

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**910 SECOND APPEAL NO. 630 OF 2015
WITH
CA/731/2016
IN
SA/630/2015**

**HARJINDER KAUR AVTARSINGH NIR
AND ANR.**

VERSUS

**THE MAHARASHTRA STATE BOARD
OF WAKF AND ORS.**

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Mr. A.R.Vaidya, Advocate for Appellants.

Mr. V.J.Dixit, Senior Counsel i/b

Mr.S.V.Dixit, Advocate for R – 1.

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CORAM : T.V.NALAWADE, J.

DATE : 29/06/2016

ORDER :

1. The Appeal is filed by the defendant of R.C.S. No. 398/1992 which was pending in the Court of the Civil Judge [Jr.Division], Aurangabad. The Suit filed by the Wakf Board for relief of declaration that the suit property is wakf property and also for the relief of

possession was decided against Wakf board. This decision is set aside by the first appellate Court in R.C.A. No. 209 of 2001. Heard both sides.

2. The Suit was filed in respect of property having size 73 x 96 ft. which is part of S.No. 77 [area 7 Acres 22 gunthas]. S.No. 77 is known as 'Kala Chabutara' situated at Aurangabad. It is the case of the Wakf board that the entire survey number belongs to religious institutions Masjid and Kabrastan and it was dedicated for Masjid many years back. It is contended that the record of dedication, Muntakhab is lost, but the entry about the ownership was there in the revenue record from prior to the year 1938 A.D. [1347 Fasali]. It is contended that for some time, it was mentioned in the revenue record that it was wakf by user [Parampok], but the property was donated for religious institution long back. It is contended that in the year 1973 the property was notified as wakf property.

3. It is the case of the wakf board that the defendant No. 1 is in possession of the suit property and he is claiming ownership over the suit property. It is

contended that the defendant No. 1 is claiming her right on the basis of a sale deed from the person who had no concern with the wakf property. It is contended that one Javed Khan was partner of the defendants, but when he realized that it was wakf property, said Javed Khan got lease deed executed from the plaintiff on 23/02/1987. It is contended that said Javed Khan has paid rent to the Wakf board in respect of the suit property.

4. When the Suit was filed, Wakf Act of 1995 was not in existence and no Tribunal was constituted. So, the Suit was filed in the Civil Court.

5. Defendant Nos. 1 to 5 filed joint Written Statement. They denied that it is wakf property. They have shown ignorance about the existence of Masjid, Kabrastan and Durgah in S.No. 77. They contended that they have no knowledge that property was notified as wakf property and they have contended that such notification is not binding on them.

6. It is the case of the defendants that husband of defendant No. 1 had made agreement of partnership

with aforesaid Javed Khan and others and they had constituted partnership firm by name “ J.K.Towers Advertising Art Gallary and Colour Laboratory”. It is contended that there was Suit filed bearing No. 467/1987 for dissolution of partnership and after that Javed Khan joined hands with Wakf board and created record that the property belongs to Wakf board.

7. It is the case of defendants that their property is given CTS No. 17378 and it is given municipal No. 5-15-113/3 in the assessment record of the local body. It is their case that area of their property is 240 Sq. Meters. It is the case of the defendants that one Raghuveersingh was the owner of this property and the defendants purchased the property from said Raghuveersingh under sale deed dated 05/12/1979. They contended that they obtained permission for construction in the year 1986 though they got the possession from Raghuveersingh under sale deed. It is contended that some portion of their property was acquired for road and compensation was paid to them by the acquiring body. Thus, they denied that the property belongs to wakf institution.

8. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The trial Court had held that Wakf board failed to prove that the suit property is part and parcel of S.No. 77. The trial Court had held that as the plaintiff failed to prove that it is part of S.No. 77, it can not be presumed that it is the wakf property. First appellate Court has held that it is wakf and it is part of S.No. 77. As it is held that the property was given on lease basis to Javed Khan and there was partnership between Javed Khan and the defendants, direction is given by the first appellate Court to execute the lease deed in favour of the defendants.

