, which is a later legislation and earlier, the Civil Court had jurisdiction to decide the same.

4] Upon hearing both sides, in my view, in fact, the issue, as to whether, the suit property is a Waqf property, would arise only when the trial Court would come to the conclusion that the earlier decree was obtained by present appellant by practicing fraud, as is pleaded in the plaint by the original plaintiffs.

5] In the circumstances, the impugned order passed by learned trial Court is hereby set aside. The trial Court is directed to firstly

frame all the issues as may arise in view of the pleadings of the parties. Thereupon, the issue, as to whether, the impugned decree is obtained by fraud or not, be decided by the trial court as a preliminary issue, upon allowing both the sides to lead evidence in this regard. Thereafter, in the light of said decision further recourse, as is permissible by the law i.e. whether, the next issue regarding the nature of property is required to be referred to the Waqf Tribunal, may be taken, if occasion arises.

6] In the light of the above directions, present Civil Revision Application is disposed of without any order as to costs.

[M.T. JOSHI, J.]

kbp