2026:BHC-AUG:17751

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2825 OF 2025

1. Gulab Didalisha Fakir
Age 57 years, Occu: Mujawar
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk,
Tq:Baramati, District: Pune 413115

2. Sunnabee D/o Didalisha Fakir,
Sunnabee W/o Dilawar Sayyad
Age: Major, Occ: Household,
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk,
Tq:Baramati, District: Pune 413115

3. Munnabee Gulab Fakir,
Age: 50 years, Occ: Household,
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk,
Tq:Baramati, District: Pune 413115

4. Aisha D/o Gulab Fakir,
Aisha W/o Aarif Mujawar,
Age: 29 years, Occ: Household,
R/o: Koregaon, Tq: Koregaon,
District: Satara

5. Karishma D/o Gulab Fakir
Karishma W/o Farukh Shaikh
Age: 27 years, Occ: Household
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk,
Tq:Baramati. District: Pune 413115

6. Reshma Gulab Fakir Age: 23 years,
Occ: House Wife
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk, Tq: Baramati,
District: Pune 413115

7. Shahrukh Gulab Fakir, Age: 21 years,
R/o: Near Raje Bagaswar Darga.
Malegaon Budruk, Tq:Baramati.
District: Pune 413115

8. Irfan Gulab Fakir,
Age: 19 years,
Occ: Education
R/o: Malegaon Budruk,
Tq: Baramati, Dist: Pune 413115
R/o: Near Raje Bagaswar Darga,
Malegaon Budruk, Tq:Baramati,
District: Pune 413115

9. Heena D/o Dilawar Sayyed,
Heena W/o Jamir Jahagirdar,
Age: 32 years, Occ: Household,
R/o: Indapur, Tal:Indapur, District: Pune

10. Beena D/o Dilawar Sayyed,
Beena W/o Shahid Mulani,
Age: 30 years, Occ: Household,
R/o: Vallabhnagar, Pimpri, Pune.

11. Rizawana D/o Dilawar Sayyed
Rizawana W/o Mohaseen Shaikh,
Age: 28 years, Occ: Household,
R/o: Koregaon, Tq:Koregaon,
District: Satara.

12. Ramjan Dilawar Sayyed,
Age: 25 years, Occ: Education,
R/o: MalegaonBu, Tal:Baramati,
District: Pune 413115

13. Hussain Dilawar Sayyed,
Age: 23 years, Occ: Education,
R/o: Malegaon, Tq:Baramati,
District: Pune 413115

14. Ashok Nivrutti Taware,
Age: Major, Occ: Agriculture

15. Shankar Nivrutti Taware,
Age: Major, Occ: Agriculture

16. Dilip Nivrutti Taware,
Age: Major, Occ: Agriculture,

Applicant Nos.14 to 16 R/o : Malegaon Budruk,
Tal:Baramati, Dist: Pune 413115

17. M/s V.N.S Nirman Infra
Through its Partners,
Shri Sachin Raghunath Bhosale, Age: 38 years,
Occ: Business R/o: Vidni, Tq: Phaltan, Dist: Satara

18. Prakash Balasaheb Chavhan,
Age: 41 years,
Occ: Construction R/o: Gultekdi Market Yard,
Office Nos.37, 38, Vastu Shri Complex, Pune-37

19. Surekha Sambhaji Shinde,
Age: 62 years, Occ: Retired.
R/o: Shivaji Chowk, Malegaon Budruk,
Tq:Baramati, Dist: Pune

20. Sambhaji Bajirao Shinde,
Age: 67 years, Occ: Retired,
R/o: Shivaji Chowk, Malegaon Budruk,
Tq:Baramati, Dist: Pune

21. Kantilal Shankarrao Kale, Age: 53 years,
Occ: Agriculture, R/o: Sharda Nagar,
Malegaon Budruk, Tq:Baramati, Dist: Pune

22. Vipul DhansinghKorpad,
Age: 29 years, Occ: Agriculture,
R/o: Malagaon Budruk Tal: Baramati,
District: Pune

23. Rajendra Gajanan Kardile,
Age: 64 years, Occ.: Business
R/o: Malegaon Budruk
Tq: Baramati, District: Pune.

24. Atul Vishvas Holkar, Age: 44 years,
Occ.: Agriculture
R/o: 11 Phata, Sadobachi Wadi,
Taluka Baramati, District: Pune

25. Uttam Tatyaba Nale, Age: 44 years,
Occ: Agriculture,
R/o: Vidani, Taluka Phaltan,
District: Satara

26. Avinash S. Gaikwad, Age: 44 years,
Occ: Agriculture,
R/o: Ambegaon, District: Pune

27. Rajudas Ganpatrao Jadhav, Age: 37 years,
Occ: Business, R/o:Ghulenagar,
Mohammadwadi Hadapsar, District: Pune

28. Sheetal Savtaji Lokhande, Age: 42 years,
Occ: Service, R/o: Sonkaswadi Pandare,
Tq:Baramati, Dist: Pune

29. Nitin Malhari Jadhav, Age: 36 years,
Occ.: Business
R/o: Malegaon Bu., Khadakali,
Tq:Baramati, District: Pune ... **Appellants**

- <u>VERSUS</u>-

1. Shrimant Vikramsingh /Lakshmansingh Raje Jadhav Rao
Age: 71 years, Occ: Agriculture,
R/o: Malegaon Budruk
Tq: Baramati, District Pune,
Presently residing at
Applicant Nos.22 to 2 (Ori. Defenc Nos.33
110 Raghavendra Vihar, Mahesh Housing Society,
Bibvewadi, Pune 411037.

