

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 25 OF 2025
WITH CA/853/2025

Chief Officer,
Municipal Council, Paithan,
Tal. Paithan, Dist. Chhatrapati Sambhajinagar,
through its Chief Officer. Santosh Dagdu Agle,
Age: 44 years, Occu: Service,
Presently working as Chief Officer.
Municipal Council, Paithan,
R/o. Paithan, Tal. Paithan,
Dist. Chhatrapati Sambhajinagar.

...Applicant

VERSUS

1. Shafiqe Saruddin Awghad,
Age: 42 Years, Occu: Labour,
R/o. Kardi Mohalla, Infront of Abuzer Masjid,
Paithan, Tal. Paithan,
Dist. Chhatrapati Sambhajinagar

2. Jaker Mahboob Awghad.
Age: 48 Years, Occu: Labour,
R/o. Kardi Mohalla, Infront of Abuzer Masjid,
Paithan, Tal. Paithan,
Dist. Chhatrapati Sambhajinagar

3. The Maharashtra State Waqf Board,
Through its Chief Executive Officer,
Panchakki, Chhatrapati Sambhajinagar.
Dist. Chhatrapati Sambhajinagar

..Respondents

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Advocate for Applicant : Mr. Y.V. Kakade
Advocate for Respondent Nos.1 & 2 : Mr. J.A.H. Deshmukh
Advocate for Respondent No.3 : Mr. N.B. Deshmukh

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : MAY 05, 2025

PRONOUNCED ON : MAY 07, 2025

JUDGMENT :-

1. The applicant/original defendant no.1 impugns the order dated 01.10.2024 passed below Exhibit-18 by the Maharashtra State Waqf Tribunal, Chhatrapati Sambhajanagar in Waqf Suit No.115 of 2024.

2. Respondent nos.1 and 2 instituted Waqf Suit No.115 of 2024 seeking relief of declaration that land C.T.S. No.648, Sheet No.59 admeasuring 1856.50 Sq. meters situated at Paithan District Aurangabad is waqf property of graveyard on Masjid Moti Awghad and consequential relief of perpetual injunction restraining defendant no.1 from raising any construction or development over suit property. It is contention of plaintiffs that Masjid Moti Awghad along with graveyard is in existence since before 1973 and same has been gazetted as waqf property. The open area situated beside Masjid Moti Awghad is used for graveyard since more than 100 years. The plaintiffs are successive Mutawali of waqf institution and maintaining the affairs of said waqf institution. Further, being Muslim person by virtue of Section 3(k) of Waqf Act, 1995, they are interested person to protect the waqf property. Previously, Regular Civil Suit No.98 of 1977 was instituted on behalf of waqf in the Court of Civil Judge Junior Division, Paithan seeking declaration and possession of part of area encroached by defendant no1, said suit has been decreed vide judgment and order dated 10.12.1993. However, behind back of

plaintiffs and Waqf Board, defendant no.1 got mutated its name in city survey record. The defendants are trying to install some kind of structure on suit property. Therefore, plaintiffs moved an application dated 19.03.2024 to defendant as well as Tahsildar, Paithan to desist from carrying any activity on suit property. However, defendant asked them to raise grievance in the Court.

3. Defendant no.1 caused his appearance and filed application Exhibit-18 seeking rejection of plaint in exercise of power conferred under Order VII Rule 11 (a)(d) of Civil Procedure Code, firstly on the ground that suit is barred by Section 304 (1)(b) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Secondly, suit is barred by limitation. The Waqf Tribunal after hearing the parties rejected the application vide impugned order dated 01.10.2024. Hence, this civil revision application.

4. Mr. Kakde, learned advocate appearing for applicant vehemently submits that name of Municipal Council has been mutated in city survey record since 1987. Further, Regular Civil Suit No.98 of 1977 was filed on behalf of waqf against defendant no.1 seeking relief of declaration and injunction. In that suit, the claim was restricted to 4 R land situated adjacent to Masjid. The plaintiffs were aware about ownership and possession of defendant no.1, where a garden has been developed. Mr. Kakde would further submit that

limitation for suit seeking relief of declaration of ownership is three years under Article 58 of Limitation Act. The Plaintiffs had first cause of action when they instituted suit in the year 1977 and thereafter when the name of defendant/municipal council is mutated in the year 1987 in city survey record. As such, right to issue accrues to plaintiffs in the year 1977, thereafter in the year 1987. The cause of action as pleaded in the plaint is fictitious and elusory. Mr. Kakde further submits that suit is not preceded by statutory notice in terms of Section 304 (1)(b) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, hence, barred by law. According to him, the Waqf Tribunal has committed serious errors of jurisdiction while rejecting plea of defendant seeking rejection of plaint.

5. Per contra, Mr. J.A.H. Deshmukh and Mr. N.E. Deshmukh, learned advocates appearing for respective respondents supports the impugned order.

6. Having considered submissions advanced and upon perusal of impugned order, apparently defendant no.1 seeks rejection of plaint firstly on the ground that, suit is barred by law in light of provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, secondly, it sans cause of action and thirdly, the suit is barred by limitation.

7. Section 304 (1)(b) of the Act stipulates that any suit instituted against Municipal Council shall be preceded by service of notice. However, as rightly observed by Waqf Tribunal, such bar would not apply to any suit filed under Section 38 of Specific Relief Act, 1963 and other reliefs claimed under that Act. Therefore, first objection as to bar contemplated under Section 304 holds no water.

8. The second contention raised on behalf of defendant is that plaintiffs had first cause of action in the year 1977. Declaration of ownership ought to have been sought within a period of three years from the date of such cause of action. Perusal of plaint in previous suit of 1977 shows that limited relief was sought in respect of 4 R land adjacent to Masjid and it is not clear whether suit property therein was part of C.T.S. No.648, Sheet No.59 admeasuring 1856 sq. mtrs. Whether the suit property and cause of action shown in earlier suit has any resemblance with suit property or cause of action in the present suit cannot be ascertained at this stage. It may require trial and recording of evidence.

9. As rightly observed by the Waqf Tribunal, present suit is instituted asserting that defendants are now trying to install some kind of structure on suit property and therefore, the application/notice was given to defendant no.1 and Tahsildar, who directed plaintiffs to approach the Court. It is difficult to draw conclusion that cause of action pleaded in the plaint is elusory or

camouflage. It would require trial. Even limitation of three years prescribed under Article 58 of Limitation Act, will have to be countered from the date when right to sue first accrues. As plaintiffs have pleaded cause of action of 2024. Merely because C.T.S. entries are in favour of defendant no.1 since 1985, suit cannot be treated as barred by limitation. In present case, clear finding as to first cause of action cannot be recorded on the basis of pleading of plaint and documents annexed thereto. It would be mixed question of law and fact to be answered in trial.

10. Recently, the Hon'ble Supreme Court of India in the case of *P. Kumarakurubaran Vs. P. Narayanan and Ors (Civil Appeal No.5622 of 2025)* decided on 29.04.2025 observed that whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of

limitation without permitting the parties to lead evidence, is legally unsustainable.

11. In light of aforesaid exposition of law, in present case, the question as to starting point of limitation or the first cause of action can be decided when parties are put to lead evidence. It would be premature to record finding that cause of action is camouflage or elusory on the basis of material available. Therefore, this Court holds that civil revision application sans merit. Hence, dismissed.

12. Civil Application No.853 of 2025 stands disposed of accordingly.

(S.G. CHAPALGAONKAR, J.)