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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4409 OF 2015

Gautam Nathaji Jadhav

PETITIONER

VERSUS

Ashish Champalal Jaisurya and Another

RESPONDENTS

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Mr. Milind A. Manjramkar, Advocate for the petitioner

Mr. R. K. Khandelwal, Advocate for respondents No.1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th JULY, 2022

ORDER :

1. In the suit, filed by the petitioner for declaration of ownership and for perpetual injunction against the defendants, the respondents – defendants appeared the resisted the claim of the plaintiff – petitioner. The defendants filed application Exhibit-14 claiming that the suit property is a Wakf property and, therefore, the suit cannot be tried before the Civil Court and, hence, the suit be dismissed under section 9 and Order VII, Rule 11 of the Civil Procedure Code.

2. The petitioner, thereafter, filed application Exhibit-19 requesting the Trial Court to frame issue of jurisdiction as preliminary issue. The respondents gave no objection for framing

preliminary issue. The petitioners, thereafter filed application Exhibit-46 with a prayer that the issue of jurisdiction be decided first before deciding application Exhibit-5. Said application Exhibit-46 was resisted by the defendants. The Trial Court rejected the said application holding that question of jurisdiction to be preliminary issue can be considered after hearing of application Exhibit-5. The petitioner is aggrieved by this order.

3. Heard learned advocate for the petitioner and learned advocate for the respondents.

4. It is not in dispute that *status quo* order is passed by the Trial Court by way of ad interim relief on Exhibit-5 application. Taking into consideration the objection raised by the respondents – defendants in application Exhibit-14 that the suit property is wakf property and, therefore, the Trial Court has no jurisdiction to entertain the suit and in view of the fact that the respondents have given no objection to frame the issue of jurisdiction as preliminary issue and in the peculiar facts of the case, it would have been proper on the part of the Trial Court to frame the said issue as a preliminary issue. The Trial Court ought to have directed the parties to lead evidence and then should have decided the said issue as a preliminary issue.

5. The approach of the Trial Court that the preliminary issue can be considered after hearing of Exhibit-5 application, in my view is not proper and cannot be sustained in the facts of the present case. The impugned order, therefore, cannot be sustained and the same is hereby quashed and set aside. The Trial Court is directed to frame issue of jurisdiction as a preliminary issue and direct the parties to lead evidence and decide the same within a period of eight weeks from the date of receipt of writ of this order.

6. With aforesaid directions, writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE