

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.329 of 2016

IN

Civil Writ Jurisdiction Case No. 9793 of 2014

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Mohammad Tanweeruddin S/o Late Tajuddin Resident of Mohalla - Banglappar,
Ahiyapur, P.O. & P.S. Sheikhpura, District - Sheikhpura

.... Petitioner

Versus

1. Md. Shamim Ahmad
2. Md. Naseem Ahmad S/o Late Wakil Ahmad
3. Mainama Khatoon W/o Late Md. Aquil Ahmad
4. Shakeel Ahmad
5. Sajid Ahmad
6. Rashid Ahmad S/o Late Md. Aquil Ahmad
7. Ramdeo Yadav S/o Late Sitaram Yadav All residents of Mohalla - Lalbag,
Ahiyapur, P.O. & P.S. Sheikhpura, District - Sheikhpura

.... Respondents

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Appearance :

For the Petitioner : Mr. Ragib Ahsan, Advocate

For the Respondents : Mr. Raj Kishore Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

Date: 12 -12-2017

The petitioner is plaintiff of Title Suit No.40 of 2010 filed in the Court of Sub-Judge, Ist Sheikhpura. He has filed this application for review of order dated 17.05.2016 passed by a Bench of this Court in CWJC No.9793 of 2014 whereby and whereunder the writ application of this petitioner filed under Section 227 of the Constitution of India was dismissed. The Court as per said order refused to interfere with the order dated 15.02.2014 passed by learned Sub Judge-Ist, Senior Division, Sheikhpura.

2. The petitioner has filed the aforesaid Title Suit No.40 of 2010 for declaration that the deed of Wazidawa (relinquishment)



dated 24.05.1917 executed by Sitaram Yadav, the father Opposite Party No.7 in favour of defendant Ist party as void *ab initio* and without any legal authority. The defendant first set appeared and filed written statement. After framing of issue the defendant first party filed a petition on 06.07.2013 under Section 85 of the Wakf Act, 1995 read with order 14 Rule 2 (a) and (b) of the CPC and Section 3 of the Limitation Act praying therein to decide issue nos.IV and IV as preliminary issues. The learned Sub Judge after hearing both sides transferred the record of Title Suit to the Wakf Tribunal, Patna for adjudication. The petitioner challenged the said order by filing CWJC No.9793 of 2014 which after hearing was dismissed on 17.05.2016.

3. The petitioner feeling himself aggrieved with the said order has preferred this application for reviewing the said order on the ground that Section 85 of Wakf Act does not oust the exclusive jurisdiction of Civil Court to decide the declaratory suit in respect of a registered deed of relinquishment. The Wakf Board or Tribunal has no jurisdiction under the Wakf Act to decide the illegality and validity of a registered document.

4. Heard learned counsel for the petitioner as well as the respondent.

5. Learned counsel for the petitioner submitted that the trial Court was misled in passing the order against the provision of law. The defendant first party had filed a petition praying therein to



decide the issue nos.iv and vi as preliminary issue but the learned court committed error in passing the order dated 15.02.2014 whereunder it transferred the case to the Wakf Tribunal. The order of transferring the suit to Wakf Tribunal was beyond the jurisdiction of court below. The court below in its order has referred the ruling reported in AIR 2007 SC 1447 and also a direction of the High Court but no reference has been made as regards any direction. The court below although referred a ruling of Apex Court but the said decision does not relate to the issue involved in the suit filed before the court below. He has further submitted the Civil Court has exclusive jurisdiction to decide any suit of civil nature under Section 9 of the CPC and, as such, the suit which is cognizable by a civil court cannot be transferred to Wakf Tribunal. The learned counsel cited the provisions of Section 6, 7, 83 and 85 of the Wakf Act and submitted that the Wakf Tribunal has been constituted only to try a suit in which the issue is as to whether any property is a Wakf property or not and as to whether of Wakf property belongs to Siya Wakf and Suni Wakf and only these two kinds of dispute can be decided by Wakf Tribunal. So the Wakf Tribunal has no jurisdiction to decide this suit in which the declaration about legality and validity of a document is involved. It has been contended that the Wakf Act was amended vide Bihar Act No.27 of 2006 whereunder a new Section 85A has been introduced which provides for automatic transfer of a suit pending before any



