

	<p style="text-align: center;"><u>Order Below Exh.25 in R.C.S. No.447 of 2024</u> (Passed on this 08th day of September, 2025) Riyajoddin -Vrs- Gafursab CNR No.MHLA060012012024</p>
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The present application is moved by Defendant No.8 under Order XVIII Rule 18 of the Code of Civil Procedure, 1908, seeking spot inspection by the Court to ascertain whether the suit property is private or public property.

2. The plaintiffs have filed the suit for perpetual injunction, asserting that they are absolute owners and possessors of Plot Nos.1 and 2 from Survey No.30/1/2 situated at Karad Nagar, Ahmedpur. The plaintiffs claim to have purchased the said plots through registered sale deeds dated 01.01.1995 and 17.05.2014 and thereafter constructed a mosque over the said plots for their personal use. It is their case that the mosque is not a public religious place and that defendants have no right, title, or interest in the property.

3. The defendants contend that although the sale deeds stand in the names of the plaintiffs, the plots were purchased from donations collected for mosque extension and that since 2001 the mosque has been open for the public, thereby becoming Wakf property by usage. Defendant No.8 argues that spot inspection is necessary because loudspeakers are installed and people from the Muslim community offer Namaz there.

4. The plaintiffs oppose the application on the ground that it is an attempt to collect evidence and that the nature of the property cannot be decided by spot inspection.

5. From the above facts following Points for Determination arise which are as under:

SR NO.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the application under Order XVIII Rule 18 CPC for spot inspection is maintainable in the present case ?	No.
2.	Whether spot inspection is necessary to determine the nature of the property (private or public) ?	No.

REASONS

6. Order XVIII Rule 18 CPC empowers the Court to inspect any property or thing concerning which any question may arise in a suit. However, this power is discretionary and should be exercised only when

a) Physical features cannot be properly brought before the Court through evidence; and The inspection is required for clarification, not for collecting evidence. Further, the Wakf Act, 1995 (as amended in 2013): Section 3(r) defines Wakf as a permanent dedication of property for purposes recognized under Muslim law.

7. Section 40 empowers the Wakf Board to decide whether a property is Wakf property.

8. Section 83 confers exclusive jurisdiction on the Wakf Tribunal to determine any dispute regarding Wakf property.

9. Section 85 bars the jurisdiction of Civil Courts in matters which the Wakf Act requires to be determined by the Tribunal.

10. The object of Order XVIII Rule 18 CPC is limited. A Court may visit the spot for clarity regarding boundaries, identification, or physical conditions that cannot otherwise be explained. However, the application cannot be allowed for determining the character of ownership or title; such questions require evaluation of documentary and oral evidence.

11. The learned advocate for defendant No. 8 relied on the ruling of Hon'ble Delhi High Court in *Bhagwant Singh Decd. Thr.Lrs. vs GurcharanKaur & Anr. in [CM(M) No.1184/2010 & CM No.16527/2010.]* This court has gone through the facts of the ruling it is about tenanted premises about Delhi Rent Control Act. The case focuses on the appointment of an expert/architect to assess alterations and whether doing so at the final arguments stage would unfairly allow parties to fill gaps in their case. The Facts of the ruling cited by the defendant No.8 and present case are totally different therefore with all due respect the ruling on which the defendant No.8 is relied is not applicable in the present case.

12. In the present case, the plaintiffs have produced registered sale deeds, municipal tax records, and electricity bills in their names. These are matters of title and ownership. Whether the mosque constructed is a private place of worship or has become a public Wakf property by usage is a mixed question of law and fact. This cannot be resolved by mere visual inspection. The presence of loudspeakers or congregation of people for Namaz does not conclusively prove public dedication or loss of ownership.

13. Moreover, in view of Section 85 of the Wakf Act, Civil Courts are barred from deciding whether a property is Wakf property.

Such determination lies exclusively with the Wakf Tribunal under Section 83. The Court, therefore, cannot assume jurisdiction indirectly by conducting an inspection for this purpose.

14. Thus, allowing the application would amount to the Court collecting evidence, which is impermissible. The application is, therefore, devoid of merit. Spot inspection is not necessary for the adjudication of the present dispute and cannot substitute evidence. Accordingly, the application deserves to be rejected.

ORDER

1. The application is rejected.
2. Cost in cause.

Place :- Ahmedpur
Date :- 08/09/2025

(M C. Hasge)
2nd Jt. Civil Judge J.D., Ahmedpur