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CRA 72.2010.odt

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

**CIVIL REVISION APPLICATION NO. 72 OF 2010**

Shaikh Mahboob @ Quadeer S/o. Shaikh  
Gafoor, Age 41 years, Occ. Mutawalli of  
Dargha Shahbnoor Shakkar Gutti (Rh) &  
Labour R/o. Indira Nagar,  
Baijipura, Aurangabad.

**.. PETITIONER**

**VERSUS**

1. Kishor Beneficial Trust,  
through its Trustee,  
Shekhar Champalal Desarda,  
Anukrupa, 28, Venkatesh Nagar,  
Opp. Jalna Road, Aurangabad.
2. Shekhar Champalal Desarda,  
Age Major, Occ. Business,  
R/o. As aboe.
3. The Municipal Corporation,  
Aurangabad, through its  
Commissioner, Aurangabad.
4. Maharashtra State Board of Wakf,  
Through its Chief Executive Officer,  
Office at Panchakki, Aurangabad.

**..RESPONDENTS.**

Mr. S.S. Kazi, Advocate for applicant,  
Mr. M.S. Deshmukh, Adv. h/f. Mr. A.D. Mane, Advocate for respondent  
Nos. 1 and 2.  
Mr. A.P. Bhandari, Advocate for respondent Nos. 2 and 3,  
Mr. N.E. Deshmukh, Advocate for respondent No.4.

**CORAM : S.G. CHAPALGAONKAR, J.**

**RESERVED ON : 15<sup>th</sup> JANUARY, 2025.  
PRONOUNCED ON : 11<sup>th</sup> FEBRUARY, 2025.**

**JUDGEMENT :-**

1. Rule. Rule made returnable forthwith. By consent of learned advocates appearing for parties, heard finally at admission stage.

2. Applicant/plaintiff impugns the judgment and order dated 30.3.2010 passed by Presiding Officer, Maharashtra Wakf Tribunal, Aurangabad in Wakf Suit No. 227 of 2006 by which suit of the plaintiff seeking a decree of perpetual injunction against respondents/defendants has been dismissed.

For sake of convenience, parties hereinafter are referred by original status in the suit.

3. Plaintiff filed Wakf Suit No. 227 of 2006, before the Maharashtra Wakf Tribunal, Aurangabad seeking a decree of perpetual injunction against defendants in respect of property bearing CTS No. 12240/24 situated at Bayjipura, Indiranagar, Aurangabad particularly, as specified in claim clause, which is alleged to have been dedicated to Dargah Shahnoor Gutti (Rh) and Dargah Jalaluddin (Rh.). According to plaintiff, he is Mutawalli of aforementioned Wakf Institution. The area admeasuring 892.5 Square Meters is dedicated for religious services of Dargah. Defendant Nos. 1 and 2 have no concern or right over the above land, but they are raising false claim and encroaching over wakf land. They are in the mindset of dispossessing the plaintiff. Defendant No.3 Municipal Corporation has granted permission in favour of defendant Nos. 1 and 2 to construct a garden on the suit land vide order dated 2.4.1997. Plaintiff resisted defendant No.2 from utilizing land belonging to Dargah, so also, made representation to the Corporation to stop

defendant Nos. 1 and 2 from raising construction of garden. However, defendants did not respond. Hence, plaintiff seeks relief that defendant Nos. 1 and 2 be restrained from interfering in peaceful possession of the plaintiff over suit land, further seeks perpetual injunction against defendant No.3 Municipal Corporation from granting permission in favour of defendant Nos. 1 and 2 to raise construction or create a garden on the suit land.

4. Defendant Nos. 1 and 2 filed written statement refuting the claim of the plaintiff. They specifically denied that suit land admeasuring 862.5 square meters from CTS No. 12240 is Wakf property. They contends that originally land was owned by Nandlal Jaiswal and Akbar Ali Gulam Hussasin. The Municipal Corporation and defendants constructed a compound wall surrounding grave administering 30 x 30 feet. The sanctioned layout of CTS No. 12240 shows open space has been surrendered by original owners in favour of Municipal Corporation by registered Relinquishment Deed dated 9.8.1983. Eventually, Municipal Corporation allotted same to defendant Nos. 1 and 2 for development of a Children Park. Plaintiff was never in possession of the suit property but raised a false claim. Construction permission granted by defendant No.3 in year 1997 has never been challenged by plaintiff under the Bombay Provincial Municipal Corporation Act. Same has attained finality. The issue as to validity of such permission cannot be raised before the Civil Court.

5. Defendant No.3 – Municipal Corporation filed separate written statement and raised the issue as to maintainability of the suit for want of service of mandatory notice before instituting the suit. It is

contended that the suit is filed on the basis of false and fabricated document by suppression of facts. It is contended that Nandlal Jaiswal and Akbar Ali Gulam Hussain were owners of the property. They submitted layout for sanction. It has been sanctioned vide order dated 9.8.1983, They surrendered area of open space vide agreement dated 9.8.1983 in favour of the Corporation. Since then, defendants are in possession of open space in Survey No. 27, CTS No. 12240. Thereafter, on 2.4.1997, Municipal Corporation granted permission for developing open space and construct Children Park. Plaintiff has no locus-standi to file the suit. The suit is not maintainable in the present form.