2. Rahiman Gulab Bhai Shaikh, Age: 51 years,
Occ: Service. R/o: Malegaon Budruk.
Tq:Baramati, Dist: Pune 413115

3. Faiyaz Ilahi Shaikh, Age: 38 years, Occ: Business,
R/o: Prabuddha Nagar, Baramati, District: Pune.

4. Maharashtra State Waqf Board
Through Chief Executive Officer,
Panchakki, Chhatrapati Sambhajinagar

5. Anil Krushnrao Taware Occ: Agri,
R/o: Sangavi, Tal: Baramati, Dist: Pune

6. Keshav Sarjerao Jagtap, Age: 76 years, Occ: Agriculture

7. Vishal Keshavrao Jagtap,
Age: 40 years, Occ: Agriculture

8. Aambadas Marutrao Jagtap,
Age: 51 years, Occ: Agriculture,
Respondent Nos.6 to 8 R/o: Pandare,
Tq: Baramati, District: Pune

9. Kalyan Maruti Pachangane,
Age: Major, Occ: Agriculture,
R/o: Malegaon Colony (Sharda Nagar)
Tq: Baramati, Dist: Pune

10. Sujata Mahadev Dhaygude,
Age: Major, Occ: Household

11. Mahadev Maruti Dhaygude,
Age: Major, Occ: Agriculture

12. Anandibai Shivaji Dhaygude,
Age: Major, Occ: Household,

Respondent Nos. 10 to 12 R/o: Malegaon Budruk.
Tal:Baramati, District: Pune

13. Shri Siddheshwar Gramin Bigarsheti
Sahakari Pathsanstha Maryadit Pandare
Tq: Baramati, District: Pune

14. Shri Kishor Mahadev Giri,
Age: 44 years, Occ: Agriculture,
R/o: Vitthalwadi, Khandaj,
Tq:Baramati, District: Pune

... Respondents

Mr. S. V. Adwant, Advocate for the Appellants
Mr. N. E. Deshmukh, Advocate for Respondent No.4
Mr. P. R. Katneshwarkar, Senior Advocate a/w Mr. Phulpagar, Advocate for Respondent No.2.
No Notice is issued to the Respondents 5 to 14.

CORAM : Y. G. KHOBRAGADE, J.
RESERVED ON : 24.03.2026
PRONOUNCED ON : 23.04.2026

JUDGMENT:-

1. In the case at hand, on 4th September, 2025, this Court passed an order and issued notice to the Respondent nos. 1 to 4 but, no notice has been issued to the rest of the Respondent Nos. 5 to 14, therefore, present appeal is restricted to the extent of Respondent nos. 1 to 4 only.

2. Heard Mr. S. V. Adwant, learned counsel for the Appellants, Mr. N. E. Deshmukh, Learned counsel for Respondent No.4 and Mr. P. R. Katneshwarkar, Senior Advocate a/w Advocate Mr. Phulpagar for the Respondents 1 to 3/ ori. Plaintiffs.

3. By the present Appeal filed under Section 83 (9) of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 (for short Waqf Act, 1995), the Appellants take exception to the order dated 04.07.2025 passed below Exhibits 559 to 563 in Waqf Suit

No.90 of 2025 by the learned District Judge/Chairman, Maharashtra State Waqf Tribunal, Aurangabad (Waqf Tribunal) thereby rejecting prayers of the Appellants for correction in Para nos. E, I, Q and S of their W.S. Exh. Nos. 125, 126, 127, 129 and 13 in respect of replacement of Gat No. 231 by Gat No. 550/1.

4. The present Appellant Nos. 1 to 13 are the original defendant Nos. 1, 2 and 4 to 14. The Appellant Nos. 14 to 18 are the original defendant Nos. 16 to 20. The Appellant Nos. 19 to 21 are the original defendant Nos. 29 to 31. The Appellant Nos. 22 to 24 are the original defendant Nos. 33 to 35; and Appellant Nos. 25 to 29 are the original defendant Nos. 37 to 41. Whereas, the Respondent Nos. 1 to 3 are the original plaintiff Nos. 1 to 3; Respondent No. 4 is the original defendant No. 42; Respondent Nos. 5 to 9 are the original defendant Nos. 21 to 25; Respondent Nos. 10 to 12 are the original defendant Nos. 26 to 28; Respondent No. 13 is the original defendant No. 36; and Respondent No. 14 is the original defendant No. 32 in Waqf Suit No. Waqf Suit No.90 of 2025. For the sake of brevity, the parties to the present Appeal shall be hereinafter referred in their original capacity as Plaintiffs and Defendants.

5. In brief, the facts giving rise to the present Appeal are as under:-

(A) Respondent Nos.1 to 3/ Plaintiffs filed a Waqf Suit No. 90 of 2019 before Hon'ble Maharashtra Waqf Tribunal, Aurangabad and prayed for declaration that-

(a) Lands (i) Gut Nos.230/1 to 230/5, (Old Survey No.252), (ii) Gut No.572/1A/4 (Old Survey No.444), and (iii) Gut No.550/A/1A (Old Survey No.467) situated at Mauje Malegaon, Tq: Baramati, District: Pune, are Waqf properties of Raje Peer Baksar Dargah, Muslim Kabristan and Eidgah.

(b) Possession of land Gut Nos.230/1 to 230/5, Gut No.572/1A/4, and Gut No.550/A/1A of Mauje Malegaon, Tq: Baramati, District: Pune.

