

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1119 of 2014

=====

1. Rizwanur Rahman Son Of Late Ghulam Fazlur Rahmad Resident Of 3rd South Street, Hindi Piri Ranchi, Jharkhand

.... Petitioner/s

Versus

1. Srimati Bhanu Devi Daughter Of Late Kritya Nand Singh Original Resident Of Village - Kaharpur, P.S. - Bihpur, District - Bhagalpur, At Present Residing At Mohalla - Bhatta Bazar, P.S. - K.Hat, District - Purnea
2. Chaduhar Azizul Hassan Son Of Late Kaniz Fatima Resident Of Chaudhary Mohalla, Ward No - 30, P.S. And District - Katihar
3. Rahiqur Rahman Son Of Late Chaudhary Rafiqur Rahman Resident Of Ward No. 28, Saifganj, Bara Bazar, P.S. And District - Katihar
4. Nazeeb Ahmad Son Of Late Abdul Majeed Resident Of Choudhary Mohalla - Ward No. 26, P.S. And District - Katihar
5. Nawar Ahmad Son Of Md. Taufique Resident Of Choudhary Mohalla, Ward No. 26, P.S. And District - Katihar
6. Zafarur Rahman Son Of Late Mamilur Rahman Resident Of Zafar Manzil, Karimganj, P.S. And District - Gaya
7. Bibi Salma Jabeen Daughter Of Kaniz Amna Resident Of Ganja Gali Motihari, P.S. And District - Motihari
8. Md. Bux Estate, Katihar, Through The Defendants Of Late Choudhary Md. Bux, P.S. And District - Katihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ragiv Hasan, Sr. Advocate

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 22-01-2016 Heard learned Senior counsel, Mr. Ragiv Hasan,

appearing for the petitioner.

This application, under Article 227 of the Constitution of India, has been filed by the petitioner for setting aside the order dated 18.05.2013, passed by the learned Sub-Judge-V, Purnia in Title Suit No. 239 of 2004, whereby the

learned court below rejected the application filed by the petitioner under Section 85 of the Wakf Act, 1995.

The learned Senior counsel for the petitioner submitted that it is the duty of the court to have transferred the suit under Section 85-A inserted by Wakf (Bihar Amendment Act No. 27 of 2006), which provides that the suit be transferred to the Wakf Tribunal for decision immediately after constitution thereof. In Bihar, the tribunal has already been constituted. Section 85 bars the jurisdiction of the civil court to try the suit.

It appears that the plaint has been annexed as annexure-1. The plaintiff has prayed for declaration of title and non title of the defendants. Subsequently, when the written statement was filed saying that, in fact, the suit property is registered in the Wakf register, the amendment application was filed and the plaint was amended and at paragraph No. 17, pleaded that the so called Wakf i.e. Md. Bux Estate, Katihar has never been in existence, it is just a misnomer and fictitious entity so far the suit land is concerned and then members of the Managing Committee of Md. Bux Wakf Estate, Katihar have been added as party defendant.

Section 85 of the Wakf Act, 1995 bars jurisdiction of the civil court in respect of any dispute, question or other matter



relating to any Wakf, Wakf property or other matter. Section 85-A of the Bihar Amendment Act, provides that the said suits in relation to the Wakf shall be tried by the Wakf tribunal and if the matter is pending before the civil court, the same may be transferred. In the present case, as stated above, the plaintiff prayed for declaration of title with respect to the suit property and for declaration that the Wakf itself was not in existence. Now, therefore, this declaration can only be given by the civil court, whether it is Wakf's property or not itself is in dispute.

The learned Senior counsel for the petitioner relied upon the decision of the Supreme Court in the case of ***Board of Wakf, West Bengal Versus Anis Fatma Begum & Another*** reported in ***AIR 2010 (7) Supreme 1059***. So far this decision is concerned, it may be mentioned here that in that case, the property in question was admittedly a Wakf property, which would be evident from paragraph No.5 of the said judgment.

So far jurisdiction of the civil court is concerned, the Hon'ble Supreme Court in the case of ***Ramesh Gobindram (deceased by L.R.s. Vs. Sugra Humayun Mirza Wakf*** reported in ***AIR 2010 SC 2897*** has held that the jurisdiction of civil courts to try suits of civil nature is very expansive. Any suit which excludes such jurisdiction, is, therefore, an exception to the general rule that

all dispute shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would, lean in favour of a consideration that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that civil court's jurisdiction is ousted. In the present case, as stated above, the Wakf tribunal has no jurisdiction to declare the title of the plaintiff with respect to the suit property nor the suit property, in the present case, is admitted to be the Wakf property. In such view of the matter, the court below has rightly rejected the application. As such, this writ application under Article 227 of the Constitution of India is dismissed.

(Mungeshwar Sahoo, J)

brajesh/-

U			
---	--	--	--