9. There is no record of dedication of the property to the wakf institution. There is no record of succession of Mutawali. In view of these circumstances, revenue record and city survey record is referred by the Courts below. The first entry in the revenue record which is available is of 1938 A.D. It is 'Hakka Nondani Patrak' [record of rights]. This document shows that it was the property of old mosque and Kabrastan. Thus, prior to 1938 A.D., there was mosque and Kabrastan on S.No. 77. This record shows that the land was initially owned

by Sarkar-E-Ali (Nizam Govt.). Survey number and area of the property was mentioned in the record of the year 1938 and this record is sufficient to infer that prior to 1938, the property S.No. 77 was belonging to Masjid and Kabrastan.

10. Record of Pahani Patrak [crop cultivation record] of the years 1954-55 to 1958-59 is available and that also shows that said survey number belongs to Masjid and Kabrastan. However, in these years, it was mentioned that it was the property of Masjid and Kabrastan by user. There is some record like 7/12 extract from 1971 – 1975. It appears that after notification of the property as wakf property under Wakf Act, 1954, the name of Wakf board was entered in the ownership column and mutation No. 300 was made. Then one Dargah was also shown in S.No. 77.

11. Revenue record shows that from the year 1938 to 1975, no private party was having any concern with S.No. 77 and the property was belonging to Mosque, Dargah and Kabrastan. Name of Wakf board was also then entered in the revenue record. Due to this record,

burden was heavy on the defendants to prove that their vendor was owner of any portion of S.No. 77, if the plaintiff is able to prove that the suit property is part and parcel of S.No. 77.

12. City survey record is also available and it shows that at the time of preparation of property card, previous record like Chalta No. 27 was available in respect of S.No. 77. City Survey record shows that portion admeasuring 240 Sq. Meters was separated during city survey and it was given CTS No. 17378. Name of Raghuveersingh was first time shown as owner of this portion and it was shown that he had purchased this portion from one Mohd. Jafar. It is already observed that in the year 1975, no private person had any concern with S.No. 77. As city survey was not done when the so called sale deed was executed in favour of Raghuveersingh, there was no question of showing city survey number in the sale deed. So, the burden was on the defendants to prove that said Mohd. Jafar was owner of any portion of S.No. 77 on the date of sale deed executed in favour of Raghuveersingh. The original sale deed is not produced on record and due to that adverse inference needs to be

drawn.

13. The entries in the revenue record and city survey record can not confer title. Thus, Raghuveersingh had not become owner due to the entry made in respect of his name in property card. It was open space, part of agricultural lands and so it was necessary to prove that Raghuveersingh had started using the portion as owner. There is no such record with the defendants. From the pleadings and the submissions made, it can be said that partnership was constituted in the year 1983 and probably after that some construction was made. No record is produced to show that any permission was obtained from the local body to make construction on this property.

14. In view of aforesaid circumstances, it was not possible for the defendants to prove their other contention that they have become owners due to adverse possession. For proof of ownership due to adverse possession, specific pleadings regarding the date from which they started enjoying the property as owner needs to be there and then it needs to be proved. When there is

record of aforesaid nature which is in favour of the plaintiff, inference was not possible that the defendants have become owner due to adverse possession. Thus, on both the points the defendants have failed and on the other hand there is voluminous record in favour of the wakf institution, which is not challenged by the defendants. This Court holds that no substantial question of law as such is involved in the Appeal. It can be said that appellant is fortunate as District Court has directed Wakf board to execute lease in favour of appellant.

15. In the result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 731 of 2016 stands disposed of.

16. At this stage, learned counsel for the appellants prayed for continuation of the order of status-quo. But, in view of the nature of operative order made by the District Court, there is no need of such continuation. Hence, such prayer is rejected.

[T.V.NALAWADE, J.]