court immediately before the date of constitution of a Tribunal under the Act and after commencing of the Act to the Wakf Tribunal. The amended Act came into force on 08.09.2006 on which date the suit was not pending. The present Title Suit has been filed in year 2010. The learned counsel in support of his contention has cited a ruling reported in *AIR 2010 SC page 2897 Ramesh Govindran vrs. Sugra Humayu Mirza Wakf* wherein, it has been held that the jurisdiction of civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction, is therefore an exception to the general rule that all disputes shall be triable by the civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction and would uphold retention of jurisdiction of the civil court and shifts the onus of proof to the party that asserts that civil court's jurisdiction is ousted. The Hon'ble Apex Court has held that the suit for eviction of tenant from Wakf property could be filed only before the civil court and not before the Wakf tribunal. The learned counsel further referred para-34 of ruling reported in AIR 2014 SC 2064 wherein the Hon'ble Apex Court has held that the jurisdiction of civil court in deciding such type of cases is not excluded.

6. In contra, the learned counsel for the respondents submitted that review application is not maintainable. The main contention is that the contesting defendant never admitted that the suit



properties are Wakf properties. The plaintiffs assert that the suit property is Wakf property whereas the defendant denies this fact and so the important issue arises for consideration and is as to whether suit properties are Wakf property or not. This issue can only be decided by Wakf Tribunal as constituted under the Act. The order of transfer of title suit from the court of Sub Judge to the Tribunal for trial does not require any interference and so the review application is fit to be dismissed.

7. Having heard the learned counsel for the parties, examining the record and relevant provisions of Wakf Act, I find that the facts asserted in the civil review application has not been controverted by learned counsel for the respondent by filing any counter affidavit. The learned court below has referred a letter of this Court whereunder a direction was allegedly given to the civil court to transfer all the pending suits relating to Wakf property was ordered to be transferred but neither any reference nor any paper has been filed in support of this contention. So in view of submission of both the parties, the moot question arises for consideration is as to whether the order of the trial Court is legally valid and within the jurisdiction of the trial court and whether the trial court has committed jurisdictional error in passing the impugned order.

8. On examination of plaint which is annexed with the review application, I find that the petitioner/plaintiff has filed the



present suit for declaration with respect to registered deed of Wazidawa dated 24.05.1977 executed by Sitaram Yadav as *void ab initio*. On careful and conjoint reading of Sections 6, 7, 83 and 85A of Wakf Act, it appears that those cases in which suit property is Wakf property or not or the Wakf is a Siya Wakf or Sunni Wakf can only be decided by the Wakf tribunal. After amendment in 2013 jurisdiction of Wakf tribunal has been extended to cover a suit for eviction of tenant from Wakf or any matter concerning lesser or lessee or no other matter. The jurisdiction of civil court to decide right title and interest of any party or for declaration in respect of any document is intact and these are not ousted on account of addition of Section 85A of the Wakf Act. The amended Section 85A of Wakf Act could apply only in a pending suit which is cognizable by a tribunal and not in respect of any other suit. Thus, it is apparent that the provision of Section 85 of the Act is not applicable in the present case which was filed after the amendment of the Act. I further find that the trial court has placed reliance upon the decision of Hon'ble Apex Court reported in AIR 2007 SC 1447 but on going through the ratio decided in the said case. I find that the provision of Section 7(5) and 85 of the Act does not extend to suits pending in the civil court before the enforcement of the Act.

9. In view of discussions made above, conjoint reading to the provisions of Section 85A read with Section 6, 7 and 83 of Wakf



Act and the ruling of the Apex Court, I find that the trial court has committed jurisdictional error in passing the impugned order dated 15.02.2014. The title suit bearing Title Suit No.40 of 2010 pending in the court of Civil Judge, Sheikhpura for declaration with respect to deed of Wazidawa cannot be tried by a Wakf tribunal even if the suit property is Wakf property or not the Wakf property. The admitted case of the plaintiff is that the suit property is Wakf property and a document was executed for its management. The father of respondent no.7 was appointed as Mutwalli to manage the property. The dispute between the parties relate to declaration with respect to a registered of Wazidawa and it is within the jurisdiction of civil court only.

10. In view of above discussions, this review application is allowed and the order dated 15.02.2014 passed by Civil Judge, Senior Division, Sheikhpura is set aside and the aforesaid title suit is ordered to be recalled from Wakf Tribunal for trial by the civil Judge. The order dated 17.05.2016 passed in CWJC No.9793 is 2014 is accordingly reviewed and modified.

11. This application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	17.11.2017
Uploading Date	
Transmission Date	

