

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12697 OF 2022

Rafiq s/o. Akhil Ahemad Sayyad	... Petitioner
<i>Versus</i>	
Javed S/o. Mehamudsab Shaikh	... Respondents.

Mr. Sushant B. Choudhary, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 20, 2023.

PER COURT :-

1. Heard.
2. The Petitioner's application in a suit filed by the Respondent, for return of the plaint on the ground of jurisdiction came to be rejected by order dated 18th November, 2022.
3. RCS No. 193 of 2012 was filed by the Respondent seeking permanent injunction claiming to be owner of suit property and alleging that the Petitioner herein taking undue advantage of the illiteracy of the Respondent obtained his signatures on certain blank stamp papers, and has put up a rival claim of ownership. In the written statement, the Petitioner claims to be in possession of the suit property under an agreement with the Respondent.

4. Learned counsel for the Petitioner submits that the jurisdiction of the Civil Court to adjudicate in respect of the suit property is barred under Section 85 of the Wakf Act, 1954 as the suit property is Wakf property and as such the application was return of plaint was filed.

5. The suit as instituted sought restraining orders based on ownership rights in the suit property, which was resisted by the Petitioner raising a rival claim of possession on the basis of alleged agreement entered into between the parties. Learned Counsel for Petitioner fairly concedes that the pleading as regards the suit property being Wakf property does not find place in the written statement. He would further submit that the Respondent has admitted that the property is of Wakf Board in his evidence and in the official gazette published by the State of Maharashtra, the suit property is shown as wakf property.

6. The admitted position is that previously an application for return of plaint was filed by the Petitioner which came to be rejected and on the same grounds the 2nd application has been filed and as such the Trial Court has rejected the application on the ground of *res judicata*.

7. The suit is fixed for final arguments and at this belated stage, an issue of jurisdiction is being raised by the Respondent. The question as to whether the property is a Wakf property, in the

facts of the present case, is a mixed question of law and fact and for deciding the question, an issue is required to be framed and decided by the Trial Court. The question, in my view, cannot be determined on the basis of an application for return of plaint filed under Order 7 Rule 10 of the Code of Civil Procedure, 1908.

8. In the absence of any pleading as to the suit property being Wakf property, no issue of jurisdiction was framed and the application for return of plaint under Order 7 Rule 10 of Code of Civil Procedure, has rightly been rejected by the Trial Court.

9. For the reasons above, Writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)