(c) Perpetual Injunction against Defendants, not to disturb the ownership and possession of the Waqf Properties and not to illegally dispossess and encroach upon the suit properties.

(d) To declare that the sale deeds and mortgage deeds executed between the Defendants inter-se are void-ab-initio.

(B) After service of notice, Defendant have filed their written statements as under:

1. Written Statement of Defendant Nos. 1 to 14 at Exh. 125;
2. Additional Written Statement of Defendant Nos. 1 to 14 at Exh. 178;
3. Written Statement of Defendant Nos. 16 to 18 at Exh. 126;
4. Written Statement of Defendant Nos. 19 and 20 at Exh. 127;
5. Written Statement of Defendant Nos. 21 to 25 at Exh. 49;
6. Written Statement of Defendant Nos. 26 to 28 at Exh. 128;
7. Written Statement of Defendant Nos. 29 to 31 and 33 to 35 at Exh. 129;

8. Written Statement of Defendant No. 32 at Exh. 71;
9. Written Statement of Defendant No. 36 at Exh. 130;
10. Written Statement of Defendant Nos. 37 to 41 at Exh. 131; and
11. Written Statement of Defendant No. 42 at Exh. 163.

(C) After considering the rival pleadings of the Plaintiffs and Defendants, the learned Waqf Tribunal framed the issues at Exh. 138 and additional issues at Exh. 386.

(D) In order to prove the claim, the Plaintiffs led evidence by filing evidence affidavit and witnesses were cross examined by the adverse party as under:

1) Plaintiff Witness No. 1 (PW-1) at Exh. 164,
2) Plaintiff Witness No. 2 (PW-2) at Exh. 299,
3) Plaintiff Witness No. 3 (PW-3) at Exh. 320,
4) Power of Attorney executed by the plaintiff in favour of PW-1,Exh. 302,
5) Defendant Witness No. 1 (DW-1) at Exh. 356, and
6) Defendant Witness No. 2 (DW-2) at Exh. 39

(E) The Plaintiffs and Defendants have filed pursis Exhibits 388 and Exh. 389 respectively and closed their evidence.

(F) After closing of evidence, the learned Waqf Tribunal heard the suit on merit in the month of April/May, 2024 and Judgment was reserved, however, prior to pronouncement of judgment the Presiding

Officer of the Tribunal was transferred and after new incumbent took charge matter was re-heard by the new incumbent Presiding Officer.

(G) During the course of final argument, the Plaintiffs have appointed new Counsel and filed different applications at Exhibits 498, 501, 503, 506 and 540 and sought permission for production of certain new documents i.e. certified copy of Survey Map of Village Malegaon (Bk.) at Exh. 514 collectively.

(H) The learned Waqf Tribunal permitted production of new additional documents under applications Exhibits 498, 501, 503, 506 and 540. The documents which are sought for production were neither produced prior to leading evidence nor such documents are proved in evidence. Not only this, but those new documents were not referred to the witnesses. Therefore, the Defendants did not have a chance to contravene the said documents. While preparing for the final arguments, the Appellants/ Defendants realized that, as per Survey Maps at Exh-514, the Dargah of Peer Raje Baksar is located in Gut No.550/A/1A (New Gut No. 550/1) (Old Survey No.467) instead of Gut No.231. Therefore, pleading in W. S. about standing of said Dargah in Gut No. 231 is not correct but said fact was mistakenly mentioned, hence, the appellants/Defendants wanted to correct the bonafide mistake, the Appellants/ Defendant Nos. 1, 2, 4 to 14, 16 to 18, 19 and 20, 29 to 31, 33 to 35 and 37 to 41 have filed Exhibit Nos.

559 to 563 the Applications and prayed to Gat No.231 by Gut No.550/1 in Para E, I, Q and S of their respective written statements.

(I) According to the Appellants/Defendants the Revenue Map Exh. 514 is a Public Document produced by the Respondents/Plaintiffs after conclusion of trial at the belated state of argument. The appellants/Defendants admitted the said Revenue Map Exh. 514. As per said Revenue Map Exh. 514 Dargah of Peer Raje Baksar is standing in Gat No. 550/1 and not in Gat NO. 231. Therefore, in order to correct the pleading raised in written statement in tune with Exh. 514 they filed applications and prayed for amendments, which does not amount to withdraw the admission but it is just to correct the bonafide mistake based on the public revenue record.

(J) The Respondent Nos.1 to 3 / Original Plaintiffs filed their say at Exhibit- 565. The Respondents/Plaintiffs opposed the application for amendment/correction of W. S., on ground that the admission given in the written statement cannot permitted to be withdrawn to bring a new case, hence, prayed for rejection of the application for correction of written statement.

(K) On 04.07.2025, the learned Waqf Tribunal passed the impugned order and rejected the application for amendment/correction of W.S. in respect of description of the property Gat Number of the property, hence this Appeal.

