



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

CIVIL REVISION APPLICATION NO.115 OF 2018

Pandit Bala Adhane (Died)
Through Legal Representavit

1. Shivaji s/o Panditrao Adhane,
Age: 55 years, Occu. Agri.
 2. Dattu s/o Panditrao Adhane,
Age: 48 years, Occu. Agri,
 3. Kamlabai wd/o Bandu Adhane,
Age: 50 years, Occu. Agri.
 4. Santosh s/o Bandu Adhane,
Age: 34 years, Occu. Agri.
 5. Rajesh s/o Bandu Adhane,
Age: 32 years, Occu. Agri,
All R/o Post Garden, Tq. Khultabad,
Dist. Aurangabad.
 6. Ashabai w/o Jagannath Gawande,
Age: 65 years, Occu. Agri.
 7. Usha w/o Ganpat Gawande,
Age: 50 years, Occu. Agri.
 8. Sangeeta w/o Yogesh Gawande,
Age: 40 years, Occu. Agri.
All R/o Post Aavhana, Tq. Bhokardan,
Dist. Jalna
- ..Applicants

Versus

1. Shaikh Ahmed Shaikh Shamshoddin,
Age: 56 years, Occu: Business
2. Shaikh Asad Shaikh Ishaque,
Age: 40 years, Occu: Business,
R/o. Gadana, Tq. Khultabad,
Dist. Aurangabad. ..Respondents/Original Plaintiffs.
3. Prakash Suppad Adhane,
Age: 63 years, Occu: Agri.

Both R/o. Gadana,
Tq. Khultabad, Dist. Aurangabad

4. The Maharashtra State Board of Waqf,
Through its Chief Executive Officer,
Having office at Panchakki, Aurangabad.
..Respondents/Ori. Deft. Nos.2 and 3.

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Mr. A. R. Vaiday, Advocate for Applicants.

Mr. S. S. Bora h/f Mr. Shaikh Naseer, Advocate for Respondent
Nos.1 and 2.

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

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 03rd FEBRUARY, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of parties, matter is taken up for final hearing at the stage of admission.
2. The applicant/original defendant no.1 impugns judgment and order dated 26.04.2018 passed by Maharashtra State Waqf Tribunal at Aurangabad in Waqf Suit No.71/2012. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).
3. The respondent nos.1 and 2 instituted Waqf Suit No.71/2012 contending that Masjid Gadana in Taluka Khultabad is registered Waqf Institution. The plaintiffs are members of Masjid Committee. The land Survey No.180 (Gut No.312) is Waqf property as per list published in Maharashtra Government Gazette dated 15.11.1973 and the same is only source of income of Masjid. The defendant

nos.1 and 2 unlawfully possessed property and managed to enter their names in the mutation record as Maruti Inam instead of Masjid Inam. In the year 1997, mischief was surfaced. The Tahsildar, Khultabad certified that entry as Maruti Inam is wrong and that has been corrected as Masjid Inam. On 02.06.2012, plaintiffs asked defendant nos.1 and 2 to hand over possession of the property, but they refused to do so. Hence, cause of action arose to file suit seeking recovery of possession.

4. The pleadings in the suit were refuted by defendants contending that they are in possession of property since long. The Waqf Institution has lost its title in respect of suit property in terms of Section 27 of the Limitation Act. The suit is hopelessly barred by limitation. The defendant no.3 filed written statement admitting contentions in the plaint. The Tribunal framed the issue, recorded evidence and accepted claim of plaintiffs while rejecting defence of limitation as raised by defendants. Consequently, decree for possession has been passed in favour of Waqf with further direction against defendants to not to alienate or create third party interest in any manner in respect of suit property.

