

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.185 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 7574 of 2010

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1. Imteyaz Ahmad, S/o Late S.K. Enayat Karim, R/o Village- Bettiah Town, Mohalla Ganj No. 1, P.S. - Bettiah Town, District - East Champaran.
 2. Neyaz Ahmad, S/o Late S.K. Enayat Karim, R/o Village- Bettiah Town, Mohalla Ganj No. 1, P.S. - Bettiah Town, District - West Champaran.
 3. Ishteyaque Ahmad (Advocate), S/o Late Mushtaque Ahmad, R/o Village- Bettiah Town, Mohalla Ganj No. 1, P.S. - Bettiah Town, District - West Champaran.

.... Appellants

Versus

1. The State of Bihar, through Chief Secretary, Govt. of Bihar, Patna.
2. Mohammad Ketabuddin, S/o Late Abdul Sakoor, R/o Mohalla Ganj No. 1 P.S. Bettiah Town, District- West Champaran.
3. Arshad Zaman, S/o Late Abdul Samad, R/o Mohalla Ganj No. 2 near II an Ram Chowk, P.S.- Bettiah Town District-West Champaran.
4. Mohammad Aslam, S/o Nayeem Mian, R/o Mohalla Ganj No. 1, near Madarsa Islamia, P.S. - Bettiah Town District- West Champaran.
5. Aftab Alam @ Shibli Azad, S/o Late Md. Quadir, R/o Mohalla Ganj No. 1, behind Bari Masjid P.S- Bettiah Town, District - West Champaran.

.... Respondents

with

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Letters Patent Appeal No. 169 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 15106 of 2009

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1. Imteyaz Ahmad, S/o Late S.K. Enayat Karim, R/o Village- Bettiah Town, Mohalla Ganj No.1, P.S.- Bettiah Town, District- West Champaran.
2. Neyaz Ahmad, S/o Late S.K. Enayat Karim, R/o Village- Bettiah Town, Mohalla Ganj No.1, P.S.- Bettiah Town, District- West Champaran.
3. Ishteyaque Ahmad (Advocate), S/o Late Mushtaque Ahmad, R/o Village- Bettiah Town, Mohalla Ganj No.1, P.S.- Bettiah Town, District- West Champaran.

.... Appellants

Versus

1. The Bihar State Sunni Wakf Board through the Chief Executive Officer, Bihar State Sunni Wakf Board, Patna-1
2. The Chief Executive Officer, Bihar State Sunni Wakf Board, Patna-1
3. The State of Bihar, through Chief Secretary Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Vishwajeet Kumar Mishra, Advocate.

For the State : Mr. Amaresh Kumar Sinha, A.C. to G.A. 9

For the Wakf Board : Mr. Rashid Izhar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-05-2016

Re.:I.A. No. 859 of 2015 in L.P.A. No. 185 of 2015

The application is for condonation of delay of 23 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 23 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 859 of 2015 is allowed and delay of 23 days in filing the Letters Patent Appeal is condoned.

Re.:I.A. No. 788 of 2015 in L.P.A. No. 169 of 2015

The application is for condonation of delay of 25 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellants have shown sufficient cause to seek condonation of delay of 25 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 788 of 2015 is allowed and delay of 25 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 185 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 11th of November, 2014 in C.W.J.C. No. 7574 of 2010 and analogous case (C.W.J.C. No. 15106 of 2009) whereby, challenge to the order dated 26th of February, 2010 passed by the Sub-Judge, West Champaran at Bettiah in Title Suit No. 278 of 2008 remained unsuccessful and the above said Title Suit was transferred to the Waqf Tribunal, Bihar.

2. Learned counsel for the appellants contends that the appellants are claiming title over the property in question through Bettiah Estate, therefore, the matter cannot be referred to the Waqf Tribunal.

3. The stand of the defendant was that Section 85 of the Waqf Act, 1995 bars jurisdiction of the Civil Court to entertain any suit regarding the Waqf property, therefore, the order passed is legal and proper. It is also asserted that the grandfather of the present appellants was record keeper as well as Muazzim. Therefore, he was given accommodation in the outer house in the Maszid for use as Hujra for Muazzim or Imam and the property in question was never

settled by Bettiah Estate with the ancestors of the appellants.

4. Learned trial court passed an order on 26th of February, 2010 for remitting the matter to the Waqf Tribunal as all questions as to whether property is Waqf or not are required to be decided by the Waqf Tribunal.

5. The challenge to the said order remained unsuccessful before the learned Single Bench. Still aggrieved; the plaintiffs are in the present Letters Patent Appeal.

6. At the outset, we may notice that before the learned Single Bench the order passed by the Civil Court was under challenge. Thus, the jurisdiction of the learned Single Bench was invoked under Article 227 of the Constitution of India. If that is so, the present appeal is not maintainable under Clause 10 of the Letters Patent. Reference may be made to the judgment reported as ***Jogendrasinghi Vijaysinghi v. State of Gujarat, (2015) 9 SCC 1.*** The Court held as under:-

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam ;(2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is

exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.”

7. In view of the said fact, the present Letters Patent Appeal preferred against the order passed by the learned Single Bench is not maintainable and the same is dismissed.

Re.: L.P.A. No. 169 of 2015

The learned Single Bench also dismissed C.W.J.C. No. 15106 of 2009, wherein the appellants have sought quashing of the notices issued on 20th of May, 2009 by the Chief Executive Officer, Bihar Estate Sunni Waqf Board under Section 54 of the Waqf Act, 1995.

2. The challenge to such notices had remained unsuccessful before the learned Single Bench and still aggrieved; the appellants filed the present Letters Patent Appeal.

3. The learned Single Bench decided both the writ applications i.e. C.W.J.C. No. 15106 of 2009 and C.W.J.C. No. 7574 of 2010 by the common order. The Letters Patent Appeal against an order passed by the learned Single Bench in C.W.J.C. No. 7574 of 2010 has remained unsuccessful as not maintainable. However, the question as to whether the Waqf Tribunal will have jurisdiction to decide the suit requires to be examined in the present proceedings.

4. In Title Suit No. 278 of 2008, the plaintiffs claim title

over the property as the settlee of the Bettiah Estate. While filing the written statement, the defendant has raised a counter claim that the property is a Waqf property. Therefore, the question as to whether property is a Waqf property or not is required to be determined by the Waqf Tribunal after the Waqf Act, 1995 was amended vide Central Act No. 27 of 2013. The amending Act provides that all questions that fall for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee has to be decided by the Tribunal.

5. In view of the said fact, there is no error in the order passed by the learned Single Bench. The matter has to be decided by the Waqf Tribunal as constituted under Section 83 of the said Act.

6. Letters Patent Appeal No. 169 of 2015 is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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