6. Mr. Adwant, the learned counsel appearing for the Appellants/ Defendants canvassed in vehemence that, the Defendants have not prayed for declaration that the Dargah is standing in Gat Nos. 231. The respondents/Plaintiff have produced revenue record Survey map of village Malegaon Bk., under applications at Exhibit Nos. 498, 501, 503, 506 and 540. As per the revenue Map, the said Dargah is standing in Gat Nos. 550/1. The suit of the plaintiff for declaration that, the properties described in para Nos. 3 & 4 of the suit are waqf properties. The Appellants/Defendants filed their respective W. S., and admitted the fact of standing of said Dargah in Gat Nos. 231 because of revenue record produced by the Respondents/Plaintiffs with the suit. Therefore, said admissions given by the Appellants/Defendants is under misconception, which can be corrected on the basis of revenue record produced by the Respondents/Plaintiffs. Therefore, it cannot be stated that the Appellants/Defendants are withdrawing admission given by them in their written statements. However, on 04.07.2025, the learned Waqf Tribunal passed the impugned order without considering scope of Order 6 Rule 17 of the Civil Procedure Code and wrongly held that, the Defendants made specific averment in their written statement about standing Dargah of Peer Raje Baksar in Gat No. 231 but by way of amendment to W.S., they are trying to withdraw

their admission given by them. Therefore, prayed to quash and set aside the impugned order.

7. The learned counsel appearing for the Appellants/original Defendants further canvassed that, the Tribunal ought to have consider that the Defendants wanted to only correct Gat Number 550/1 instead of agricultural field Gat NO. 231 of village Malegaon (Bk.) where the said Dargah is standing as per the revenue record produced by the Respondents after conclusion of trail. However, the learned Tribunal failed to consider the correction sought in change of Gat Number of agricultural field and recorded wrong findings, hence, prayed for quashment of the impugned order.

8. It is further canvassed on behalf of the Appellants/ Defendants that, initially, the Defendants have set out their claim on the basis of revenue record i.e. public documents produced with their Plaint. Accordingly, the Appellants/Defs., filed their respective W. S. on the basis of revenue record which were available with them. However, after conclusion of trial and when the matter was ripen for final argument, the learned Tribunal permitted the Plaintiffs to produce new revenue record/public documents pertaining to the lands in dispute. The Appellant/Defendants admitted the said Revenue record. As per new documents i.e. certified copies of the revenue record proves that said Dargah is standing in Gat No. 550/1 and not in Gat No. 231.

Therefore, the Appellants/Defendants are intending to correct their mistake, hence, it does not amount to withdrawal of admission. Therefore, the learned Tribunal ought to have grant the amendment. However, the learned Tribunal passed the impugned order without considering public record i.e. Revenue Record, hence, prayed for quashment of impugned order.

9. To buttress these submissions, Mr. S.V. Adwant placed reliance on the following case laws:

1) Habib Alladin v. Mohammed Ahmed, *2026 SCC OnLine SC 119* Para No.: 50
2) Dinesh Goyal v. Suman Agarwal (Bindal), *SLP (Civil) No. 30324/2019,* Para No.: 11.2, 17, 19
3) Usha Balasaheb Swami v. Kiran Appaso Swami, *(2007) 5 SCC 602* Para No.: 18–22, 26, 28
4) Sushil Kumar Jain v. Manoj Kumar, *(2009) 14 SCC 38* Para No.: 18, 19
5) Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd., *(2022) 16 SCC 1,* Para No.: 25, 26, 71.2–71.3.2, 71.5–71.9

10. On the contrary, Mr. P. R. Katneshwarkar, the learned Senior Counsel h/f Adv. Phulpagar, appearing for the Respondents/Plaintiffs supported findings recorded by the learned Waqf Tribunal. The learned Senior Counsel appearing for the Respondents/Plaintiffs canvassed in vehemence that, the Plaintiffs have filed Waqf Suit No. 90 of 2019 and prayed for declaration the suit properties described in paragraph No.4 are the Waqf properties. The Respondents/Plaintiffs specifically pleaded that, their forefathers were allotted the suit land to serve the Dargah of Peer

Raje Baksar and to meet the expenses of Electricity, maintenance of Dargah and other religious programs.

11. It is further canvassed on behalf of the Respondents/Plaintiffs that, the Appellants/Defendants have filed their respective written statements and specifically pleaded in paragraph No.120 (E) that, the Dargah is situated in land bearing Gat No. 231 admeasuring 28 G of Malegaon (Bk.). The Appellants/Defendants specifically pleaded in para No. 120(I) that mere use of some portion of the agricultural land bearing Gat No. 231 for some religious and pious work without permanent dedication by a person, cannot bring other properties as Waqf properties. In paragraph No. 120J of the written statements the Appellants/Defendants admitted that the Dargah of Raje Peer Baksar is a registered property in respect of 49 Square meters. The Defendants are the bonafide purchasers of land Gat no. 230 for value consideration. In paragraph No. 120(Q) the Appellants/ Defendants claimed about sub-division of Gat No.230 as Gat Nos. 230/1 to 230/5. However, the sub division is done as per the rule of law after following due procedure and the land admeasuring 29 G out of Gat No. 231 is shown to be owned by the Dargah as per entry made in the 7/12 extract. The Appellants/ Defendants have specifically admitted in paragraph no. 120 (S) that the Dargah is covered by a compound wall and is a property falling in Gut No. 231, admeasuring 28 G and clarified that land to the extent of 5 acres

contained in Gat No. 550/A/1A is possessed by the Government. The Defendants have never transacted with respect to the property of the Dargah contained in Gat No. 231 admeasuring 28G and the property of Idgah and Kabrastan contained in Gat No. 550/A/1A. Therefore, the Defendants/Appellants are trying to withdraw their admission given in their written statement particularly in paragraph No. 120(E),(I),(Q) and (S) which corroborates as per admitted public document Exh. 514, 515 and 400 i.e. Revenue maps. As per the revenue record/Map Original Survey No. 252 was renumbered as Gat No.538 and subsequent it was renumbered as new Gat Nos. 230 and 231. Therefore, the learned Tribunal considered pleadings of both the sides as well as the revenue record and held that since the Appellants Defendants gave their admission about standing of Raje Peer Baksar Dargah in Survey No. 231, hence, the Appellants/Defendants cannot be permitted to withdraw, hence, no substantial grounds are set to disturb the said findings. Therefore, prayed for dismissal of the Appeal.

