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

914 CIVIL REVISION APPLICATION NO. 208 OF 2014

JALINDAR MACCHINDRA MOTE AND ANOTHER
VERSUS
THE CHIEF EXECUTIVE OFFICER, MAHARASHTRA STATE BOARD OF WAKF AND OTHERS

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Advocate for Applicants : Mr. V. P. Latange
Advocate for respondent No.1: Mr. Y. B. Pathan
Advocate for Respondents 2 and 3 : Mr. Pathan Zafar

**CORAM : T. V. NALAWADE, J**

**DATE : 26th April, 2016**

**O R D E R:**

1. The revision is filed to challenge the judgment and order of Wakf Suit No. 16/2010 which was pending before the Wakf Tribunal, Aurangabad. The suit is filed by the present applicants for declaration that the suit property bearing Gat No. 564 admeasuring 3 H 85 R ( to the extent of 81 R) situated at village Gevrai Tq. Nevasa Dist. Ahmednagar is not wakf property. Further relief was claimed to challenge the order made by the Chief Officer of the Wakf Board in Case No. 54/24/2006 dated 05.12.2007. Both these sides are heard.

2. Plaintiff No.2 is sister of plaintiff no.1. It is the case of the plaintiffs that the father of defendant No.2 Kadarbhai Shaikh and defendant no.3 had made an agreement in favour of plaintiff No.1 to sell

the suit property and the said agreement was registered. It is contended that no sale deed was executed by the defendants by contending that the permission of Sub Divisional Officer, Shrirampur was required and on the date of agreement, consideration of Rs.15,000/- was paid by plaintiff no.1 to defendant no.1. It is contended that the suit property was given in possession of plaintiff No.1 on the date of the agreement and then plaintiff no.1 handed over possession to plaintiff no.2 for the purpose of cultivation. It is contended by the plaintiffs that when they made enquiry about the necessity of permission to sell the property from revenue authority, they realized that there was no necessity of permission as it was not Inam land.

3. Father of defendant no.2 died on 19.04.2002. It is contended that during the life time of Kadarbhai, plaintiffs had requested him many time to execute the sale deed but on one or other pretext, he avoided to execute the sale deed. It is contended that the plaintiff no.1 then filed Suit, Regular Civil Suit No. 23/2006 for relief of specific performance of contract in the court of Civil Judge, Junior Division, Nevasa but when it was contended by the present defendant

nos.2 and 3 that it was wakf property, the suit was withdrawn after taking permission of the court for filing suit before Wakf Tribunal.

4. It is the case of plaintiffs that at the instance of defendant Nos. 2 and 3, one proceeding was started under section 54 of the Wakf Act 1995 against them but proper procedure was not followed by defendant no.1, Chief officer and the order of eviction was made against them. It is contended that the suit property is registered as wakf property but at the time of registration, no notice was given to plaintiffs and that registration is not binding on the plaintiffs. It is the case of plaintiffs that there is some mistake committed by the revenue authority as the land Survey No. 144 admeasuring 9 Acres 22 Gunthas was dedicated as wakf for Masjid Gevrai but subsequently the land dedicated was shown as survey No. 137, present Gat No. 564. On the basis of aforesaid pleadings, two reliefs were claimed.

5. The suit was contested by the defendants. Both the sides gave evidence. It is the case of the defendants that the suit property is wakf property and defendant Nos. 2 and 3 are successors of the original

Mutawalli. It is contended that the record of Sanad is lost but there are entries with regard to the said record made in proper register kept under the Maharashtra Land Revenue Code. It is contended that there was mistake in mentioning survey No. 144 as a land dedicated to Masjid but it was subsequently corrected and in the revenue record, correct no. was mentioned. It is contended that the land bearing survey no.144 was not owned by Masjid and it belongs to other persons and that land has no concern with the Masjid.

6. The main document on which the plaintiffs are relying is the agreement of sale. The execution of this document is proved and the documents at Exh. 52 shows that Kardarbhai Dagdu Shaikh and Hasan Dagdu Shaikh had agreed to sale 81 R portion of Gat no. 564 to plaintiff no.1. Possession was not given and it was mentioned that there was necessity of getting permission of Sub Divisional Officer and after getting permission, the sale deed was to be executed. The document was registered on 16.05.1990.

7. It is not disputed that previous No. of Gat No. 564 was Survey No. 137. The record like form of consolidation prepared under the Consolidation Scheme

is produced at Exh. 44 and it also shows that previous No. of Gat No. 564 was survey No. 137. Dagdubhai Shaikh, father of defendant No.2 was shown as owner of this land. On the other hand, at Exh. 45, there is another form of consolidation scheme showing that survey no. 144/3 was renumbered as block No. 64. This land is owned by Kondiram Khandu Mandlik. There are 7/12 extracts of Survey No. 144/1 etc. and they show that this survey no. was originally standing in the name of Dhondiba Khema Mandlik, Namdeo Tukaram Mandlik, Kondiba Khandu Mandlik, Maruti Namdeo Mandlik etc. The record is right from the year 1951. There are copies of mutations in respect of this land and this record shows that the land was owned by Mandlik family and at no place, name of Masjid was shown in the revenue record. They had taken loan from various banks on this land. On the other hand, the revenue record of survey No. 137 starting from the year 1931-32 is on record at Exh. 31. This record shows that right from beginning, the land was shown as Devasthan Inam Class III land given to Masjid. One Dagdubhai Ramjubhai was shown as occupant of the land and for some time one Patil was shown as simple tenant. From the year 1958-59, the name of Dagdubhai was shown in crop cultivation column. Kadarbhai, father of defendant no.2 and defendant no.3 are successors of aforesaid Dagdubhai and there is revenue record in that regard at Exh. 40.

8. It appears that in the record like register of Inam, number of this land was mentioned as survey no. 144 but the area was the same. This document is at Exh. 41 on which plaintiffs are relying. The Tribunal has compared the description of property with the aforesaid record and has given finding that by mistake, survey No. 144 was recorded in the register instead of recording survey no. 137. In any case, the successors of original occupant are not claiming that the suit land was their personal Inam and it is not wakf. Further, the plaintiffs have come with the case that there was an agreement to sale of some portion of Gat No.564 and there is record created during implementation of consolidation scheme which is already discussed. In view of this circumstance, not much is left with the plaintiff to defend the possession. Further, under the registered agreement, no possession was given and it is not contended by the plaintiffs as to how and when they got possession. It can be said that some document was created to make wrongful gain

but as the property is wakf property and it was registered also as a wakf, it is not open to the plaintiffs to claim any rights of ownership in the property. Provisions of the Wakf Act, 1995 are applicable to the property. In view of the aforesaid record, it cannot be said that the plaintiffs had made enquiry or that the plaintiffs were sure that the suit property is not wakf property and only after that they had given some consideration to the predecessor of defendant No. 2 and to defendant No. 3.

9. The learned counsel for the plaintiffs submitted that registration of property as wakf is not binding on them. This submission is not at all acceptable. The Inamdaras, Mutawallies are not disputing the nature of property and property was already shown as wakf property and in the revenue record it was shown as service Inam land right from 1931-32. All this record is considered by the Chief Officer and finding is given that plaintiffs have no right to keep the possession. The Wakf Tribunal has considered all the available material and no error can be found in the order made by the Chief Officer. As the plaintiffs are claiming right of ownership and the Wakf Institution, Masjid of Gevrai is not benefited, this court holds that the

possession needs to be taken back from the plaintiffs.

10. Considering the scope of revision, this Court holds that interference is not possible and there is no question of admission of revision. In the result, the revision stands dismissed.

**( T. V. NALAWADE, J. )**

JPC