5. Mr. Vaidya, learned Advocate appearing for the applicants submits that taking pleadings of the plaintiffs, apparently suit is hopelessly barred by limitation. He submits that certified copy of

the Gazette itself shows long standing possession of defendants over the suit property. This fact is not disputed. Referring to Section 66(G) of old Waqf Act, 1954, he submits that it has been inserted w.e.f. 23.06.1986 vide G.S.R. No.897 (E). The limitation provided under Section 66(G) would not apply to the present case, since defendants are in possession of the property since before 15.11.1973 and limitation period of 12 years as prescribed under Article 65 of the Limitation Act was expired much prior to insertion of Section 66(G) providing limitation of 30 years for any suit for possession of immovable property comprised in any Waqf. He would, therefore, submit that learned Tribunal failed in grave error while applying provisions of Section 107 of the Waqf Act, 1995 to the present Suit, which has been inserted by Act of 2013. In support of his contentions Mr. Vaidya would place reliance on judgment of Supreme Court of India in case of ***T. Kaliamurthi and Another Vs. Five Gori Thaikal Waqf and Ors.***¹ contending that limitation being procedural law would apply only to the pending proceeding at the time of enactment. However, with exception that where right of suit is barred under law of limitation in force before new provision came into operation and the vested rights has accrued to another, the new provision cannot revive stale claim or take away accrued vested right. He would further rely upon judgment in case of ***Sabir Ali Khan Vs. Syed Mohd.***

¹ AIR 2009 SC 840.

Ahmad Ali Khan and Others² contending that Waqf property can be subject matter of acquisition of title by adverse possession.

6. Per contra, Mr. Bora, learned Advocate appearing for respondent nos.1 and 2 seeks to rely upon judgment of Supreme Court of India in case of ***T. Anjanappa and Ors. Vs. Somalingappa and Ors.***³ to contend that it is burden of defendants to prove affirmatively the case of adverse possession, which contemplates hostile possession, expressly or impliedly in denial of title of true owner. Mr. Bora would further rely upon judgment of Delhi High Court in case of ***Tirath Singh and Ors. Vs. Delhi Waqf Board*** in ***RFA No.359/1996*** dated ***18.02.2011*** to contend that even if it is assumed that Article 65 of the Limitation Act providing for a limitation period of 12 years applies to present case, the period would be counted from the date when possession became adverse and matured into ownership rights. Unless the defendants, through specific pleadings and material evidence, establish the acquisition of title by way of adverse possession, they cannot defend their possession by citing the bar of limitation.

7. Having considered submissions advanced and perusal of reasoning adopted by Waqf Tribunal, issue that falls consideration before this Court is as to the application of law of limitation for bringing action for recovery of possession in respect of Waqf

² 2023 3 MLJ 353.

³ (2006) 7 SCC 570.

properties and particularly in facts of present case if suit is within period of limitation.

8. Before delving into legal aspects of the matter, certain foundational facts can be referred as under:

The Masjid Gadana is Waqf Institution. The land Survey No.180 (Gut No.312) admeasuring 3 Acres 19 Gunthas situated at village Gadana has been listed as Waqf in Maharashtra Government Gazette dated 15.11.1973. The title of the immovable property, as listed in the Gazette, indicates that the Inam land is under the illegal possession of Pandit Bala Adhane and Suppad Rama. The defendants are claiming rights through them. Relying on the contents of the Government Gazette dated 15.11.1973, the defendants argued that since their illegal possession was acknowledged prior to 1973, the suit filed in 2012 is hopelessly barred by limitation. They further contended that the rights accrued in their favor under the prevailing law cannot be revived, even by subsequent legislation withdrawing the applicability of the provisions of the Limitation Act. At this stage, a glance to the legislative history as to applicability of the provisions of the Limitation Act in Waqf Suit is required. The Waqf Act of 1954 remained in effect until it was repealed and replaced by the Waqf Act of 1995. Section 66(G) was introduced in Waqf Act, 1954 w.e.f. 23.06.1986, which reads thus:

“66-G. Period of limitation for recovery of wakf properties to be thirty years- *Notwithstanding anything contained in the Limitation Act, 1963, the period of limitation for any suit for possession of immovable property comprised in any wakf or possession of any interest in such property shall be a period of thirty years and such period shall begin to run when the possession of the defendant becomes adverse to the plaintiff.”*

