

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.69 of 2014**

Chhattisgarh State Wakf Board, through the Chief Executive Officer, Chhattisgarh State Wakf Board, Devendra Nagar, P.S.-Raipur, District-Raipur (CG)

---- Applicant

Versus

1. Abdul Halim Khan son of late Abdul Hakim Khan, aged about 59 years, Occupation-Agriculturist/Independent Journalist, Caste-Mulsim, through Special Power of Attorney-Mohammad Fahim Khan Son of Abdul Halim Khan, aged about 24 years, Caste-Muslim, both address Akbar Khan Ki Chall, in front of Mission Hospital, Bilaspur, Police Station-Civil Line, Tahsil and District Bilaspur (CG)
2. Gram Panchayat Bhadha, through the Sarpanch, Gram Panchayat Bhadha, Pachpedi Turning, Tahsil-Masturi, Police Station Pachped, District Bilaspur (CG)
3. Chief Executive Officer, District Panchayat, Bilaspur (CG)
4. State of Chhattisgarh, through the Collector, Bilaspur, Collectorate Office, Bilaspur (CG)
5. Gram Panchayat Bhadha, through the Secretary, Gram Panchayat Bhadha, address-Pachpedi Turning, Tahsil Masturi, Police Station-Pachpedi, District Bilaspur (CG)

---- Respondents

For Applicant	: Mr.Prateek Sharma and Mr.Suyesh Dhar, Advocates
For Res.No.1	: Mr.Manoj Paranjape and Mr.Prasun Agrawal, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****31/08/2016**

1. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that he is title-holder and possession holder of the suit and and therefore, he is entitled for declaration of title and permanent injunction against defendant-Chhattisgarh State Wakf Board.
2. Defendant-hhattisgarh State Wakf Board filed an application under Order 7 Rule 11 read with Section 151 of the CPC holding that the suit property is Wakf Board property duly recorded and jurisdiction of the

Civil Court is barred by provisions of Sections 6 and 85 of the Waqf Act, 1995 (hereinafter called as "the Act of 1995"). The said application has been rejected by the trial Court by order impugned.

3. Mr.Prateek Sharma, learned counsel appearing for the applicant, would submit that the trial Court has committed jurisdictional error in rejecting the application under Order 7 Rule 11 read with Section 151 of the CPC and thereby the impugned order deserves to be set aside. He would further submit that property is Wakf Board property or not can be decided only by the Walf Board Tribunal and not by the trial Court.

4. On the other hand, Mr.Manoj Paranjape, learned counsel for respondent No.1, would support the order impugned.

5. I have heard learned counsel appearing for the parties.

6. It is the case of the plaintiff that he is owner of the suit property. It is also not admitted by the plaintiff that the suit property is Wakf property.

6. It is well settled that in order to decide the application under Order 7 Rule 11D of the CPC, plaint averment has to be seen.

7. On perusal of the plaint allegation, it is quite vivid that the suit property is not Wakf Board property and it is claimed to be the property of the plaintiff and as such, question as to who is owner of the property is yet to be tried, therefore, it cannot be held that the suit is barred by provisions of Section 6 and 85 of the Act of 1995. The trial Court has not committed jurisdictional error while rejecting the application under Order 7 Rule 11 of the CPC.

8. Consequently, the civil revision is liable to be and is hereby dismissed.

Sd/-
(Sanjay K Agrawal)
Judge