

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**APPEAL AGAINST ORDER NO.23/2022**

Sheikh Anis Sheikh Karij and anr. .vs. Ramdas Tulshiram Palaskar

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

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Court's or Judge's orders

Mr. M. Ateeque, Advocate for appellants.

Mr. V. Bhise, Advocate for respondents.

**CORAM : ANIL L. PANSARE, J.**

**DATE : 03.07.2023**

Heard Mr. Ateeque, learned counsel for appellants and Mr. Bhise, learned counsel for respondents.

2. The appellants/original defendants have filed the present appeal against order dated 04.07.2022 passed by learned District Judge-I, Akot below Exh.-15, 16 and 6 in Regular Civil Appeal No.6/2022. The appellants claim themselves to be interested persons of Waqf institution namely; “Khaki Shah Miya Dargah”, of Malegaon Bazar, a registered trust under the provisions of the Maharashtra Public Trust Act, 1950.

3. The respondent/original plaintiff approached the learned Civil Judge Junior Division, Telhara by filing a suit for declaration and injunction against the appellants vide Regular Civil Suit No.18/2021. The case of the respondent before the trial Court is of protected tenant under the provisions of Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

4. The appellants had filed an application under Order VII Rule 11 of the Code contending that the Civil

Court has no jurisdiction, the subject matter of property being Waqf property. The Trial Court, having found substance in the contentions of the appellants, was pleased to reject the plaint.

5. The respondent approached the appellate Court assailing the said order dated 14.11.2021. The first appellate court vide order dated 05.07.2022 i.e. the impugned order was pleased to allow the application Exh.-6, whereby the first appellate court though granted relief, it was for a limited period of 30 days, restraining the appellants from disturbing possession of the respondent over the disputed property except by following the due process of law. The first appellate court also directed both the parties to put forth their contentions on the point of jurisdiction.

6. Learned counsel for the appellants submits that the first appellate court while allowing the application for a limited period has observed in paragraph 4 that the appellants have admitted in written statement that the respondent is in possession of the disputed property which fact is contrary to the pleadings.

7. It appears the appellant is aggrieved by the facts noted by the first appellate court in respect of the possession of the respondent over the property. The moot question however remains whether the civil court has jurisdiction to entertain the suit. The first appellate court has directed both the parties to put forth their contentions on this point. The relief so granted by the

first appellate court was only for limited days i.e. 30 days. The appellant ought to have focused on the question of law involved in the appeal, which goes to the root of the matter.

8. In the circumstances, the purpose will be served if the parties are directed to appear before the first appellate court and to put forth their contentions on the jurisdictional issue involved in the suit.

9. The parties to appear before the first appellate court on 10.07.2023. Till then, interim order dated 13.07.2022 to continue. The appellant is at liberty to invite attention of the first appellate court to the pleadings in respect of the possession of respondent over the suit property, which the first appellate court is bound to consider, in accordance with law. The appellate court will thereafter decide the appeal on the point of jurisdictional issue as observed in the impugned order. All contentions are kept open. Order accordingly.

10. The appeal is disposed of in the above terms.

**(Anil L. Pansare, J.)**

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