9. By this provision application of Limitation Act, 1963 was removed for bringing suit for possession in respect of immovable property comprised in any Waqf. As such, instead of limitation period of 12 years prescribed under Article 65 of the Limitation Act, the said period of 30 years has been introduced for bringing action in respect of Waqf properties. Later on, by amendment of 2013 in Waqf Act, 1995, Section 107 has been introduced w.e.f. 01.11.2013, which reads thus:

“107. Act 36 of 1963 not to apply for recovery of waqf properties - *Nothing contained in Limitation Act, 1963 (36 of 1963) shall apply to any suit for possession of immovable property comprised in any waqf or for possession of any interest in such property.”*

10. By this amendment, application of limitation for bringing action against Waqf Institution has been withdrawn. As such, for any such suit instituted after 2013, limitation period would not be applicable.

11. In light of admitted facts, defendants are in possession of suit properties since before 1973. According to Mr. Vaidya, applying

Section 65 of the Limitation Act, right of plaintiffs to recover property from defendants has been lost in the year 1985. Therefore, Section 66(G) of the Waqf Act, 1954 or Section 107 of the Waqf Act, 1995 would not aid plaintiffs to bring their action within limitation.

12. It is true that if any right is accrued in favour of defendants by operation of law as it stands, it cannot be taken away by subsequent amendment in Waqf Act. Therefore, it will have to be examined if defendants have acquired any right or defendants can establish that plaintiffs lost their rights to seek recovery of possession of the property from them. It is not disputed before this Court that in absence of specific provisions as regards to the limitation for filing suit for possession of immovable property in Waqf Act, the general provision under Limitation Act would apply. Section 65 of the Limitation Act would govern rights of the parties prior to introduction of Section 66(G) of the Waqf Act, 1954. Article 65 of the Limitation Act reads thus:

Description of Suit		Period of Limitation	Time from which period begins to run
65	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

13. Bare reading of aforesaid provision would show that limitation of 12 years is prescribed for recovery of possession of

immovable property based on title. The limitation period will begin from the date when possession of defendants became adverse to the plaintiffs. Undisputedly, defendants have not denied title of Waqf over the suit property. Hence, they would acquire title by way of adverse possession only from the date when their possession became adverse to the plaintiffs. Turning back to the pleadings in the written statement, it can be observed that defendants have not pleaded that they acquired title by way of possession. They are simply coming with a case that suit of the plaintiffs is hopelessly barred by limitation, since limitation period of 12 years expired much before 1985. Therefore, even applying law laid down by Supreme Court of India in case of ***T. Kaliamurthi and Another*** (supra), particularly observations in paragraph no.40 to find out vested right accrued in favour of defendants, there is nothing to show that defendants' possession became adverse to the title of plaintiffs. The law on the point of adverse possession can be better understood through the observations of the Supreme Court of India in case of ***T. Anjanappa and Ors.*** (supra), which reads thus:

“13. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful,

open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

14. In light of aforesaid factual and legal position, even accepting that provisions of Section 66(G) of the Waqf Act, 1954 introduced w.e.f. 23.06.1986 would have no application to the rights of defendants. In the absence of specific pleadings and evidence regarding defendants possession, open, continuous and hostile enough to be known by the parties concerned; adverse possession cannot be presumed. Notably, the written statement filed by the defendants makes no mention of acquiring title through adverse possession. Even to hold suit being barred under Section 27 of the Limitation Act, determination of period of limitation will have to be reckoned to the specific provision contained in Article 65. It is not disputed before this Court that present suit is based on title and period of limitation will have to be counted as per Article 65 from the date when possession of the defendants became adverse to the plaintiffs. Therefore, this Court is of the opinion that even applying Limitation Act, 1963 without touching to the provisions of Waqf Act, the defendants could not establish that suit is barred by limitation. In that view of the matter, there is no merit in the Civil Revision Application.

15. Consequently, Civil Revision Application stands dismissed.

16. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

17. At this stage, Mr. Vaidya, learned Advocate appearing for the applicant submits that the applicant may approach the Supreme Court. The interim protection that was granted may be continued for a period of eight weeks from today.

18. In that view of the matter, the interim relief that was in operation shall remain in force for a further period of eight weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE