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CRA 206.14.odt

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

CIVIL REVISION APPLICATION NO. 206 OF 2014

Syed Saleemuddin S/o. Syed Naseeruddin,
Age 51 years, Occ. Service.
R/o. Muzaffar Nagar, N-13, Aurangabad,
through his GPA
Syed Mir Ahtesham Ali S/o. Zafar Ali,
Age 39 , Occupation Business
R/o. House No.4-10-64, Near Nizamuddin
Dargha, Shahganj, Aurangabad.

.. APPLICANT.
Original plaintiff.

Versus

1. Nayyar Jaha Begum w/o. Syed Moinuddin,
Age 66, Occupation Household,
R/o. Dargah Nizamudding Compound,
Shahganj, Aurangabad.
2. The Chief Executive Officer,
Maharashtra State Board of Wakf,
Panchakki, Aurangabad.

..RESPONDENTS.
Original defendants.

Mr. Ashutosh S. Kulkarni, Advocate for applicant.
Mr. Anand P. Bhandari, Advocate for respondent No.1
Mr. Najam E. Deshmukh , Advocate for respondent No.2

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 6TH FEBRUARY, 2025.
PRONOUNCED ON : 30th APRIL, 2025.**

JUDGMENT :-

1. Applicant/plaintiff impugns order dated 19.7.2014 passed by Maharashtra Wakf Tribunal, Aurangabad, below Exh. 18 in Wakf Suit No. 83 of 2012, thereby rejecting plaint in exercise of powers under Order VII Rule 11 of C.P.C. [For sake of convenience, parties hereinafter are referred as per their original status in suit]

2. Respondent/defendant instituted Wakf Suit No. 83 of 2012 claiming relief of declaration plaintiff is Mutawalli of wakf institution, namely, Dargah Sayyad Shah Nizamuddin situated at Nizamuddin Chowk, Aurangabad, recovery of possession and permanent injunction against defendant No.1. According to plaintiff, one Gulam Moinoddin @ Kaisaruddin expired in 1965 leaving behind Mohamudi Begum. In RCS No. 16 of 1966 a decree is passed declaring that Nayyarjahan Begum and Mohamudi Begum are Mutawali and Sajjada of above dargah. According to plaintiff, there were 10 other legal heirs and successors of Gulam Moinoddin, However, RCS No. 16 of 1966 was instituted by defendant No.1 claiming himself as successor of Gulam Moinoddin suppressing the names of other legal heirs. According to plaintiff, the Wakf Board wrongly presumed that Nayarjahan Begum is Mutawalli of Dargah. Even otherwise, she cannot be Mutawalli of Dargah as Mohammedan law do not permit a lady to be Mutawalli. According to plaintiff, he is from pedigree of original Mutawalli of Dargah Syed Shah Nizamuddin and legally entitled for appointment as Mutawalli. He had issued notice under Section 89 to Wakf Board to accept his status as Mutawalli and by removing Nayyarjahan Begum from office of Mutawalli and then instituted present suit.

3. Defendant No.1 appeared in the suit and filed application under Order 7 Rule 11 of CPC seeking rejection of plaint, contending that plaintiff sans locus-standi to file present suit. According to defendants, plaintiff is claiming right on the basis of succession through his father. In previous suit i.e. RCS No. 97 of 1975 plaintiff's father was party, in which right of defendants being daughter of Kaisaroddin has been approved and that decree has attained finality on dismissal of RCS No. 2 of 1982 on 16.8.1980. Plaintiffs suit is barred by res-judicata, so also, limitation. It is further stated that plaintiff has instituted another suit i.e. Special Civil Suit NO. 908 of 2011 with same pleadings in court of Civil Judge (S.D.) which has been dismissed on 11.3.2013. As such, defendants sought rejection of plaint.

4. The Wakf Tribunal observed that in RCS No. 16 of 1966 defendant No.1 and her mother are declared as Mutawali of Dargah. Similarly in suit filed by plaintiff's father i.e. RCS No. 97 of 1975, it is held that plaintiff Nayyarjahan is not entitled to sue and not eligible to hold office of Mutawalli of Dargah. Said suit is dismissed and decree has attained finality. Consequently, suit is held to be vexatious and plaint is ordered to be rejected under Order 7 Rule 11 of CPC.

5. Mr. Ashutosh Kulkarni, learned advocate for applicant submits that suit of plaintiff could not have been rejected invoking principle of res-judicata since such issue is not germane to the inquiry under Order 7 Rule 11 of CPC. In support of his contention, relies upon judgment in the case of ***P.V. Gururaj Reddi Vs. P. Neeradha Reddy and another (2015) 8 SCC 331 and Shrihari Hanumandas Totala vs. Hemant Vithal Kamat and others (2021)9 SCC 99.***

6. Per contra, learned advocate for respondent submits that plaintiff is habitual litigant and files vexatious proceedings on same cause. He points out that in RCS No. 16 of 1966 filed by defendant/respondent seeking declaration that she being successor of Jagirdar Syed Shah Gulam Moinoddin, her entitlement has been approved by civil court. Father of applicant/plaintiff was party to that suit. Plaintiff's father filed RCS No. 97 of 1975 seeking declaration that defendant No.1 is not entitled to hold office of Mutawalli. Said suit came to be dismissed on 5.10.1981. Appeal filed against same has been dismissed on 16.8.1984. Thereafter, applicant filed RCS No. 906 of 2011 seeking declaration that decree in RCS NO. 16 of 1966 is not binding on him. Plaintiff in that suit has been rejected under Order 7 Rule 11 of CPC. Appeal against said order is dismissed by District Judge on 18.7.2016. Second appeal against both decrees has been dismissed on the point of delay by this court. In this background, plaintiff/applicant has filed Wakf Suit NO, 83 of 2012. On objection by defendants, plaint is rejected.

7. Mr. Bhandari submits that even after rejection of plaint, plaintiff had instituted Wakf suit No. 11 of 2013 and same has been withdrawn unconditionally. According to Mr. Bhandari, no error can be found in the order passed by Wakf Tribunal, thereby rejecting plaint in facts of present case. According to him, revision application is liable to be rejected with heavy costs. In support of his contentions, he relies upon following judgments :-

- 1] *M/s. Shree Surya Developers and Promoters vs. N. Shailesh Prasad and others (Civil Appeal No. 439 of 2022 Supreme Court of India*
- 2] *Rajendra Bajoria and Others Vs. Hemant Kumar Jalan and others*

(Civil appeal Nos. 5819-5822 of 2021 Supreme Court of India.

3] T. Arivandandam vs. T.V. Satyapal and another AIR 1977 Supreme Court of India 2421.

4] Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by LRs (Civil Appeal No. 2960 of 2019 Supreme Court of India)

5] M/s. Frost International limited Vs. Milan Developers and Builders (P) Limited and another (Civil Appeal No. 1689 of 2022 Supreme Court of India)

8. Having considered submissions advanced, it can be observed that plaintiff/applicant filed present suit with following reliefs :-

“[A] The suit of plaintiff may kindly be decreed with costs;

[B] It be declared that, plaintiff is Mutawalli of Darga Sayed Shah Nizamuddin, situated at Nizamuddin Chowk, Aurangabad;

[C] Decree for recovery of possession of Wakf Institution – Dargah Sayed Shah Nizamuddin situated at Nizamuddin Chowk, Aurangabad may kindly be passed in favour of plaintiff against the defendant no.1;

[D] Decree for permanent injunction may kindly be passed restraining the defendant No.1 from causing hindrance in the right of plaintiff as Mutawalli of Dargah Sayed Shah Nizamuddin situated at Nizamuddin Chowk, Aurangabad.

[F] Any other suitable or equitable relief in favour of plaintiffs may kindly be passed in the interest of justice.”

9. Applicant endeavours to contend that under the Mohammedan Law ladies cannot be appointed as Mutawalli of any Dargah. Therefore, acknowledgment of status of Mutawalli of Dargah Shah Nizamuddin, by Wakf Board is illegal and void-ab-initio.

10. The defendants by filing application below Exh.18, brought on record following litigation/proceedings instituted by plaintiff or his father for similar reliefs.

[I] RCS No. 16 of 1966 filed by defendant No.1 in which defendant No.1 is held to be successor of Jagirdar Syed Shah Gulam Moinoddin, consequently decree dated 25.4.1966 is passed

[ii] RCS No. 97 of 1975 instituted by plaintiff's father seeking negative declaration against defendant No.1 as to her entitlement to hold office of Mutawalli of Dargah. Said suit has been dismissed. Decree is confirmed in appeal;

[iii] RCS No. 906 of 2011 filed before civil court by plaintiff to declare that decree in RCS NO. 16 of 1966 is not binding upon him. Plaint is rejected under Order 7 Rule 11 of CPC. That decree has attained finality by judgment and order dated 18.7.2006 in R.C.A. No. 117 of 2013 passed by District Judge, Aurangabad.