12. The learned Sr. Counsel further submits that, the application dated 07.02.2025 filed by the Plaintiffs shows that the lands described in paragraph No. 4 of the suit are Waqf properties and the Dargah of Raje Peer Baksar is the cultivator and in possession of the suit properties. Therefore, the Appellants /Defendants cannot be permitted to withdraw the admission given by them in their W.S.. Therefore, findings recorded by

the learned Tribunal are just and proper, hence, prayed for dismissal of the appeal.

13. Having regard to the submissions canvassed on behalf of both the sides, I have gone through Exh. 559 to 563 i.e. Applications for Correction/Amendment, Exh. 565 Reply of the Respondent no.2/plaintiff as well as impugned order dated 04.07.2025 passed by the learned Tribunal below Exh.559 to 463 in Waqf Suit No. 90 of 2019.

14. According to the Appellants/Defendants, the Respondents/ Plaintiffs filed Waqf Suit No. 90 of 2019 and specifically prayed for declaration that the property described in paragraph no. 4 of the suit is in possession of the Raje Peer Baksar Dargah and it is Waqf property. In paragraph no. 4 of the suit, the Respondents/Plaintiffs described suit properties as under:

Para No.	Old Survey No.	Old Gat No.	New Gat No.	Area
4(a)	252	538A and 538B)	230 and 231,	44 Acre 32 R
4(b)	444	1021	572/1/A/4	12 Acre
4(c)	467	1116A/1/A	550/A/1/A	6 Acre

15. The Plaintiffs specifically pleaded in paragraph no. 4 of the suit that, Raje Peer Baksar Dargah is existing in the suit properties. However, in paragraph no.4 of the suit no specific pleadings are raised about standing of the said Dargah in old Survey No. 252, which allegedly renumbered as Gut Nos. 538A and 538B and then again renumbered as

Gat Nos. 230 and 231, admeasuring 44 Acres and 32 Ares. On 29.04.2019, the Plaintiffs have filed a Waqf Suit No. 90 of 2019 and produced certain documents under the list of document Exh. 4 pertaining to revenue record of the suit land. On 15.06.2019, the Plaintiffs produced 8 documents under List Exh.83 and certain documents on 03.09.2019 under list Exh.87.

16. After service of notices, the Defendants have filed their respective written statements as under:

1. Written Statement of Defendant Nos. 1 to 14 — Exh. 125
2. Additional Written Statement of Defendant Nos. 1 to 14 — Exh.178
3. Written Statement of Defendant Nos. 16 to 18 — Exh. 126
4. Written Statement of Defendant Nos. 19 & 20 — Exh. 127
5. Written Statement of Defendant Nos. 21 to 25 — Exh. 49
6. Written Statement of Defendant Nos. 26 to 28 — Exh. 128
7. Written Statement of Defendant Nos. 29 to 31 and 33 to 35 — Exh. 129
8. Written Statement of Defendant No. 32 — Exh. 71
9. Written Statement of Defendant No. 36 — Exh. 130
10. Written Statement of Defendant Nos. 37 to 41 — Exh. 131
11. Written Statement of Defendant No. 42 — Exh. 163.

17. The Defendants filed their respective written statements on the basis of revenue record which was produced alongwith the suit and claimed that, said Dargah is situated within the land Gat No.231 admeasuring 28 Guntha of village Malegaon Bk. On 01.10.2021, the defendant No.1 Gulab Didalisha Fakir filed additional written statement

at Exh. 178. Thereafter on 15.02.2021, the learned Waqf Tribunal framed issues at Exh. 138 and subsequently, on 07.02.2022, additional issues were framed at Exh. 386.

18. On 23-07-2021, the Respondents/Plaintiffs have filed evidence affidavit of PW-1 Shrimant Vikramsinh Laxmansinh Raje Jadhavrao and produced certain documents under list Exh. 165. The plaintiffs witness had undergone cross examination conducted on behalf of the Appellants/Defendants. The Respondents/Plaintiffs filed evidence affidavit of PW2 Faiyaz I. Shaikh on 27.06.2022 at Exh. 320. The said witness had also undergone cross examination conducted on behalf of the Appellants Defendants. After the Respondents/Plaintiffs evidence is over, they filed evidence closure pursis at Exh. 388 on 12.12.2022.

19. The Appellants/Defendants filed Evidence affidavit of DW-1 Gulab Dilalishah Fakir at Exh. 356 on 11.08.2022. The Appellants/ Defendants also examined DW-2 Sachin Raghunath Bhosale, the partner of defendant Nos. 19 Firm V.N.S Nirman Infra. The said witness had undergone cross examination on behalf of the Respondents/ Plaintiffs on 17.01.2023. The Appellants/Defendants no. 1 to 4 filed their evidence closure Pursis at Exh. 389. Thereafter, the matter was fixed for final argument.

