

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 123 OF 2018

Satyanarayan s/o Shivdayal Totla

Age: 72 years, Occ: Business,

R/o: Mahesh Nagar, Jalna

...Applicant

Versus

1. Syed Jamil Ahemd s/o Syed Janimiyan
Age; 50 years, Occ: Business & Mutawali
of Dargah hazrat Syed Ahemd Sher Sawar (RH)
Old Jalna, Tq. Dist- Jalna
R/o Gulshan-E-Raza, H. No. 3-2-50,
Tattupura, Old Jalna Tq. Dist- Jalna.
 2. The Chairman
Maharashtra State Wakf Board,
Majistic M.L.A. Hostel, Room no. 309 & 31
3rd Floor, Colaba, Mumbai-39
Through Chief Executive Officer
Maharashtra State Wakf Board,
Panchakki, Aurangabvad.
 3. Chief Executive Officer,
Maharashtra State Wakf Board,
Panchakki, Aurangabad.
 4. District Wakf Officer,
Maharashtra State Wakf Board,
Bhaji Mandi, New Jalna,
Tq. Dist- Jalna
- ...Respondents

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Mr. B. A. Darak, Advocate for applicant

Mr. M. G. Mustafa, Advocate for respondent no. 1.

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 28th August, 2018

Oral Judgment :

1. Rule. Rule made returnable forthwith. Heard learned counsel for applicant and learned counsel appearing for respondent no. 1 finally by consent.
2. The applicant-original defendant no. 4, purportedly aggrieved by the order passed by Wakf Tribunal on application exhibit- 144 in wakf suit no.195 of 2006 dated 14th June, 2018 pursuant to Order I, Rule 10 of the Code of Civil Procedure, 1908 whereunder his request to add 25 persons referred to in application exhibit-144 as defendants in suit has been turned down, is before this court.
3. The tribunal appears to have considered that respondent no. 1- plaintiff has claimed relief of possession of suit property after removal of encroachment over the same by defendant no. 4-present applicant.
4. Tribunal has observed that the statement appearing in rejoinder to affidavit in reply filed by the plaintiff-present respondent no. 1, in writ petition no. 10375 of 2017, would not be considered as a part of his pleading and whether such a statement made in different

proceedings would be binding in the present proceeding would be a matter of evidence and could be considered at the time of trial, and as such, the statement claimed to be made by the plaintiff in some other proceedings by itself cannot be a ground to add any third person as party to suit.

5. The tribunal has further considered that it is not the case wherein it can be said that the controversy in the suit cannot be adjudicated upon and decided without presence of persons sought to be added. The plaintiff-present respondent no. 1 does not appear to make any claim against such persons. The tribunal has considered that presence of such persons is not essential for final and effective adjudication of controversy in present suit between the plaintiff and defendant no. 4.

6. Learned counsel Mr. Darak vehemently submits that while in one proceeding it is the case of the respondent no. 1 that other persons are in occupation of property, it would be advantageous to plaintiff-respondent no. 1 to have such persons to be referred to and added in this suit. Skipping reference to such persons despite referring to them in rejoinder in writ petition is deliberate act and is

intended and aimed at to harass and vex the applicant. He, therefore, submits that rejection of request under application exhibit-144 has been lackadaisical, taking parochial view of the matter with pedantic approach.

7. On the other hand, learned counsel Mr. Mustafa for respondent no. 1 submits that the tribunal while deciding application exhibit-144 pursuant to Order I, Rule 10 of the Code of Civil Procedure considered that presence of persons sought to be added under application is not essential for final adjudication of controversy in the suit. He submits that exercise of discretionary power by tribunal while passing impugned order is on sound footing and is not amenable for interference with under extraordinary power of this court. He submits that tribunal has taken into account that no relief has been sought against the persons sought to be added as defendants. He states that the tribunal has rightly appreciated that proposed defendants are not the necessary parties as no relief has been sought against them by the plaintiff, and their presence is also not essential for final adjudication of controversy involved in the suit before tribunal.

8. He submits, other submission in respect of statement in affidavit in rejoinder in writ petition has also been properly considered by the tribunal, observing that the statement made in some other proceeding cannot be considered as binding in the present proceeding. He, therefore, urges not to meddle with order passed on application exhibit-144 and requests for dismissal of civil revision application.

9. Having regard to the submissions as aforesaid and also looking at the compass of the power of court and pleadings in plaint in the suit, it may have to be considered that possession has been claimed by plaintiff from defendant no. 4 - present applicant and injunction sought is also only against defendant no. 4. It appears to be a claim of recovery of possession from defendant no. 4.

10. In the circumstances, order impugned in this civil revision application, passed in discretionary powers of the trial court does not appear to be suffering any infirmity calling for any interception in exercise of powers of this court.

11. Civil revision application is, therefore, dismissed without affecting resort to section 105 of the Code of Civil Procedure at appropriate stage. Rule discharged.

12. Observations in this order are limited only for the purpose of decision in civil revision application and would not have further efficacy and shall not influence merits of the case.

[SUNIL P. DESHMUKH, J.]

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