

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3688 of 2016

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Ghulam Muztaba Khan @ Muzzu Khan & Ors

.... Petitioner/s

Versus

Abdul Aleem Khan @ Abdul Haleem Khan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 08-03-2016

Heard the learned senior counsel, Mr. P.N.Shahi for the petitioners.

By the impugned order dated 25.01.2016, the learned Sub Judge VIII, Gaya in Title Suit No.29 of 2015/308 of 2012 rejected the application filed by the petitioners to decide the issue of law i.e. issue Nos.9 and 10 as preliminary issue, recording a prima facie case that Civil Court has the jurisdiction to try the suit in view of the decision of the Supreme Court in **Bhanwar Lal and Another v. Rajasthan Board of Muslim Wakf and Others, (2014) 16 Supreme Court Cases 51.**

Hon'ble Supreme Court in the case of **Foreshore Cooperative Housing Society Limited v. Praveen D. Desai and others, (2015) 6 Supreme Court Cases 412** at paragraph 38 has held that "in the unamended Code, the categorisation was only between issues of law and of fact and it was mandatory for the court to try the issues of law in the first instance and to postpone

the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the court that notwithstanding that a case may be disposed of on a preliminary issue, the court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). The sub-rule relaxes the mandate to a limited extent by conferring discretion upon the court that if the court is of opinion that the case or any part thereof may be disposed of “on an issue of law only”, it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the court or a bar to the suit created by a law in force.”

Since by the impugned order, the Court below has passed the reasoned order after considering the decision of the Supreme Court, as stated above, and has come to the conclusion that in fact, the relief claimed in the suit for declaration of title cannot be granted by the Wakf Tribunal and the relief can only be granted by the Civil Court and rejected the application, in my opinion, no case for supervisory jurisdiction is made out.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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