

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

924 REVIEW APPLICATION (CIVIL) NO. 124 OF 2016
IN CRA/159/2012 WITH RA/125/2016 IN CRA/25/2011

HAJI HASANALI KHALILY AND ORS
VERSUS
SHAIKH GULAM GOUS GULAM MOHD. AND ORS

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Advocate for Applicants : M.D. Adkar h/f. P.B. Shirsath
Advocate for Respondents 1, 2 & 5 : Ruchir Wani h/f. A.S. Bajaj
Advocate for Respondent 6 : S.P. Chapalgaonkar
Advocate for Respondents 8 to 10 : Mohd. Waseemulla
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CORAM : T.V. NALAWADE, J.
DATED : 14th October, 2016.

ORDER :

1. The review applications are filed for review of the judgment and order delivered in Civil Revision Application Nos. 159/2012 and 25/2011. Heard the learned counsel for applicants.

2. The learned counsel submitted that this Court has referred the notification issued under the Waqf Act, 1995 in which suit property was shown as Sunni waqf and due to that, the revision came to be dismissed. The learned counsel submitted that the said notification was set aside by this Court at Principal Seat in Writ Petition No. 457/2011 [Anjuman-I-Islam Vs. State of Maharashtra and ors.] by order dated 21st

September 2011 and this circumstance was not brought to the notice of this Court when the matter was argued for petitioners. He produced the copy of order dated 21.9.2011 and submitted that the matter needs to be now heard again in view of this circumstance. He submitted that in addition to the statement of Bademiya which was recorded in the past and which was to the effect that it is Sunni institution, there were other statements which the petitioner wanted to produce and as such, one civil application was filed along with the revisions, but separate order is not made on the said application and reasons are not given for rejection of that application.

3. The Tribunal constituted under the Waqf Act, 1995 has the power of Civil Court and the Tribunal is expected to decide the matter on pre-ponderance of probability. Issue was framed with regard to nature of waqf, whether it is Shia or Sunni, by the Tribunal and on the basis of the material the issue is answered in affirmative. The notification is considered as one of the circumstance by the Tribunal. In view of these circumstances, this Court held that the decision given by Tribunal cannot be interfered with.

4. The other circumstance that the revision applicants

wanted to produce some record like statements of relatives of Bademiya cannot be now considered. When the matter was argued it was mainly argued on Muslim Law and whatever argument was advanced is considered by this Court while deciding the revision. In any case, Bademiya was dead when the matter was tried before the Tribunal and due to this circumstance, the statement of Bademiya, dead person was considered as relevant and weight was given to it by the Tribunal and that can be done in view of the provision of section 32 of the Evidence Act. If the present applicants wanted to use statements of other witnesses, so called relatives of Bademiya and wanted to use the statement of those witnesses before the Tribunal, that could have been done by examining those witnesses only before the Tribunal. The Revisional Court is not expected to consider such submission. In any case, this point was not pressed when the revision was argued before this Court. It can be said that purpose behind the filing of the present proceeding is only to get some time. This Court sees no reason to review the decision. Both the review applications stand dismissed.

[T.V. NALAWADE, J.]

SSC/