6. The Wakf Tribunal framed issues, recorded evidence of the parties and finally dismissed the suit vide judgment and order dated 30.3.2010 which is assailed in this Revision.

7. Mr. S.S. Kazi, learned advocate for the applicant submits that the suit property belongs to the Dargah which has been registered as a Wakf. He invites attention of this court to the extract of Register of Wakf depicting registration of Dargah since 27.8.1988 as a Wakf. He would further invite attention of this Court towards entries of land and immovable properties of Wakf, wherein, the four boundaries of suit property admeasuring 892.5 Sq. Meters has been recorded in the name of Wakf. He would further submit that defendants have not disputed existence of Dargah in CTS No. 12240. Further there is no challenge to the registration of Wakf and description of suit properties depicted in Wakf Register. Mr. Kazi further invites attention of this Court to the order dated 17.3.2010 passed in C.R.A. No. 37 of 2019 by which this Court was pleased to set aside an order passed by Tribunal below Exhibit 71,

permitting defendant No.3 to lead secondary evidence as regards to Exhibit Nos. 90 and 91. Mr. Kazi would submit that in spite of aforesaid order. The documents at Exhibits 90 and 91 have been considered by the Tribunal while passing the impugned order. According to Mr. Kazi, learned Tribunal failed to consider effect of registration of Wakf and entry of suit property in the Register of Wakfs. The Wakf Board has also supported plaintiff. Defendants could not establish their claim as to the ownership. Learned Tribunal recorded erroneous finding on the material issues in absence of record depicting ownership of Municipal Corporation over CTS No. 12240 of 2024 or land Survey No. 27. The Tribunal erroneously observed that since Wakf institution is not Gazetted or Wakf is registered recently in year 1988 plaintiff's claim is not accepted. He would submit that there are three modes of registration of Trust. Gazette publication is one of such modes. Therefore, every wakf need not be necessarily Gazetted. Therefore, adverse presumption could not have been drawn only for the reason that the plaintiff Wakf is not Gazetted.

8. Per contra, Mr. M.S. Deshmukh, learned advocate for respondent Nos. 1 and 2 and Mr. Anand Bhandari, learned Advocate for respondent No.3 supports the impugned order. They would submit that it was for the plaintiff to establish ownership and possession over the suit property. However, plaintiff utterly failed to discharge his burden. Plaintiff instituted suit simplicitor for injunction without claiming declaration of ownership. As such, the suit itself is not maintainable. Further relief as claimed against defendant No.3 Municipal Corporation cannot be entertained since suit is instituted without issuing mandatory notice under Section 487 of the Bombay Provincial Municipal Corporation Act. They would further submit that there is nothing on

record to show that plaintiff is validly appointed as Mutawalli of the Wakf. The Tribunal has rightly found that the plaintiff has no locus-standi to institute the suit on behalf of the Wakf.

9. Having considered submissions advanced by learned advocates for respective parties and on perusal of record and proceeding, the point that arises for consideration in this revision application is, as to whether plaintiff proves ownership of Wakf over suit property. Plaintiff, in his endeavour to establish title of Wakf over suit property relied upon admission of defendants as to existence of Dargah in CTS No. 12240. Secondly, entry of suit property in the Register of Wakfs depicting four boundaries for area admeasuring 892.5 square meters. Plaintiff further relies upon his own oral evidence.

10. Pertinently, wakf has been registered on 27.8.1998 vide Registration No. 1 of 1998 on the basis of proposal submitted by plaintiff himself. The particulars of Wakf Property are recorded on the basis of information supplied by plaintiff. It records area of Wakf property as 892.5 Square meters with boundaries as under :-

East : Houses of Indira Nagar

West : Bayji Pura – SFS Road.

North : SFS

South : Yashoda Hospital.

Minute reading of the extract of Wakf Register depicts that particulars, like CTS Number, Survey Number, Source of Title of Wakf are missing. Pertinently, plaintiff has not filed on record any evidence to show source

of title in favour of Wakf. Record do not suggest that Wakf Board had caused independent inquiry as to the title of Wakf over the suit property. As observed by the Tribunal, during 1966 to 1970, City Survey Scheme has been implemented in Aurangabad city. Name of Dargah does not appear in city survey record as owner or occupier over suit property. One does not know, on what basis area admeasuring 892.5 Square meters, is recorded in name of Wakf. The photographs of the existing Dargah are part of record of suit at Exhibit 57. It shows existence of Dargah situated on 30 x 30 feet area. Even respondents have not denied existence of Dargah, however, there is nothing to show that land admeasuring 892.5 Square meters adjacent to the Dargah is owned by Wakf.