20. As per Dates & Events furnished by the Appellants/ Defendants, the learned Waqf Tribunal heard oral arguments of both the

sides during the period of 4.10.2023 to 02.02.2024 but no final Judgment was pronounced. It is a matter of record that subsequent to oral arguments, the Respondents/Plaintiffs filed Exh. 450 an Application for production and prayed for exhibition of documents. Further, on 01.02.2024, the Respondents/Plaintiff again filed Exh. 455 an Application for calling of revenue record from the Revenue Office, Baramati. Thereafter, on 08.02.2024, the Plaintiffs again filed an application Exh. 460 and prayed for production of documents. Thereafter, final argument were again commenced on 20.03.2024 but on 24.05.2024, the Appellants/Defendants filed their written notes of argument at Exh. 476 to 479 and Judgment was reserved, which was to be pronounced on 22.05.2024. Thereafter, a third party filed Exh. 487 an Application for Intervention, hence, the learned Tribunal called say of the parties but no judgment was pronounced.

21. It is not in dispute that, in Civil Appeal No. 151 0f 2021 (arising out of SLP (Civil) No. 20260 of 2019, the Hon'ble Supreme Court passed an order **20-01-2021** and expedited the suit but due to transfer of earlier Presiding Officer, the suit remained undecided. After the joining of the new Presiding Officer again *de novo* hearing was scheduled on 12.06.2026 but the Respondents/Plaintiffs engaged another counsel on 22-08-2024. Subsequently, *de novo* hearing was conducted w.e.f. 20.10.2024 to 18.12.2024. However, during the course of oral

argument on behalf of the Appellants/Defendants, the Respondents/ Plaintiffs filed Exh.501 an Application seeking exhibition of documents Sr. Nos. 4 and 16 produced under list Exh. 166. Further, the Respondents/ Plaintiffs also filed Exh. 502 an application for production of documents i.e. Gaon Namuna 7 of Survey No.274 and Exh. 503. The Respondents/ Plaintiffs sought production of documents produced under list of documents Exh. 503A.

22. As per the dates and events furnished by the Appellants/ Defendants, on 11.11.2024, during course of oral arguments on behalf of the Appellants/Defendants, the Respondents/Plaintiff filed Exh. 504 an application seeking production of six documents and Revenue Maps Exh. 514 and 515 under list of Documents Exh. 504A. On 10.12.2024, the Respondents/ Plaintiffs also filed Exh. 505 an application and prayed for exhibition of documents produced under list Exh. 83 but said application came to be rejected.

23. On 11.12.2024, the Plaintiffs have filed Exh. 506 an application for production of documents. On 18.12.2024, the learned Tribunal passed an order below Exhibits 514 and 515 and permitted the Plaintiffs/Respondents to prove said documents. Thereafter, again on 20.12.2024, the Plaintiffs/Respondents filed Exh. 540 an application for production of six documents. Further, on 02.01.2025, the Plaintiffs again filed Exh. 544 and prayed for production of two additional documents.

Thereafter, the suit was posted for final argument on 09.01.2025 but no argument was concluded.

24. Thereafter, on 17.04.2025, the present Appellants/Defendants filed Exh. 559 to 563 an application seeking permission to correct their Written Statements to the extent of standing of Dargah of Raje Peer Baksar in Gat No. 550/1 (Old Survey No. 467) to the extent of 1 Hectare as per the revenue record (7/12 extract) instead of Gat No. 231.

25. Taking into consideration of submissions canvassed on behalf of both the sides, two questions arise for my consideration which are as under:

> *(i) Whether at the fag end of argument can the Appellant/Defendant be permitted to withdraw the admissions given in their written statement in respect of standing of Raje Peer Baksar Dargah in Gat No. 231?*
>
> *(ii) Whether at the fag end of argument can the Appellants/Defendants be permitted to take alternate defence about standing of said Dargah in Gat No. 550/1 (old Survey No. 467) to the extent of 1 H in respect of Gat No. 230?*

26. Order VI Rule 17 of the Code of Civil Procedure Reads as under:

> *17. **Amendment of pleadings-** The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.*

27. In ***Ramniranjan Kajaria & others Vs. Sheo Prakash Kajaria, (2015) 10 SCC 203,*** the Hon'ble Supreme Court observed in paragraph No. 23 as under:

> “23 'Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position. It is seen that the issues have been framed in the case before us, only in 2009. The nature and character of the amendment and the other circumstances as in the instant case which we have referred to above, are relevant while considering the delay and its consequence on the application for amendment. But a party cannot be permitted to wholly withdraw the admission in the pleadings, as held by this Court in Nagindas Ramdas v. Dalpatram Ichharam alias Brijram and others AIR - 1974 S.C. 471 : (1974) 1 SCC-242 (1974) 2 SCR - 544. To quote paragraph - 27.
>
> "27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be

in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

The Hon'ble Court further observed as follows: "

21. On amendments generally, in the decision reported in Revajeetu Builders and Developers v. Narayanaswamy and Sons and others(2009) 13JT-366, (2009) 10 SCC 84 : (2009)15 SCR.103(2009)10 UJ-4850 after referring to Gautam Sarup (supra), the principles on amendment have been summarized at Paragraph-63. It has been held as follows:

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

28. In the case of ***Mahila Ramkali Devi and Ors Vs Nandram*** **reported in (2015) 13 SCC P-132** the Hon'ble Supreme Court held that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

29. In ***Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon,*** **AIR 1969 SC 1267**, it is held that, the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

30. In ***Pandit Ishwardas vs. State of Madhya Pradesh and Ors.,*** **reported in 1979 4 SCC 163** the Hon'ble Supreme Court observed as follows:-

> 4. "We are unable to see any substance in any of the submissions. The learned counsel appeared to argue on the assumption that a new plea could not be permitted at the appellate stage unless all the material necessary to decide the

plea was already before the Court. There is no basis for this assumption.

