

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9831 OF 2014**

MUFAMAM ABDUL NAIM
VERSUS
RIYAJODDIN FAYAJODDIN, L.RS. SIDDIQUE JAMIL AHMED
RAYAJODDIN AND OTHERS

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Mr. M. G. Mustafa, Advocate for the Petitioner.

Mr. Siddhant P. Sirsat h/f Mr. N. L. Chaudhari, Advocate for
Respondent Nos.1A to 1H and 2.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 13th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The petitioner is aggrieved by the order dated 01.10.2014 passed by the Trial Court in RCS No.147/2013, whereby the Trial Court after having framed a preliminary issue of jurisdiction under Section 9-A of the Code of Civil Procedure, on the application of the plaintiff deleted the preliminary issue.

3. RCS No.147/2013 was instituted by the respondents/plaintiffs seeking relief of perpetual injunction to which written statement came to be filed by the petitioner/defendant. It is the contention in the written statement that the jurisdiction of the Civil Court is barred, as the said property is a service inam land and it constitutes the property of Wakf Board and in respect of Wakf property the Wakf Tribunal constituted under Section 85 of the Wakf Act, 1995, would have jurisdiction.

4. Considering the averments made in the written statement, the Trial Court framed the preliminary issue of jurisdiction as against which the application came to be filed by the respondents placing on record the certain documents to contend that the suit property is madat-mash inam and as such, the preliminary issue framed by the Trial Court is irrelevant and applied to delete the said issue.

5. Heard the learned counsel appearing for the parties.

6. Issues arise when any material proposition of fact or law in a case is affirmed by one party and denied by the other. In the present case, the petitioner/defendant has come with a specific case that the said property is Wakf property and as such, it is only the Wakf Tribunal which will have jurisdiction. Considering that there is an express bar which is provided under the Wakf Act, 1995 and the contention of the petitioner/defendant is that the suit property is Wakf property, the Trial Court rightly framed the preliminary issue of jurisdiction. The application filed by respondent/plaintiff placing documents on record contending that the suit property is madat-mash inam is in the nature of the evidence which can be considered by the Court while deciding the issue of jurisdiction. The Trial Court has rejected the application also on the ground that in the suit proceedings what is required to be considered is the question of possession and not title.

7. Considering the provision of Section 85 of the Wakf Act, 1995 there is an express bar, whereby the jurisdiction of the Civil Court to entertain any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal is

barred. Considering the express bar, unless and until preliminary issue of jurisdiction is framed and decided, the Civil Court cannot clothe itself with the jurisdiction on the ground that the issue is only in respect of possession and not title, as the provision of the Wakf Act provides that all these issues to be decided by the Tribunal which has been constituted under Wakf Act, 1995.

8. For the reasons above, the impugned order dated 01.10.2014 is hereby quashed and set aside and the preliminary issue of jurisdiction is restored to file.

9. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE