

27.02.2026
Court No.13
Item No. 6
pk

FAT 489 of 2016

Sheikh Riyajuddin and others
Vs.
Sheikh Hasmat Ali and others

Mr. Rahul Karmakar,
Ms. Gargi Goswami

...for the appellants.

1. The instant appeal is directed against a judgment and order dated 18th June, 2016 passed by the learned Civil Judge (Senior Division), Ghatal in T.S. No. 70 of 2015. The suit was for partition filed by the plaintiffs/appellants. It is the contention of the plaintiffs/appellants that the property of which the partition is sought is the pirottor property and that the appellants and the respondents have shares therein. The defendants in the suit filed written statement, inter alia, contending that the property-in-question has been registered as a Wakf Property under the provisions of the Bengal Wakf Act, 1934.
2. An application was pending before the Wakf Board under Section 44 of the said Wakf Act against Diary No. 237. On the basis of the said application E.C. Case No. 14429 was registered by the Wakf Board and Mutuwallis from both sides were appointed.
3. Having regard to the above, the Trial Court while framing issues considered an application of the defendants under Order 14 Rule 2 of the Code of Civil Procedure to decide

as a preliminary issue as to whether the suit for partition was maintainable in view of the provisions of the West Bengal Wakf Act.

4. The Trial Judge was of the view that there was a prima facie evidence that the property-in-question was registered with the Wakf Board and Mutuwallis were appointed. The Trial Court was further of the view that if the appellants are of the view that the property-in-question is not a wakf property, they are required to apply before the Wakf Tribunal under the provisions of the Act for an appropriate adjudication to that effect.
5. This Court is of the view that the Trial Judge was justified in passing the impugned judgment and order. Admittedly when a specially constituted forum is available under a Special Act, the civil forum under the general law would have no jurisdiction to entertain any civil proceedings.
6. The plaintiffs/appellants are not remediless. They may approach the Wakf Tribunal with an appropriate application under the Act in question and contend that the property in question is not wakf property and that the signature of the original wakif was forged in the purported Wakfnama.
7. Leaving all questions are left open to be decided by the Wakf Tribunal in accordance with law, this Court is of the view that the impugned order calls for no interference.
8. Accordingly, the instant appeal is hereby dismissed. Consequently connected application, if any, is also dismissed.

9. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Md. Shabbar Rashidi, J.)