5. There is no impediment or bar against an appellate Court permitting amendment of the pleadings so as to enable a party to raise a new plea. All that is necessary is that the Appellate Court should observe the well-known principles subject to which amendments of pleadings are usually granted. Naturally, one of the circumstances which will be taken into consideration before an amendment is granted is the delay in making the application seeking such amendment and, if made at the Appellate stage the reason why it was not sought in the trial court. If the necessary material on which the plea arising from the amendment may be decided is already there, the amendment may be more readily granted than otherwise. But, there is no prohibition against an Appellate Court permitting an amendment at the appellate stage merely because the necessary material is not already before the Court."

31. In the case of ***Baldev Singh and others VS Manahar Singh and Another*** **reported in (2006) 6 SCC. P-498** the Hon'ble Supreme Court held as under:

'8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting, the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Slue Mya V Maung MO Hnaung in which the Privy Council observed:

All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be sub-ordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally excused, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit."

32. ***Habib Alladin v. Mohammed Ahmed, 2026 SCC OnLine SC 119,*** the Hon'ble Supreme Court observed in Para No. as under:

> "50. Now, looking at the facts of the present case, a bare reading of the plaint would indicate that neither is the property specified in the list of auqar as published in Chapter II nor registered under Chapter V and hence the decision as to whether the property is a waqf property or not cannot be decided by the Tribunal since the property is not one specified in the list of auqaf, which is the mandatory requirement under Section 6(1) and Section 7(1) of the Waqf Act of 1995 to approach the Tribunal. We will not consider the issue as to whether the property can be deemed to be a 'waqf by user' since the question is still at large. The injunction simpliciter sought for before the Tribunal does not fall within its jurisdiction and the plaint has to be rejected, which we do, allowing the application of the defendant under Order VII, Rule 11. The order of the Tribunal, ascertaining jurisdiction and that of the High Court, affirming it are set aside."

33. In ***Life Insurance Corporation v. Sanjeev Builders Pvt. Ltd., (2022) 16 SCC 1,*** *the Hon'ble Supreme Court observed as under:*

> "71. Our final conclusions may be summed up thus:
>
> 71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.
>
> 71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.
>
> 71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless: 71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

> 71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

34. After going through the record it appears that, the Appellants/original Defendants no. 1 to 4 specifically admitted in paragraph No. 120 (E) of their written statement that Dargah of Raje Peer Baksar is situated within land Gat No. 231 admeasuring 28 Guntha of village Malegaon Bk. In Para No. 120(E), the Appellants/Plaintiffs raised pleadings as under:

> ***"Para 120 (E)***: *The contents of Para 5 of the plaint deal with Description of Suit Properties mentioned by the plaintiffs in the proceeding, however it is stated that Dargah of Peer Raje Baksar, is not situated in land Gut No.230 of Malegaon, Tq: Baramati, neither is a Wakf property, but is the property of an individual and the property described in Para 5(b) is also not a Wakf property, therefore the claim raised by the plaintiffs is irresponsible and thoughtless. Further, the Dargah has been recently notified to be 49 Sq.mts. without giving the details of the property in which it is situated, thus it would be appropriate to state the Dargah is situated within land Gut No.231, admeasuring 28 G of Malegaon (Bk). Likewise, the plaintiffs have not placed on record, any document or evidence to show that the property described in para (c) is a Wakf property, thus the claim in that respect, is incorrect. Further, the boundaries mentioned in the para under reply, are not correct, thus the plaintiffs are under obligation to prove it with strict proof. Land*

Sy.No.252 was numbered as Gut No.538A and further as Gut No.230 and as on date, it is sub-divided in 5 parts and numbered as Gut Nos. 230/1 to 230/5. Similarly, land Sy.No.274 was numbered as Gut No.538B and as on date, is numbered as Gut No.231, thus the description of the suit properties given in the para under reply, is incorrect.”

35. On Careful consideration of said pleadings it appears that, the Appellants/Defendants have not admitted fact of standing of Raje Peer Baksar Dargah in Gat No. 231 in totality but it shows that said Dargah recently notified to the extent of 49 sq. Meters in Gat No. 231.

36. As per the provisions of Order 6 Rule 17 of Code Civil Procedure as well as law laid down by the Hon’ble Supreme Court in cases cited supra, the Court can generally permits amendment to the pleadings even at the advance stage of the suit including during the course of final argument. Indeed, a wrong admission given in the written statement can be generally corrected by way of amendment by invoking provisions of Order 6 Rule 17 of the Civil Procedure Code, provided, it does not cause injustice to the Plaintiffs, amendment does not change the nature of suit or take away the verified rights created by admission, especially if sought before commencement of the trial. However, the amendment can be allowed at any stage of the matter, even at the appellate stage, if the said amendment goes to the root of the matter and

determination of real controversy. The said power cannot be used unless the party proves that they could not have raised the matter earlier with due diligence.

37. In case in hand it prima facie appears that, even after conclusion of trail and when the suit was posted for final argument, the learned Tribunal has permitted the Respondents/Plaintiffs to produce numerous documents i.e. revenue record, Revenue Map pertaining to the suit land, which were not produced alongwith the suit. Further, the Respondents/Plaintiffs also not referred new documents during the course of the trial. The Revenue record/ Maps i.e. Exhibit Nos. 400, 514, 515 are not in consonance with the pleadings raised by the Plaintiffs. The 7/12 extract does not reflect about standing of said Dargah in Gat No. 231. The pleadings of the Appellants/Defendants in their W.S., particularly in paragraph No. 120E are based on the revenue record, which were produced by the Respondents/Plaintiff alogwith the suit but subsequent to conclusion of trial they produced additional/new documents i.e. Revenue record and said documents are admitted by the Appellants/Defendants. Therefore, the Defendants/Appellants wanted to correct the mistake on the basis of additional revenue record produced by the Respondents/Plaintiffs.

