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

**CIVIL REVISION APPLICATION NO. 137 OF 2017**

1. Rafiuddin S/o Qutbuddin Farooqui,  
age 59 years occupation business  
R/o Khadkali Galli, Udgir Dist. Latur
2. Hisamuddin S/o Jafer Patel,  
age 55 years occupation business  
R/o Khair Nagar, Udgir Dist. Latur
3. Syed Hisamuddin S/o Syed Nizamuddin,  
age 60 years occupation Legal Practitioner  
R/o Bidar road, Udgir Dist. Latur.
4. Shaikh Haqqani S/o Shaikh Hussain,  
age 40 years occupation labourer  
R/o Aurangpura, Udgir Dist. Latur
5. Saber Yahya Patel,  
age 32 years occupation Ex. Municipal Councilor  
R/o Rangeen bungalow, Udgir Dist. Latur
6. Khursheed Alam S/o Mashoodul Haq,  
age 45 years occupation labour  
R/o Dakhul Darwaza, Quilla road, Udgir Dist. Latur,
7. Thanedar Tanveer S/o Naseer Mohd.,  
age 38 years occupation business  
Dabirpura, Udgir Dist. Latur.

...APPLICANTS

(Original defendants No.3 to 9)

**VERSUS**

1. Syed Mushtaq Ahmed S/o Syed Ashfaq Ahmed,  
age 29 years occupation nil  
R/o Mehboobpura, Udgir Dist. Latur.

(2)

2. Maharashtra State Board of Wakfs,  
through its Chief Executive Officer,  
Panchakki, Aurangabad.
3. District Wakf Officer, Latur,  
age major occupation service  
R/o Ganj Golai, Latur Dist. Latur  
(Through : Respondent No.2)

...RESPONDENTS

(Orig. Plaintiff and Defts. No.1 & 2)

Mr P.S. Paranjape, Advocate, holding for Mr S.B. Khan, Advocate,  
for applicants  
Mr R.S. Deshmukh, Advocate, holding for Mr S.A.P. Quadari,  
Advocate for respondent No.1

**CORAM : N.W. SAMBRE, J.**

**DATE : 1<sup>st</sup> August, 2017**

**ORAL ORDER**

By an order dated February 2, 2016, passed by the Civil Judge (Senior Division), Udgir, the Civil Court directed return of plaint as the power to entertain in suit in relation to *Wakf* property does not vest in Civil Court.

2. While doing so, the Civil Judge (Senior Division), Udgir, on September 18, 2015, made an endorsement that since the rights of the parties as are sought to be adjudicated in the suit are in relation to the *Wakf* property, the same was registered as Special

(3)

Civil Suit.

Subsequent thereto, the suit, as a consequences of order dated 2<sup>nd</sup> February 2016, presented the same before the Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad, in which application Exh. 71 came to be filed by the present applicants/original defendants, alleging that the suit, pursuant to the provisions of Order VII Rule 10(2), is not maintainable, as the very claim, which was returned by the Civil Court, was not presented before the Wakf Tribunal. According to learned Counsel for the applicants, the Wakf Tribunal rejected the said objection and directed the present applicants to file their additional written statement, if any. As such, this revision application.

3. While harping upon the provisions of sub-rule 2 of Rule 10 of Order VII of the Code of Civil Procedure, Shri Paranjape, learned Counsel for the applicants, submits that what was expected of the plaintiffs is to submit the same plaint, which was returned to him by the Civil Judge (Senior Division), Udgir, and not altogether new plaint or by amending the plaint, that was returned, that too, without leave of the Court. He would then urge that it is always open for the plaintiff to pray before the Court for grant of amendment, if any, to be carried out in a plaint, which is re-submitted/re-presented before the competent Court.

(4)

4. Per contra, Shri Deshmukh, learned Counsel for the respondent/plaintiff would urge that it is always open for the plaintiff to present the same plaint or amend the plaint on its own and or present it or to file altogether separate plaint as there is no embargo prescribed under the provisions of Order VII Rule 10. He would harp upon provisions of Order VI Rule 17 or Order VII Rule 10-A and also draws support of the Judgment of the Apex Court in the matter of **Hanamanthappa and another Vs. Chandrashekharappa and others (AIR 1997 Supreme Court 1307)**.

5. Having considered submissions made, though initially the claim made under Rule 10 of Order VII gives a picture that the plaintiff must tender the same plaint without carrying out any amendment to the Court of competent jurisdiction. However, the said provisions are considered by the Apex Court in the matter of **Hanamanthappa**, cited supra, while dealing with the situation, wherein the plaintiff to suffer order of return of plaint for presentation of it to the competent Court, has observed that it is always open for such plaintiff to amend the plaint on its own or present altogether fresh suit, on the cause of action pleaded. The Apex Court in paragraphs No. 2 and 3 of the said judgment in the matter of **Hanamanthappa**, has observed, as such:

(5)

*“2. Admittedly, the respondents filed O.S. No. 158/94, in the Court of District Munsiff, Navalagund. On grounds of lack of territorial jurisdiction the plaint was returned for presentation to the proper Court. Accordingly, after making necessary amendment to the plaint the respondents represented the suit, which came to be numbered as O. S. No. 10/91, in Civil Court at Dharwad. The petitioners filed an application under Order VII, Rule 10, C. P. C. for dismissal of the petition on the ground that the plaint was materially altered, without seeking permission for amendment of the plaint as required under Order VI, Rule 17, C. P. C. The High Court dismissed the petition.*

3. It is contended by Shri Kulkarni, learned Counsel for the petitioners, that since the petition had been filed with amended averments in the plaint, necessarily it must be treated to be a fresh plaint and not one after representation to the proper Court. We find no force in the contention. The object of Order 7, Rule 10-A is that the plaintiff, on return of the plaint, can either challenge in an appellate forum or represent to the Court having territorial jurisdiction to entertain the suit. In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee as had rightly been pointed out by the High Court. Therefore, it cannot be dismissed on the ground that the plaintiff made averments which did not find place in the original plaint presented before the Court of District

(6)

Munsiff, Navalgund. It is not always necessary for the plaintiff to seek amendment of the plaint under Order VI, Rule 17, C. P. C. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law. Under those circumstances, we do not think that there is any error of law committed by the High Court in giving the above direction.”

6. In view of above observations of the Apex Court, the fact remains that the objection to the jurisdiction, if any, is always open for the present applicants to be raised before the Tribunal, as the Tribunal in such an eventuality is duty bound to consider the same. However, the plaintiff, in view of provision of Order VII Rule 10-A cannot be precluded from filing an amended plaint or an altogether different suit as the rights of the parties to the suit in question, in which plaint is returned, were neither adjudicated upon nor legal embargo would be read under the provisions of Civil Procedure Code to that effect.

7. In view of above, in my opinion, I hardly notice any error of jurisdiction. Revision Application, as such, fails. Hence the Revision Application is rejected.

**( N.W. SAMBRE, J.)**

pjm