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

CIVIL REVISION APPLICATION NO.234 OF 2016

Masjid-E-Firdous through its
Trustees,

1. Shabbir s/o Jamadar Pathan,
Age: 40 years, Occ: Business,
2. Kutbuddin s/o Jamadar Pathan,
Age: 43 years, Occ: Business,
3. Aziz s/o Ramzan Shaikh,
Age: 63 years, Occ: Business,
4. Imran s/o Chand Shaikh,
Age: 34 years, Occ: Business,

All R/o. Rajendranagar,
Shahu Nagar, Kedgaon,
Tq. & Dist. Ahmednagar.

..APPLICANTS

VERSUS

Amol s/o Shivaji Bhatpure,
Age: 33 years, Occ: Business,
R/o. Shahunagar, Kedgaon,
Tq. & Dist. Ahmednagar.

..RESPONDENT

Mr M.A. Khan, Advocate for applicants;
Mr S.S. Chapalgaonkar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd JULY, 2017

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ORAL ORDER :

Present applicants are the defendants in Regular Civil Suit No.37 of 2014 pending on the file of Civil Judge, Senior Division, Ahmednagar, who moved an application under Section 9A of the Code of Civil Procedure therein for framing of preliminary issue as regards jurisdiction of the Civil Court to try and decide the suit in the backdrop of the fact that the suit property is wakf property. Said application came to be rejected by order dated 5th October, 2016 passed by Civil Judge, Senior Division, Ahmednagar. As such, this civil revision application.

2. Mr. Khan, learned Counsel for the original defendants would invite attention of this Court to the registration certificate and inclusion of suit property in the same as property of the wakf. According to him, in view of Civil Court has no jurisdiction to entertain the suit, particularly in the backdrop of provisions of Section 85 of the Wakf Act. Section 85 of the Wakf Act reads thus :

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"85. Bar of jurisdiction of civil courts.— No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal."

3. He would then urge that Civil Court has rejected the application on two grounds (a) on the date when property was purchased the wakf was not registered and (b) the property in question is meant to be use for residential use and not for any other use. According to him, the issue is covered by the judgment of the Apex Court in the matter of ***Board of Wakf, West Bengal and another vs Anis Fatma Begum and another***, reported in ***(2010) 14 Supreme Court Cases 588***.

4. Per contra, Mr. Chapalgaonkar, learned Counsel for the respondent has tried to support the order of Civil Court on the ground that Civil Court has no jurisdiction to try the suit when the

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property is to be used which is not permissible while granting users permission under Maharashtra Land Revenue Code. According to him, common law remedy available under Section 9 of the Specific Relief Act is rightly invoked by present applicants.

5. Having considered rival submissions, it is required to be noted that the property in question is already included to be wakf property in the registration certificate dated 3rd March, 2010 issued in favour of wakf. Apart from above, in the plaint, the property in question, admittedly came to be transferred to the wakf, who has ownership right over the suit property. Once the aforesaid factual matrix is borne out of record, the provisions of Section 85 of the Wakf Act will govern the field.

6. In the aforesaid background, the suit, in my opinion, is not maintainable before Civil Court has remedy to the present respondent is only before the

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wakf tribunal. As such, impugned order passed by Civil Judge, Senior Division, Ahmednagar rejecting application moved under Section 9A of the Code of Civil Procedure below Exhibit-16 is hereby set aside. Application - Exhibit-16 is allowed. It is held that the suit before civil Court is not maintainable for want of jurisdiction. Civil Revision Application, as such, stands allowed.

7. At this stage, learned Counsel for respondent-plaintiff submits that he be permitted to get plaint return and present before wakf tribunal. Since prayer appears to be reasonable and not objected by learned Counsel for the applicants, same stands allowed.

(N.W. SAMBRE, J.)

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