

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

WRIT PETITION NO. 2597 OF 2015

- 1] Shaikh Gausoddin S/o Shaikh Hannu
Age: 61 Years, Occu. Labour,
R/o Musa Nagar, Udgir, Dist. Latur.
 - 2] Babbu S/o Nazim Munsu
Age: 31 Years, Occ. Business,
R/o Khadkali Galli, Udgir, Dist. Latur.
 - 3] Nazim S/o Sijaoddin Munsu
Age: 63 Years, Occ. Business,
R/o Khadkali Galli, Udgir, Dist. Latur.
 - 4] Shaikh Mahatab S/o Shaikh Hannu
Age: 51 Years, Occ. Labour,
R/o Musa Nagar, Udgir, Dist. Latur.
 - 5] Khulejabegum W/o Shaikh Mahatab
Age: 46 Years, Occu. household,
R/o Musa Nagar, Udgir, Dist. Latur.
 - 6] Sahikh Nazim S/o Shaikh Mahatab
Age: 23 years, Occu. Auto Driver,
R/o Musa Nagar, Udgir, Dist. Latur.
 - 7] Shaikh Mohsin @ Chotu S/o Shaikh Mahatab
Age: 22 Years, Occu. Auto Driver,
R/o Musa Nagar, Udgir, Dist. Latur.
 - 8] Shaikh Pasha S/o Shaikh Hannu
Age: 45 years, Occu. Labour,
R/o Musa Nagar, Udgir, Dist. Latur
-PETITIONERS.**
(ORIG. DEFENDANTS)

Versus

Rajesh S/o Vithalrao Kamble
Age: 52 Years, Occu. Agri. & Business,
R/o Gandhi Nagar, Udgir, Dist. Latur. **...RESPONDENT.**
(Orig. Plaintiff)

Mr. M.S. Choudhary , Advocates for petitioners.

Mr. V. D. Gunale, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 31st August, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Present proceeding is filed to challenge the order made on Exh. 17 in Regular Civil Suit No. 493/2013 by the learned Civil Judge, Junior Division, Udgir. The application filed under section 9A (Maharashtra Amendment) of Civil Procedure Code is rejected by the Trial Court and the Trial Court has refused to frame preliminary issue on the point of jurisdiction. The suit is filed by present respondent - Rajesh for relief of declaration that he is owner of the property. He has also prayed for relief of possession against the present petitioners and relief of injunction is also claimed. It is the case of plaintiff that he has purchased plot having size of 60 ft. x 60 ft. from defendant No. 1 under registered sale deed and it is part and parcel of Survey No. 377.

3) It is the case of defendants that Survey No. 377 is Service Inam Land and it was given for rendering services to

Dargah. According to defendants, there is Muntakhab of 1305 Fasli (1895 A.D.) and there is revenue record like Khasara Patrak of the year 1954-55 to show that Survey No. 377 is Service Inam Land. It is also the case of defendants that in the year 1980 property is notified as Waqf property in Government Gazette.

4) The learned Judge of the Trial Court has observed that plaintiff - Rajesh is a stranger, he is not a Muslim and so, Civil Court has jurisdiction. The provisions of sections 6 and 7 of the Waqf Act, 1995 show that after creation of Waqf Tribunal, there is bar created to the jurisdiction of Civil Court vide section 85. Section 83 gives jurisdiction only to Waqf Tribunal and provisions of sections 6 and 7 show that if the property is notified as Waqf property, then notification receives presumptive value and even a stranger like Rajesh needs to challenge such notification by filing appropriate proceeding before Waqf Tribunal. This Court is avoiding to go in to the merits of the matter. But the aforesaid circumstances and position of law is sufficient to show that Trial Court has committed grave error in holding that preliminary issue need not be framed in the present matter.

5) The learned counsel for the plaintiff placed reliance on the case reported as **2007 (5) ALL MR 132 [Shivajirao s/o.**

Eknathrao Kovale and Ors. Vs. Syed Mehmood s/o. Syued Nizamoddin and Ors.]. The facts of this reported case show that proceeding was filed in the year 1987 i.e. before creation of Waqf Tribunal. This single circumstance is sufficient to ignore the decision given in the case on which reliance is placed by the learned counsel for plaintiff. This Court holds that the order made by the learned Civil Judge, Junior Division, Udgir cannot sustain in law.

5) In the result, petition is allowed. The order made by learned Civil Judge, Junior Division, Udgir on Exh. 17 in Regular Civil Suit No. 493/2013 is set aside. The Trial Court is expected to frame preliminary issue on the point of jurisdiction of Civil Court and allow both the parties to lead evidence and then decide the issue. The observations made in this matter are only for the purpose of present matter and the learned Judge of the Trial Court is not to get influenced by the observations made by this Court in this order.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/