

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.364 of 2017

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Equbal Haidar Khan

.... Petitioner/s

Versus

Bihar State Shia Wakf Board & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shabbir Ahmad, Adv.

For the Respondent/s : Mr. Syed Asgher Najmi, Adv.

Mr. Chaitanya Krishna, Adv.

Mr. Yusuf Haidar Khan(in person)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

6 14-08-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 19.07.2016 passed in Title Suit No.59 of 1990 by Munsif, Patna City by which the Munsif allowed the petition of respondent No.3 Yusuf Haider Khan to be impleaded as defendant No.3 in the suit.

The admitted facts are that Akhtar Hussain Khan filed Title Suit No.59 of 1990 for declaration that the suit property mentioned in Schedule I, Mosque Nawab Ali Ibrahim Khan situated at Dolighat, P.S. Khajekalan, Patna City is the personal property of the plaintiff and the same is not the property of defendant No.1 namely Bihar State Shia Wakf Board. During the pendency of the suit, Equbal Haidar Khan filed a petition with his father on 12.12.1997 that Akhtar Hussain Khan is an old person



aged about 82 years and he has orally gifted all his properties including the suit property in favour of Equbal Haidar Khan and, therefore, Equbal Haidar Khan be added as plaintiff on such, Equbal Haidar Khan was substituted in place of Akhtar Hussain Khan as plaintiff in the suit. During the pendency of the suit, the second son of Akhtar Hussain Khan filed a petition that the suit property is a mosque and controlled by Shia Wakf Board and on the petition of his father namely, Akhtar Hussain Khan, he along with his eldest brother was appointed as Mutwali of the mosque and, therefore, he is a necessary party in the suit on such, learned Munsif allowed the respondent No.3 to be impleaded as defendant No.3 in the suit. The petitioner assailed the said order.

Mr. Shabbir Ahmad, learned counsel appearing on behalf of the petitioner submits that the defendant No.3 is not either a necessary party or proper party in the suit. There is no question of appointment of Mutwali of the sons of Akhtar Hussain Khan. Akhtar Hussain Khan claimed the mosque as his personal property. It is further submitted that case of the defendant No.3 based on the Resolution No.20 dated 22.01.1980 of the Bihar State Shia Wakf Board by which on the application of Akhtar Hussain Khan joint Mutwali namely Equbal Haidar Khan, the plaintiff and Yusuf Haidar Khan, defendant No.3 were appointed Mutawali of



Mosque Ali Ibrahim Khan. It is submitted that prior to the aforesaid resolution, Resolution No.14 dated 04.06.1978 (page 12 of the counter-affidavit) issued which shows that Umanath, Advocate gave legal notice to the Shia Wakf Board on behalf of Akhtar Hussain Khan to expunge the name of Mosque Ali Ibrahim Khan, Dolighat from the register of Shia Wakf Board after dismissal of Misc. Case No.42/12 of 1976 filed by Sri S.Anwar Ali Khan ex-Mutwali of the mosque in question but the Board resolved not to expunge the name of the mosque from the register of Shia Wakf Board and directed that if Akhtar Hussain Khan prefers to be Mutwali, the Board has got no objection to appoint him Mutwali of the mosque but Akhtar Hussain Khan never applied for appointment of Mutwali. It is further submitted that in the Mohammedan law, the father is at liberty to gift or bequeath his property to any person and the son is not entitled to get any share as entitled in Mitakshara Hindu Law. It is submitted that defendant No.3 filed Title Suit No.11 of 1987 for partition of the properties said to be owned by mother of defendant No.3. In the aforesaid suit, the brother, sister and father of the plaintiff were defendants. Akhtar Hussain Khan, the father of Yusuf Haidar Khan was defendant No.3 in Title Suit No.11 of 1987 and he filed written statement. In his written statement, Akhtar Hussain Khan



disowned his son Yusuf Haidar Khan and also disclosed that on account of his misconduct he is debarred from inheritance of any property owned by Akhtar Hussain Khan, therefore, in this view of the fact, the defendant No.3 is not a necessary party but the learned Munsif has committed illegality by allowing the petition of respondent No.3 to be impleaded as defendant No.3 in the suit.

On the other hand, respondent No.3 who appears in person and learned counsel appearing on behalf of Bihar State Shia Wakf Board submitted that the letter as contained in Resolution No.20 dated 22.01.1980 and the Resolution No.14 dated 04.06.1978 were issued by the Bihar State Shia Wakf Board. Respondent No.3 submitted that he being the younger son of Akhtar Hussain Khan is a necessary party in the suit in which prayer is made for declaration that the mosque is personal property of the plaintiff, Akhtar Hussain Khan. Defendant No.3 and his brother, Equbal Haidar Khan were appointed jointly as Mutwali of the mosque. Thus, the order of the learned Munsif does not require any interference.

Having considered the submissions of both sides and on perusal of the records, I find that the petitioner and respondent No.3 are own brother. The father of the petitioner filed the present suit for declaration of the property, mosque to be his own property



situated in the premises of his house. During the pendency of the suit, one of the brothers Equbal Haidar Khan was transposed as plaintiff. Respondent No.3 had no knowledge about the pendency of the suit and when he came to know, he filed a petition to be impleaded as defendant in the suit. From the resolution No.20 dated 22.01.1980 issued by the Bihar State Wakf Board, it is crystal clear that respondent No.3 was appointed to look after the mosque property along with his brother, Equbal Haidar Khan. The oral gift deed said to have been made by the father of the petitioner and debarring the defendant No.3 from inheriting the property of Akhtar Hussain Khan are not the subject matter of the suit and the genuineness of the oral gift deed is yet to be tested in the suit.

Thus, I find that the learned Munsif has rightly allowed the petition of respondent No.3 to be added as party since respondent No.3 appears to be a necessary party in the suit. Accordingly, I do not find any illegality in the order impugned and thus, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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