

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 CRA NO.67 OF 2021

**MOHD. TAUSIF MOHD. RAZIODDIN INAMDAR AND ORS
VERSUS
SHANTABAI NAMDEV SHIVEWAR AND ORS**

Mr.Taher Ali Quadrim, Advocate for the applicants
Mr. S. S. Gangakhedkar, Advocate for the respondent
Nos. 1 and 2
MR. Vakil Afzal Husain M., Advocate for the
respondent Nos.3 to 11

CORAM : VINAY JOSHI, J.

DATE : 15-02-2022

P. C.

. Heard.

2. The revision petitioner has called in question the order dated 22-03-2021 passed in RCS No. 151 of 2019 by the learned Civil Judge, Senior Division, Bhokar refusing the urge of defendant Nos. 13 to 16 for return of plaint in terms of order VII Rule 10 of the Code of Civil Procedure. It was the contention of the defendant Nos. 13 to 16 that the suit ought to have been filed before the Maharashtra State Wakf Tribunal and as such it was not maintainable before the civil court.

3. After hearing both sides the learned Civil Judge was pleased to reject the application which is impugned herein. Aggrieved defendant Nos. 13 to 16 have come up in revision by mainly relying on the recent pronouncement of the Supreme Court in the Case of Rashid Wali Beg Vs Farid Pindari and Others reported in 2021 SCC Online SC 1003. Precisely in the said decision the Supreme Court has made it clear that the provision of Section 83 and 85 of the Wakf Act cannot be ignored and the suit for injunction has to go before the Wakf Tribunal.

4. Mr. Gangakhedkar, Advocate appearing for the respondent Nos.1 & 2 original plaintiffs has fairly conceded the legal position and submitted that in view of the said recent pronouncement, necessary orders shall be passed. However, he had request to resort the provision of order VII Rule 10-A to curtail unnecessary efforts for serving other side.

5. In view of the settled position there is no quarrel amongst both the sides that plaint ought to have been returned and therefore, following order:

ORDER

i. The CRA stands allowed.

ii. The impugned order dated 22-03-2021 passed in RCS No. 151 of 2019 by Civil Judge, Senior Division, Bhokar is hereby quashed and set aside.

iii. The application Exh.47 moved by the defendant Nos. 13 to 16 for return of plaint under Order VII Rule 10 of the CPC stands allowed.

iv. The plaint is returned for presentation to the Maharashtra State Wakf Tribunal.

v. Both the sides shall appear before the Wakf Tribunal on 16-03-2022.

vi. It is clarified that no separate notice would be issued to the original defendants as they should take note of this and file their appearances accordingly before the Wakf Board.

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vii. The interim order passed by the trial court at Exh.8 dated 26-02-2020 shall remain inforce for a period of 45 days from today.

[VINAY JOSHI, J.]

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