

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2112 OF 2018
(Satyanarayan s/o Bhagirathji Lahoti Vs. Sayyed Khairunissa Begum
w/o Sayyed Kadar Ali and others)

Mr.A.N.Sikchi, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/02/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 29/01/2018 by which the Trial Court has rejected application Exh.88 in RCS No.274/2005.

2. Contention is that the litigating sides admit that the suit property is a wakf property and hence the Civil Court will not have the jurisdiction to decide the said suit in the light of the bar u/s 85 of the Wakf Act.

3. The Trial Court has recorded the following factors while rejecting application Exh.88 filed by the petitioner praying for deciding one issue as a preliminary issue :-

[A] An application was filed at Exh.57 on 02/09/2008 by the defendants praying for framing of the issue of jurisdiction.

[b] By an order dated 12/11/2008, the jurisdiction issue was

framed and it was ordered that the said issue would be decided alongwith other issues.

- [c] The defendants again moved an application in the same cause at Exh.34 once again putting forth the same prayer on 7/02/2001. That application was rejected by the Trial Court. Said order has not been challenged.
- [d] Again on 01/01/2018, the petitioner/defendant has moved Exh.88 again praying that the jurisdiction issue may be tried as a preliminary issue, when the suit is almost 13 years old.
- [e] By the impugned order, the Trial Court has rejected the said application concluding that the plaintiff has led oral evidence by filing an affidavit in lieu of examination in chief on 09/06/2016 and still the defendant has not commenced the cross examination.

4. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Board of Wakf, West Bengal and another [2010 (14) SCC 588] wherein the Hon'ble Apex Court has held that all disputes which are relating to the Wakf Property or the Wakf Board, shall be considered by the Wakf Tribunal.

5. It requires mention that in RCS No.274/2005, neither the Wakf Board is a party nor is the plaintiff seeking any declaration of ownership over a property which could be said to be belonging to the Wakf Board. Issue is as regards a 'well' in between the two parties.

6. Considering the above, the impugned order is neither perverse nor erroneous, in as much as, I find that this petition has been vexatiously filed. The same is, therefore, dismissed by imposing costs of Rs.10,000/- which the petitioner shall deposit with the Advocate's Association of the Bombay High Court, Bench at Aurangabad on or before 16/03/2018. Receipt of such deposit shall be placed before the Trial Court on or before 23/03/2018, failing which, the right of the petitioner to lead evidence would be struck off.

7. Since the suit is of 2005, the same shall stand expedited and the Trial Court shall consider all the issues on their own merits as expeditiously as possible and preferably on or before 31/01/2019.

(RAVINDRA V. GHUGE, J.)