

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19810 of 2013

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Munna Pandey S/O Late Ganga Pandey resident of village- Bhaluhipur, P.S- Ara (Town), District- Bhojpur.

.... Petitioner

Versus

1. The State of Bihar through Collector, Bhojpur, Ara.
2. Sunni Wakf Board Patna through, Chairman Sunni Wakf Board, Road No. 34, Harding Road, Patna.
3. Mohd. Sharif S/O Late Mohd. Rafiq resident of mohalla- Meera Chak, P.S (Ara) Town, District- Bhojpur.
4. Mohd. Nehal S/O Mohd. Badasdoja Ansari resident of mohalla- Meera Chak, P.S- Ara (Town), District- Bhojpur.
5. Triloki Pandey S/O Late Mahabir Pandey resident of village Bhaluhipur, P.S (Ara) Town, District- Bhojpur.
6. Control Pandey S/O Late Sukhdeo Pandey resident of village Bhaluhipur, P.S (Ara) Town, District- Bhojpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate

For the respondent/s : Mr. Shankar Kr. Thakur, AC to GP 27

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-09-2018

This writ application has been filed for quashing the order dated 12.08.2008 passed by learned Munsif II, Ara in Title Suit No.116 of 2003 whereby and whereunder the learned court below transferred the said suit to the Wakf Board for disposal.

2. Heard learned counsels for the petitioner and the respondents.

3. It appears that the respondent nos.3 and 4 in representative capacity filed the aforesaid suit against the petitioner and others for declaration that the suit land measuring 0.1885 hectares i.e. 47 decimals of new plot no.1868 of khata no.794 belongs to



kabristan which is being used as graveyard by the muslim community since long. The plaintiff further sought relief that the defendants or non-muslim community had or have no concern with any portion of the said land. The plaintiff impleaded Sunni Wakf Board, Patna through its Chairman as defendant no.2. The petitioner and two others i.e. respondent nos.5 and 6 jointly filed written statement denying the claim of plaintiff. The present petitioner and respondent nos.5 and 6 along with two others filed a Title Suit No.478 of 2004 against the respondent nos.3 and 4 and Union of India for declaration of title over the suit land and some other plots. They sought relief of declaration of title and further that the land in question belongs to Deity with which the members of other community had or has no concern.

4. On going through the pleadings of both parties in aforesaid two suits, I find that the said land partly stands recorded as 'Anabad Sarva Sadharan Kabristan' in municipal survey khatian which has been challenged by the plaintiffs of Title Suit No.478 of 2004 and some portion has been recorded as 'Dev Asthan' under plot no.1868 in another ward no.30. They have further sought relief to restrain the defendants from causing any interference in possession of the plaintiffs.

5. The averments made in both the complaints, prima facie show that there is bonafide dispute as regards title between the parties which has to be decided by the Civil Court and the Wakf Board which has been impleaded as defendant to the suit in Title Suit



No.116 of 2003 is not competent to adjudicate right and title of the parties. The petitioner has denied the competency of Wakf Board to decide the suit.

6. The learned counsel for the petitioner cited ruling reported in **(2010) 8 Supreme Court Cases 766** (Ramesh Gobindram (Dead) through Lrs. Vs. Sugra Humayun Mirza Wakf) wherein the Hon’ble Apex Court has held that it is a Civil Court which is required to adjudicate and decide the nature of property, whether it is a Wakf or not. Thus, I find that the Civil Court has exclusive jurisdiction to entertain and try the suit. In view of above fact, the order passed by the learned court below transferring the Title Suit No.116 of 2003 to Wakf Board which itself is a party to the suit is not sustainable. It further appears that another suit with respect to same property is still pending before the Civil Court.

7. In view of above discussions, I find that the order of court below is not sustainable and is, accordingly, set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.09.2018
Transmission Date	

