

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 173 OF 2015

Vakeel Usman Mujawar

...Applicant

Versus

Shri. Dagduddin Yasin Mujawar
and Ors

...Respondents

....

Mr. Shrishail Sakhare, Advocate for the Applicant.

Mr. Keshav Borhade, Advocate for Respondent Nos.1 to 9.

Mr. Satyajeet A. Rajeshirke, a/w. Mr. Rahul Vijay Mane, Advocate
for Respondent No.13.

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CORAM : R. G. KETKAR, J.

DATE : 3rd May, 2016

P.C.

1. Heard Mr. Shrishail Sakhare, learned Counsel for the applicant, Mr. Keshav Borhade, learned Counsel for respondent Nos.1 to 9 and Mr. Satyajeet Rajeshirke, learned Counsel for respondent No.13, at length.

2. By this application under Section 83(9) of the Waqf Act, 1995 (for short, 'Act'), the applicant has challenged the judgment and order dated 17.11.2014 passed by learned Presiding Officer, Maharashtra Waqf Tribunal, Aurangabad (for short, 'Tribunal') in Waqf Suit No.19/2011. By that order, the

Tribunal dismissed the Suit instituted by the applicant, hereinafter referred to as 'plaintiff'.

3. The plaintiff has instituted the suit *inter alia* praying for declaration that the property bearing Gat No.499, situate at Manjree, Taluka-Sangola, District-Solapur (for short, 'suit property') is a waqf property; for declaration that the transaction made by defendant No.2 for alienation of suit property in favour of defendants No.10 and 11 is null and void *ab initio*; for perpetual injunction restraining defendants No.1 to 9 from interfering in peaceful management of Dargah Ladle Peer situate at Manjeri, Taluka-Sangola, District-Solapur and from alienating the waqf property by gift, sale and mortgage etc.. The defendant resisted the suit *inter alia* contending that the suit property is not a waqf property. After considering the evidence on record, Tribunal came to the conclusion that the suit property is not a waqf property and accordingly dismissed the suit. It is against this order, the plaintiff has instituted the present Civil Revision Application.

4. Mr. Sakhare submitted that the plaintiff made application under Section 36 of the Act to the chief Executive

Officer of the Maharashtra State Waqf Board, Aurangabad (for short, 'Board') on 24.3.2008. In pursuance thereof on 26.3.2008, public notice was issued by the Board which was also published in Daily Pudhari. In pursuance thereof no objections were raised. On 23.4.2008 the Board issued certificate of registration certifying that the property set out in application is a waqf property and accordingly entries were made in the waqf register maintained under the provisions of the Act. He submitted that the defendants made Application No.13/2008 under Section 7 read with Section 38 of the Act challenging the registration dated 23.4.2008. By order dated 15.1.2010, the Tribunal rejected the application.

5. The plaintiff thereafter made application under Section 40 of the Act dated 4.6.2009 enclosing therewith the documents and record. A prayer was made for conducting enquiry and for recording the property set out in Schedule-A as a waqf property. He submitted that said application is pending since then. He submitted that as the defendants were causing obstruction to the Management of Dargah, the plaintiff instituted suit against the defendants. During pendency of the suit, he took out

application Exhibit-5. By order dated 7.12.2011, the Tribunal issued injunction restraining the defendants from interfering in Dargah management by the present Committee or from alienating, dividing or encumbering the suit property or creating any third party interest or rights therein or thereon in any manner whatsoever till disposal of suit. While passing interim order, the Tribunal has recorded *prima facie* finding to the effect that the suit property is the waqf property. However, the Tribunal has dismissed the suit. Mr.Sakhare invited my attention to (1) extract of Register of Alienated Villages and Lands in Sangola and particularly Sr. No.257 in respect of Ladlesaheb Peer, Manager, Dadan Valad Bahadur and Husen Valad Abdul Atar to contend that the suit property is recorded as a waqf property, and (2) Tippan Book dated 23/24.11.1988 at Exhibit-84 to contend that the property is described as Dargah. He also invited my attention to admission by DW-1 Ibrahim Syed Mujawar in cross-examination as also in paragraph-4 of the written statement. For all these reasons, he submitted that Civil Revision Application requires consideration.

6. On the other hand, Mr. Borhade invited my attention to

paragraphs-17 and 18 of the impugned order. He submitted that after considering the material on record, the Tribunal has held that the property mentioned in Schedule-A to the application is not a waqf property.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

8. Mr. Sakhare relied upon Tippan Book dated 23/24.11.1988 at Exhibit-84. Tribunal has dealt with this document and observed that in that document nowhere it is mentioned that the suit land is a waqf property of Dargah Ladalepeer. Tribunal also considered the extract of register at Exhibits-87 and 91, wherein the property is described as Class-II personal inam land. In other words, the document does not record that the suit property is a waqf land. Tribunal therefore held that the suit property is not a waqf property and it is a personal inam. In paragraph-18, Tribunal has considered the documents produced by the defendants and in particular 7/12 extract of the year 1940-41 and 1949-1950. In 7/12 extract the property is recorded as 'Jat Inam' (personal inam). Thus after

considering the material on record, Tribunal held that the property is not a waqf property. In view of the findings recorded in paragraphs-16 to 18 of the impugned order, I do not find any is made out for invocation of powers under Section 83(9) of the Act.

9. In the case of ***M.L.Sethi Vs R.P.Kapur, 1972 (2) SCC 427***, the Apex Court thereafter considered the scope of section 115 of C.P.C. It was observed in paragraph 12 as under :

“.. The jurisdiction of the High Court under section 115 of the C.P.C. is a limited one. As long ago as 1884, in *Rajah Amir Hassan Khan v. Sheo Baksh Singh*, the Privy Council made the following observation on Section. 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908:

"The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In *Balakrishna Udayar v. Vasudeva Aiyar*, AIR 1917 PC 71, the Board observed :

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-

exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In *N. S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras*, AIR 1949 P.C. 156, the Judicial Committee said that section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law.

This Court in [Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee and others](#) and *Vora Abbashhai Alimahomed v. Haji Gulamnabi Haji Safibhai*) has held that a distinction must be drawn between the errors committed by sub-ordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court, and errors of law which have no such relation or connection. [In Pandurang Dhoni Chougute v. Maruti Hari Jadhav](#)(3), this Court said :

"The provisions of Section 115 of the 'Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said

errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed, to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of s. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115."

31. Applying the tests laid down to the facts of the present case, I do not find that the Tribunal committed any error in passing the impugned order. The Tribunal has correctly borne in mind principles of law. The facts have been properly appreciated and after considering all the material and relevant facts, the Tribunal has passed the impugned order. The applicant was not in a position to demonstrate that the findings recorded by the

Tribunal are perverse being based on no evidence or that on basis of evidence on record, no prudent man could have come to that conclusion. The decision of the Tribunal does not lead to miscarriage of justice. The High Court while exercising the powers under Section 83(9) of the Act cannot substitute its own view in place of Tribunal merely because it considers to put better view.

32. For all these reasons, I do not find any merit in this Application and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)