

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 10 OF 2023

Mubarak s/o Bashir Fakir (Inamdar)

Applicant

Versus

Shrimant Vikramsingh Laxmansingh Raje
Jadhavrao & others

Respondents

Mr. Shaikh Faruk V. Patel, advocate for the applicant.

Mr. S. V. Adwant, Advocate for respondents No. 4, 5, 7 to 17, 22 & 23.

Mr. Rahul Taware & Ms. Neha Kamble, Advocates for respondents No.
19 to 21 & 24 to 31.

Ms. Neha Kamble, Advocate for respondents No. 32 to 44.

CORAM : R. M. JOSHI, J.

DATE : 2nd MAY, 2023.

PER COURT :

1. Learned counsel for respondents No. 4, 5, 7 to 17, 22 and 23 seeks leave to file reply affidavit on record. Leave granted. Reply affidavit taken on record.

2. By consent of both the sides, application is heard finally on merit.

3. At the outset, it needs to be recorded that the original plaintiffs in Wakf Suit No. 90/2019 did not object to the application filed by third party and since the plaintiffs are not contesting party to the said application, notice to plaintiffs is dispensed with.

4. Heard learned counsel for the applicant, original contesting defendants and the Wakf Board.

5. This application is filed taking exception to the order passed below Exhibit 297 in Wakf Suit No. 90/2019 whereby application of third party Mubarak Fakir (Inamdar) was rejected by order dated 22nd July, 2022. Parties are referred to by their nomenclature in suit.

6. Learned counsel for the applicant contends that the Tribunal has committed error in not considering the fact that the issue about so called affidavit of present applicant could be a matter of evidence and on that ground the application ought not to have been rejected. He also drew attention of this Court to the say filed by plaintiffs wherein no objection was raised in joining applicant as party to the said suit. He further contends that the applicant herein

is the legal heir of Bashir Didalisha Fakir Inamdar, Mutawalli of the said property. He further states that there is every possibility of there being compromise between plaintiffs and defendants and therefore, he is necessary party to the suit. In sum and substance, according to him, he is proper and necessary party for proper decision of the suit.

7. Learned counsel for the contesting defendants opposed the said submission by pointing out reply filed before the Tribunal to the application for joining as party as well as order passed in the revenue proceeding. He also drew attention of this Court to the statement made by present applicant on oath to the effect that he has no blood relations with Bashir Didalisha Fakir Inamdar. Thus, according to him, by relying upon the said statement, the Tribunal has rightly rejected the application. He further argues that considering the nature of the suit, applicant is neither proper nor necessary party to the suit.

8. Perusal of the plaint shows that the suit is filed by plaintiffs for declaration that the suit property is Wakf property and that the transactions done in respect of the Wakf property are illegal.

There is no dispute about the fact that plaintiffs No. 1 and 2 are interested persons as defined by Section 3(k) of the Wakf Act, being persons who profess Islam.

9. Perusal of the application filed by applicant herein before the Tribunal does not whisper anything about this being a collusive suit. Admittedly, suit is filed in the protecting interest of the suit property (Wakf property). It is contested and both sides led their respective evidence. Now, suit is at the stage of final arguments. Applicant was unable to show that the suit is not contested seriously or there is any intentional lacunas left to favour defendants. Thus, on the basis of oral statement made during the course of argument, it cannot be presumed that there can be any compromise between the parties which could be detrimental to the interest of the Wakf property. Thus, this does not become a ground to add applicant as party to the proceeding.

10. As regards claim of applicant to be legal heir of Bashir Didalisha Fakir Inamdar is concerned, in the present suit the issue as to who is the Mutawalli of the Wakf property is not involved for determination by the Tribunal. In any case, the Tribunal has

observed in paragraph No.5 of the impugned order that the present applicant in his affidavit has clearly stated that he has no blood relations with Bashir Didalisha Fakir Inamdar. Specific query was made to learned counsel for the applicant in order to show as to whether at any point of time any objection is raised about the said document or even observation made by the Tribunal in the impugned order. Learned counsel for the applicant was unable to point out that either before the Tribunal any objection was raised to the affidavits which were placed on record along with reply by the defendants or any specific ground is made out in the application for challenging the impugned order on that ground. There is candid finding recorded by Tribunal about claim of applicant to be heir of Bashir Dadilshah and said finding is based on documentary evidence i.e. affidavit/reply filed in the proceeding, may be quasi judicial in nature. In absence of any challenge to the said document or even for want of raising it to be a ground in this application, there is no reason to interfere into the order passed by the Tribunal on the ground that there is any incorrect observation made for the purpose of deciding the application in question. In fact, this application suffers from suppression of material facts as the applicant has conveniently filed

on record orders passed by Revenue Authorities, without referring that these orders are subsequently set aside.

11. So far as the issue as to whether applicant is proper and necessary is concerned, having regard to the nature of the suit and more particularly in view of the fact that the issue as to who is the Mutawalli of the Wakf property being not involved for determination before the Tribunal, it cannot be said that the applicant is either proper or necessary party to the suit. The suit and issues involved therein can be decided effectively even in absence of applicant as party thereto.

12. While exercising jurisdiction under Section 115 of the Code of Civil Procedure, this Court needs to consider as to whether the Tribunal has failed to exercise its jurisdiction or exceeded the jurisdiction. On both counts, no fault can be found with the order in question. Having regard to the application filed by the applicant where there is no specific averment about the suit being collusive one or even apprehension of any compromise between them, even on that count, present application also does not deserve consideration.

13. In the result, application stands dismissed with cost in cause.

(R. M. JOSHI)
Judge

dyb