11. Plaintiff contends that, Dargah was in existence since long and the suit property was very much in the name of Dargah. If that is so, then there could have been some entry in the old Survey record of land or in CTS record. Admittedly, CTS No. 12240 has been carved out from old Survey No. 27. The record pertaining to old Survey No.27 does not depict entry in the name of Dargah. Plaintiff could not bring on record pre 1998 evidence indicating that the suit property was owned or possessed by Dargah prior to its registration as Wakf. Normally, Wakf institution would receive property through deed of dedication, Sanad, Muntakhab Patra, or any other form of dedication. Plaintiff could not clarify source of title or otherwise establish title of the Dargah. There is nothing to support entry of suit property admeasuring 892.5 square meters in waqf register. Apparently, in this case, entry of suit property is taken in wakf register only on the basis of information submitted by plaintiff himself with his proposal for registration of Wakf. The Tribunal has rightly observed that the Wakf institutions were surveyed in seventies

and thereafter Gazetted in the State of Maharashtra.

12. If Dargah or Wakf had been in existence as claimed by plaintiff; naturally, it could have been Gazetted long back. Significantly, plaintiff has instituted present suit claiming relief of perpetual injunction in respect of suit property without holding the valid document of title. His claim is solely based on an entry in the Wakf Register, which has been taken on the basis of his own assertion. In absence of any document of title, defendants have seriously objected plaintiffs claim for injunction. The suit has been filed under Section 38 of the Specific Relief Act, claiming relief of perpetual injunction. Pleadings and evidence tendered by plaintiff suggests that he is asserting title of Wakf over the suit property and seeks relief of perpetual injunction against defendants. If that is so, it was paramount for the plaintiff to seek declaration of ownership and claim consequential relief of perpetual injunction.

13. The Honourable Supreme Court in the matter of ***“Anthula Sudhakar vs. P. Buchi Reddy (dead) by LRs and others” reported in (2008) 4 SCC 594***, in para.21 crystallized the position as regards to the maintainability of suit simplicitor for permanent injunction without claiming declaration of title, which read thus :-

“To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor.

(b) As a suit for injunction simplicitor is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de-jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

14. Aforesaid legal position is recently reiterated by Supreme Court in the case of *T.V. Ramkrishna Reddy vs. M. Mallappa and another* AIR 1021 SC 4293.

15. Applying the aforesaid principles espoused by the Apex Court to the facts of the present case, it can be observed that in present case plaintiff asserting his ownership and possession over the suit property and consequently, seeking relief of perpetual injunction without seeking declaration as to his title which is seriously disputed. Therefore, claim in present form, would not be maintainable.

16. Turning back to the pleadings of the parties, defendants have specifically denied plaintiff's title over the suit property and asserted positive case that the suit property is originally part of Survey No.27, which was converted to CTS No. 12240 during implementation of the city survey scheme in the year 1971. The original owners of the land had submitted layout of the property and surrendered the open space in favour of the Municipal Corporation. Thereafter, Corporation permitted defendant Nos. 1 and 2 to develop the Children Park. Accordingly, town planning authorities have accorded sanction for construction of the Garden under the provisions of Maharashtra Regional and Town Planning Act. Defendants have placed on record, P.R. Card of CTS No. 12240/24 which is also relied upon by plaintiff. Copy of map Exhibit 86 i.e. approved layout plan sanctioned by Defendant No.3 Corporation on 2.4.1983 depicting open space. None of the documents show ownership of Dargah or Wakf over suit property. The document Exhibit 82 clearly throws light on the fact that there were open spaces in the layout and owner was required to surrender the same to the Corporation free from any encumbrances alongwith spaces left for road. There is no rebuttal to this part of the evidence. The Corporation has also placed on record documents with lists Exhibits 40/4 to 40/8, which contains a copy of

registered agreement between defendant Nos. 2 and 3 and original land owners – Nandlal Jaiswal and Akbar Ali Gulam Hussain, thereby surrendering ownership of open space to the Corporation from the date of approval of the layout. The aforesaid documents demolishes plaintiff's case as to ownership and possession over the suit property.

17. Plaintiff has claimed further relief that defendant No.3 Municipal Corporation be restrained from granting any permission to defendant Nos. 1 and 2 for construction of a garden. Admittedly, plaintiff had not served a notice in terms of Section 487 of the Bombay Provincial Municipal Corporation Act. Even the permissions is already granted, the layout plan has been approved under the provisions of MRTP Act. Therefore, relief as claimed by plaintiff would be out of the purview of Civil Court/Wakf Tribunal.

18. Having regard to the totality of the facts and circumstances, the order passed by the Wakf Tribunal needs no interference. No jurisdictional error or perversity is brought to the notice of this court requiring interference under Section 83 of the Wakfs Act, 1995. Resultantly, civil revision application stands dismissed. Rule is discharged.

**[S.G. CHAPALGAONKAR, J]**

grt