[iv] During pendency of present litigation, plaintiff filed Wakf Suit No. 11 of 2013 seeking declaration that defendant Nos. 1 and 2 are self styled as so called Mutawalli and Sajjada and stranger to Dargah

Shah Nizamuddin Awaliya, Aurangabad and directing defendant No.1 – Maharashtra State Board of Wakf, Aurangabad to re-appoint defendant Nos. 2 and 3 as Mutawalli and Sajjada of Dargah. However, unconditionally withdrew the suit. Vide order dated 15.11.2017, withdrawal was permitted by imposing costs to be paid to defendants.

11. The aforesaid history of litigation clearly demonstrate that plaintiff is litigating for one and same cause by filing different proceeding before the different forums, with intention to harass the defendant No.1, who is already declared as Successor of Jahagirdar Sayyad Shah Gula Moinuddin, Mutawalli of Dargah. The Wakf Tribunal observed aforesaid conduct of plaintiff and passed impugned order of rejection of plaint.

12. It cannot be disputed that jurisdiction under Order 7 Rule 11 of C.P.C. has to be exercised within parameters prescribed and contents of plaint and documents annexed thereto can only be looked into. There cannot be dispute over proposition of law espoused by Supreme Court of India in case of P.B. Gururaj Reddi and Shrihari Totala (supra) that rejection of plaint is not permissible on the ground of res-judicata. However, at this stage, it would be apposite to refer to the observations of the Supreme Court of India in case of ***T. Arvandandam vs. Statyapal (1977)4 SCC 467, in para. 10.2 and 10.3, as under :-***

“ We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The

learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if a clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.

In the case of Ram Singh vs. Gram Panchayat Mehal Kalan (1986) 4 SCC 364, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.”

13. Similarly, the Supreme Court of India in case of ***Rajendra Bajoriya (supra)*** observed in para. 17 thus :-

“17. It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is, as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown at the threshold. This Court, therefore, upheld the order passed by the trial court of rejecting the suit and that of the appellate court, thereby affirming the decision of the trial court. This Court set aside the order passed by the High Court, wherein the High Court had set

aside the concurrent orders of the trial court and the appellate court and had restored and remanded the suit for trial to the trial court.”

14. Keeping in mind aforesaid aspects of the matter, if contents of plaint and documents annexed thereto in Wakf Suit No. 83 of 2012 are considered, plaintiff himself states that in R.C.S. No. 16 of 1966, declaration is given as to Mutawalliship in favour of Nayyarhajan Begum, as to the Dargah holding that she is the legal heir and representative of Syed Shah Gulam Moiuddin @ Kaisaroddin. Plaintiff's father was party to the said suit. No relief is claimed in present suit that aforesaid decree in R.C.S. No. 16 of 1966 is nullity or not binding upon the plaintiff. Plaintiff has pleaded that he issued notice dated 16.4.2012 to Wakf Board seeking his entitlement as Mutawalli of Dargah and defendant be removed from the office of Mutawalli of Dargah Shah Nizamoddin and, therefore, cause of action arose to file the present suit.

15. It is apparent that plaintiff has cunningly suppressed earlier proceedings referred above in very same subject matter, wherein, the competent courts have passed decrees holding right of defendant to hold the office of Mutawalli. Similarly, suit with similar prayer instituted by his father is already dismissed in the year 1981 and decree is confirmed upto the appellate court. Similarly, plaintiff attempted to seek very same relief in R.C.S. No. 906 of 2011 by filing suit before the Civil Judge at Aurangabad and his plaint came to be rejected vide judgment and order dated 11.3.2013, which is confirmed upto this court. Even during pendency of present suit, plaintiff had instituted Wakf Suit no. 11 of 2013 and same is unconditionally withdrawn.

16. Although Mr. Kulkarni, learned advocate for applicant is right in contending that bar under Section 11 of C.P.C is to be established with reference to the pleading in earlier plaint and same would be the issue of trial. In facts of present case, when there is a chequered history of litigation, plaintiff has suppressed impeccable material in the form of previous pronouncements which leave no room to raise repeated claim in respect of lis, decided between the parties. Claim in instant suit is patently vexatious. The cause of action shown in plaint is illusory and camouflage. This Court has no hesitation to hold that none of the reliefs sought in the plaint can be granted to the plaintiff under law and there is no purpose in allowing to continue the trial of the suit, as has been consistently held by the Supreme Court in such a situation, suit has to be thrown at the threshold since it sans cause of action. In the result, there is no merit in the civil revision application. Same is dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-