



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

35 CRA NO. 83 OF 2024

SHAIKH SHAMSUDDIN S/O RAHIMUDDING
VERSUS

SHAIKH JAHANGIR S/O SHAIKH MOHAMMAD ISA, (MUJAWAR)
AND OTHERS

...

Mr. Deshmukh Sachin S., Advocate for the Petitioner

Mr. M. S. Chaudhari, Advocate for Respondent Nos.1 to 3

Mr. N. E. Deshmukh, Advocate for Respondent No.4

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 05/08/2024.

P. C. :

1. The learned counsel for respondent Nos.1 to 3 filed an affidavit in reply. Taken on record. Copy furnished to other side.

2. Heard rival submissions.

3. The applicant, who is original defendant No.2 in Wakf Suit No.69 of 2020, has challenged the order dated 20/03/2023 below Exhibit-116 passed by the learned District Judge / Chairman, Maharashtra State Wakf Tribunal, Aurangabad (hereinafter referred to as 'the learned tribunal'). Under the impugned order, the learned tribunal has rejected the application filed by the applicant for framing additional issue which reads as follows :

“Whether the plaintiff proves that the suit property as per new sketch map is a part of Survey No.376 and the same is the land belonging to plaintiff Wakf Institution” ?

4. The learned counsel for the respondent Nos.1 to 3 as well as the learned counsel for respondent No.4-Wakf Board strongly opposed the application on the ground that the aforesaid issue has already been answered and the nature of suit property being Wakf property is already established.

5. However, it appears that the present appellant had also challenged order dated 21/07/2023 passed below Exhibit-1 by the learned tribunal, whereby plaintiffs were directed to file correct sketch map, by way of CRA No.192 of 2023. At that time, this court vide order dated 02/11/2023 had directed the learned tribunal to give opportunity to present applicant – defendant No.2 to bring the material against the fresh map and allow them to recall the witnesses, if any. Accordingly, the applicant – defendant No.2 filed an additional written statement and thereby claiming that as per the new sketch map filed by the plaintiff the suit property is not the part of Survey No.376 but it is a portion of Survey No.379, at Udgir to which plaintiff has no concerned.

6. The learned tribunal appears to have rejected the request for framing such issue because the plaintiff is already under obligation to prove that the suit property is part of Survey No.376. However, as per the law of pleading, a burden to prove certain fact is cast upon the person who asserts the same. The learned counsel for the applicant submits that irrespective of casting burden, the issue needs to be framed as to whether the suit property is part of Survey No.376 or 379. Under such circumstances, the learned tribunal can be directed to frame following issue relying upon the contentions of the parties.

“Does the defendant No.2 prove that as per the new sketch map the suit property is part of Survey No.379 to which plaintiffs have no concern.”

7. The learned tribunal thus, shall frame the aforesaid issue and by giving an opportunity to all concerned parties, decide the same according to law.

8. The Civil Revision Application stands disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)