

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12375 of 2015

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1. Badri Paswan,
 2. Tunni Paswan, both sons of Late Bataha Paswan
 3. Mostt. Kaliya Devi, wife of Late Rameshwar Paswan
 4. Ramchandra Paswan,
 5. Ramjee Paswan, both sons of Late Rameshwar Paswan
 6. Mostt. Rajabi Devi, wife of Late Prameshwar Paswan, All residents of Village Nirpur, P.O. Ratnauli, P.S. Maniyari, District Muzaffarpur.

... .. Petitioner/s

Versus

1. Masjid of Sunni Community, Village Nirpur, P.O. Ratnauli, P.S. Maniyari, District Muzaffarpur through Acting present Mutwalli Mansoor Ali, son of Md. Alam.
2. Md. Ekram, Son of Md. Najju Mian,
3. Md. Ansar, Son of Late Md. Suleman Mian,
4. Md. Tamil, Son of Late Najmul, all members of Masjid Managing Committee, Village Nirpur, P.O. Ratnauli, P.S. Maniyari, District Muzaffarpur.
5. Chairman, Bihar State Sunni Waqf Board, Haj Bhawan, P.O. GPO, District Patna
6. Secretary, Bihar State Sunni Waqf Board, Haj Bhawan, P.O. GPO, District Patna
7. The State of Bihar through the Collector, Muzaffarpur,
8. Circle Officer, Kudhani Anchal, P.O. Turki, District Muzaffarpur
9. Lakhindra Paswan,
10. Mahendra Paswan,
11. Surendra Paswan,
12. Sunil Paswan,
13. Suresh Paswan, all sons of Late Prameshwar Paswan, All residents of village Nirpur, P.O. Ratnauli, P.S. Maniyari, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Vishnudeo Narayan, Sr. Adv. Mr. Ajit Kumar Bariar, Adv.
For the Respondent/s	:	M/s Amaresh Kr. Sinha, Kainat Akhtar and Helal Ahmad, Advs.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 20-12-2018

Petitioners are plaintiffs of Title Suit No. 1311 of 2013

pending before the court of Sub-Judge-I, Muzaffarpur. They have filed this writ application for quashing the order dated 20th April 2015 whereby and whereunder the aforesaid title suit was



transferred to the Wakf Tribunal, Patna for adjudication and both the parties were directed to appear before the Wakf Tribunal, Patna.

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

3. Petitioners have filed the aforesaid suit for declaration of their title over the land mentioned in schedule-I and II of the plaint and the recovery of possession over the land mentioned in schedule-I with *mesne profit* for the period of dispossession.

4. According to plaintiffs, the suit land comprised in R.S.P. Nos. 470 and 471 mentioned in schedule-I and R.S.P. Nos.470/473 mentioned in schedule-II of the plaint correspond to C.S.P. No.171 under C.S. khata No.108. The said C.S. Plot No. 171 stands recorded in the name of Dular Chand Dusad son of Mani having its total area measuring 1 acre 18 decimal. The petitioners claim to be descendants of said recorded tenant Dular Chand Dusad. It is alleged that during revisional survey operation, the said land has been wrongly recorded in the name of defendants without any knowledge to the plaintiffs. The defendants have neither title nor possession over the said land. The defendants on the strength of wrong survey entry, have dispossessed the plaintiffs from the portion of suit land.



5. The defendants appeared and filed written statement.

They have denied the allegation made in the plaint and claimed that the suit land as their purchased land by virtue of registered sale deed dated 22.12.1940 executed the ancestor of plaintiffs. After purchase the defendants came in possession over the said land and during survey operation the same was recorded in their name. The court below believing the said property as wakf property, has transferred suit to the Wakf Tribunal, Patna for adjudication and decision. In this regard, the learned counsel for the petitioners submitted that 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 this suit was not pending. 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. 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.

6. On going through the pleadings made in the plaint and written statement, I find that the suit property was ancestral property of the plaintiffs. This fact has not been denied by the defendants. The defendants claim that the ancestor of the plaintiffs had transferred their interest in favour of the defendants and so it became the wakf property. The assertion of the plaintiffs is that the



document, which is propounded by the defendants, is forged and fabricated and so the Wakf Tribunal cannot adjudicate the question of title or cancel the document in question. It is the civil court who has jurisdiction to adjudicate the question of title.

7. In view of above discussion, the impugned order transferring the title suit to the Wakf Tribunal, Patna is not sustainable and is accordingly set aside and this writ application is allowed. The Wakf Tribunal is directed to return the case record to the concerned court for trial.

(Sanjay Kumar, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.12.2018
Transmission Date	N/A