38. The learned Waqf Tribunal has not taken pains to summon the Revenue Officer to determine the issue whether said Dargah is

standing in Gat in Gat No. 231, or in land bearing Gat No. 550/1. The Respondents/Plaintiffs heavily relied on Revenue Map Exh. 400.

39. As per the Revenue Map Exh. 400 Agricultural field Survey Numbers and Sub Divisions are renumbered in the year 1989 as under:

I. Survey No. 252 was renumbered as Gat No. 538A and then Gat No. 230.

II. Survey No. 274 was renumbered as Gat No. 538B and then Gat No. 231.

III. Survey No. 467 was renumbered as Gat No. 1116 and then Gat No. 550/1.

40. As per Exh. 400- Revenue Map, the agricultural lands bearing Gat Nos. 230 and 231 are part of survey Nos. Survey No. 252 and 274 admeasuring 44 acres 32 Are, whereas the Agricultural land bearing Gat No. 550/1 i.e. Survey No. 467 admeasuring 214 acres and 3 Gunthas. As per Revenue Map Exh. 514, the Dargah of Raje Peer Baksar is standing in Gat No. 231 and said fact is admitted by the Appellants/Defendants in their W.S.. The Respondents/ Plaintiffs claimed that, Appellants/ Defendants have not produced copies of revenue record i.e. (i) 7/12 Extract of Gat No. 358A Exh. No. 327, (ii) 7/12 Extract of Gat No. 358B Exh. 328, (iii) 7/12 extract of Gat No. 538-B Exh. 329 (iv) 7/12 extract of Gat No. 231 Exh. 369. However, it appears that, the Appellant/ Defendants Nos.1, 2 and 4 to 14 produced the following revenue record:

(a) Revenue Record i.e. 7/12 extracts of Land Survey No.274 (Old Gut No. 538B and new Gut No.231),

(b) Gaon Namuna No.7 of village Malegaon,

(c) Application filed by Khutubee Fakir (deceased defendant no.3) before Tahasildar Baramati under Bombay Tenancy Act, 1948, and

(d) Judgments passed by Additional Tahasildar, Baramati in Tenancy Case No.32-0 Malegaon Bk 32/1983, Tenancy Case No. 32 (O) (P) 13/1995 and Tenancy/SR/22/2012;

41. In ***Ram Niranjan Kajaria v. Sheo Prakash Kajaria & Ors., (2015)*** **10 SCC 203 : AIR 2015 SCW 6475,** it is held that a party cannot be permitted to completely withdraw an admission made in the pleadings; however, such admission may be clarified or explained by way of amendment, and the party is not precluded from raising alternative pleas in defence.

42. In ***Weaving Mills Co.Ltd.&Anr.v.Ladha Ram & Co.*** **AIR 1977 SC 680 : (1976) 4 SCC 320** it is held that, an amendment withdrawing a clear admission cannot be permitted, it has also been observed that alternative pleas are permissible in law. In the present case, the proposed amendment is not intended to withdraw any categorical admission, but is sought to substitute the Gate No. 231 with Gat No. 550/1 on the basis of subsequent revenue records brought on record by the Respondent-

Plaintiffs. Therefore, the said amendment deserves consideration as an alternative plea necessary for effective adjudication of the dispute.

43. It is a well-settled principle of law that once a party to a suit gave admission, such party ordinarily cannot be permitted to withdraw the said admission. However, if such admission has been made under a misconception or without verification of the relevant documents, the same may not be binding on the said party. So also, oral admission can not override effect of documentary evidence. Nonetheless, the Defendants are entitled to raise alternate pleas in support of their defence. Therefore, considering the pleadings of both the sides, coupled with fact that the learned Waqf Tribunal permitted the Respondent/Plaintiffs to produce certain revenue records at after arguments are over and said record is not part of the evidence. So also, the said documents were not produced with the suit. Therefore, the Appellants/Defendants are having right to take alternate defence that the said Dargah is not standing in Gat No. 231, but is standing in Gat Nos. 550/1 (old Gat No. 467) instead of Gat No. 231. However, the learned Tribunal rejected the application and declined to permit the Appellants/Defendants to substitute Para Nos. 120 E,I,Q & S of their written statements on ground that they wanted to withdraw the admission, which does not appear justifiable. However, the learned could have permit the Appellants/Defendants to take alternate plea about

existence of said Dargah in Gat Nos. 550/1 (old Gat No. 467). Therefore, impugned order is needs to be quash and set aside.

44. In view of the above discussion, I am inclined to grant present appeal and proceed to pass the following order:

O R D E R

(1) First Appeal is partly allowed.

(2) The order dated 04.07.2025 passed below Exhibits 559 to 563 in Waqf Suit No.90 of 2025 by the learned District Judge/Chairman, Maharashtra State Waqf Tribunal, Aurangabad is hereby quashed and set aside.

(2) The Appellants/Defendants are permitted to take alternate plea that Dargah of Raje Peer Baksar is standing in Gat Nos. 550/1 (old Gat No. 467) in addition to their earlier defence.

(3) The Appellants /original Defendants shall amendment their written statement within period of 14 days from the date of receipt of certified copy of the order.

(4) No order as to costs.

(Y. G. KHOBRAGADE, J.)

JPChavan