

ORDER BELOW EXH.5 IN REG. CIVIL APPEAL NO.06 OF 2024

(Turabsha alias Dadasha Lalsha Fakir Inamdar vs. Habibsha Lalsha Fakir Inamdar & anr.)

01. Heard Ld. Adv.Shri. S.G.Mulani for appellant and Ld. Adv. Shri.S.I. Shikalgar for the respondents. Perused application, say, written notes of argument and the record.

02. Being aggrieved and dissatisfied by the judgment and decree passed in R.C.S.No.183/2001, dtd. 27.11.2023, by the Ld.Civil Judge J.D. Koregaon, defendant No.1 therein preferred this appeal. Said suit was filed by respondent No.1 against the appellant and respondent No.2 & 2A for declaration, perpetual and mandatory injunction. The Ld. Trial Court partly decreed the suit. Thereby the Ld.trial Court pleased to declare the Will dtd. 28/01/1999 executed by Late Lalsha Halimsha Fakir Inamdar and Late Shahajahanbi Lalsha Fakir Inamdar is illegal and not binding on Wakf properties.

03. It is the case of the appellant/defendant No.1 in this application that, plaintiff sought the declaration about the Will dtd. 28/01/1999 executed by Late Lalsha Halimsha Fakir Inamdar is illegal, void and not binding on suit properties. It is admitted to both the parties that suit properties are Wakf properties, but the Court partially decreed the suit of declaration about the said Will. Actually, Civil Court has no jurisdiction to try and adjudicate the dispute of Wakf properties, Wakf Board was necessary party to that suit. Said disputed Will was executed for the administration of Wakf properties. But the

Ld. Trial Court did not consider any of the point raised by this appellant in that suit. By this application, same points are raised.

04. It is alleged further that in view of above, the judgment and decree of the trial Court is illegal and null. But taking disadvantage of said judgment and decree and so also as the order passed in favour of appellant to appoint him as 'Mutawalli' is declared illegal, appellant is unable to look after administration of Wakf property. There is order of Hon'ble Apex Court confirming to remove the encroachment in those properties. But because of the impugned judgment and decree, plaintiff is trying to interfere in the administration of Wakf property. It will take time to decide the appeal on the merit. So at this stage, effect and execution of decree passed in Reg.Civil Suit No.183/2001 dtd. 27/11/2023 is required to be stayed. So application be allowed. Application is supported by affidavit.

05. Respondent No.1 filed say to the application Exh.5 at Exh.15 and affidavit to say at Exh.16 and denied all the contentions made in the application. According to him, all the objections raised are already discarded by the Ld. Trial Court.

06. He alleged further that, prior to registering the suit properties before the Wakf Board at Aurangabad, those were registered with the Charity Commissioner, Satara. Suit properties S.Nos.138/1 and 138/2 and 906 were the properties

belonged to Hazrat Peer Sayyed Hussaini Jahangir Maa Saheb Godhadpeer trust. Earlier its registration No. was B/201/Satara. The trustees of said trust were to be appointed by the succession. After the Wakf Act came in existence, those properties were registered with Wakf Board, Aurangabad bearing registration No. MWBW/10/2007. Chief Officer of said Board in case No. 4235/2007 on 20/06/2013 appointed this respondent means original plaintiff as 'Mutawalli'. Appellant preferred appeal before the Wakf Tribunal, Aurangabad which was dismissed.

07. He alleged further that, the other property S.No.306 earlier registered as B-218 as a trust property. It was belonged to Chaitansha Pir Mira Sayyad Husaini trust. After the existence of Wakf Act, it is also registered with Wakf Board, Aurangabad by No. MSBW/09/2007. Said trust by its order dtd. 20/06/2013, appointed this appellant i.e. defendant No.1 as 'Mutawalli'. Said order is also in existence. So also, order of Ld.Civil Judge Jr.Dn.Koregaon about removal of encroachment in the Wakf property is confirmed up to Hon'ble Supreme Court. Hence, there is possibility of encroachment in the suit property. Judgment and decree passed by the Ld. Trial Court in Reg.Civil Suit No.183/2001 dtd. 27/11/2023 is in the form of declaratory decree and it cannot be stayed, so application be dismissed.

08. Now, if the decree passed in Reg.Civil Suit No.183/2001 dtd. 27/11/2023 is perused, it reveals that admittedly it is

regarding to the Wakf properties. It is also admitted to the parties that they are Muslim by religion and Governed by Sunni Law. Under such circumstance, it is the material question in the appeal that, whether Civil Court has jurisdiction to entertain the suit and whether deceased had right to execute the Will of entire properties, may it belongs to Wakf Board or may it belongs to him or her. In this background, if the judgment of Ld.trial Court is perused, it reveals that the Ld.trial Court framed as many as eight Issues. In which there are two Issues at Sr.Nos.1 & 8. The Issue No.1 reads as, “*Whether plaintiff proves that Will dtd. 28/01/1999 is illegal and void-ab-initio ?*” and Issue No.8 reads as, “*Whether Will dtd. 28/01/1999 is got obtained by defendant No.1 from deceased Lalsha and Shahajahanbi by using coercion and fraud upon them?*” The Ld.trial Court answered Issue No.1 in affirmative and Issue No.8 in negative. The findings prima facie appear contrary to each other. In this background, the Ld.trial Court pleased to decreed the suit partly to the extent of declaration of the Will that, it is not binding on Wakf property, when admittedly it was about Wakf property and no consequential reliefs were granted.

09. As such, this decree involves many legal questions which needs detail and thorough hearing. It will certainly take time to hear and decide this appeal. Meanwhile, if the execution of such decree is not stayed, there are chances that respondent No.1 means plaintiff of the suit, by taking disadvantage of the fact that Will is not binding on the Wakf property, may interfere in

the business of Wakf properties. In that case, the loss will cause to the Wakf properties which cannot be compensated in terms of money. Hence, following order is passed.

ORDER

1.	Application is allowed with costs to appellant. Respondent No.1 to pay costs to him.
2.	In the result, the effect and execution of the decree passed in Reg.Civil Suit No.183/2001 dtd. 27/11/2023 is stayed till the decision of this appeal.
	Pronounced in open Court.

Place : Satara.
Dt.13.01.2025.

Kamala V. Bora
District Judge-2, Satara