

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Application No. 292/2019

Rajasthan Board Of Muslim Wakf, Through Chief Executive
Officer, Jyoti Nagar, Jaipur

-----Petitioner

Versus

1. Smt. Neena Paliwal W/o Shri Anurag Paliwal, Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur
2. Shri Anurag Paliwal S/o Late Shri Kamal Chand Paliwal, Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur
3. Smt. Hansa Paliwal W/o Shri Kamal Chand Paliwal, Bharat Petrol Pump, Near Dargah Kadam Rasool And Muslim School, Moti Doongri Road, Jaipur
4. Smt. Nidhi Paliwal D/o Late Shri Kamal Chand Paliwal, Bharat Petrol Pump, Near Dargah Kadam Rasool And Muslim School, Moti Doongri Road, Jaipur
5. Nasimuddin Khan Pyare Miya S/o Shri Hakim Salimuddin Khan, Mutawali, Dargah Wakf Property Kadam Rasool Fateh Tiba, Moti Doongri Road, Jaipur

-----Respondents

Connected With

S.B. Civil Miscellaneous Application No. 282/2019

Rajasthan Board Of Muslim Wakf, Through Chief Executive
Officer, Jyoti Nagar, Jaipur.

-----Petitioner

Versus

1. Smt. Neena Paliwal W/o Shri Anurag Paliwal, R/o Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur.
2. Shri Anurag Paliwal S/o Late Shri Kamal Chand Paliwal, R/o Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur.
3. Smt. Hansa Paliwal W/o Shri Kamal Chand Paliwal, R/o Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur.
4. Smt. Nidhi Paliwal D/o Shri Kamal Chand Paliwal, R/o Bharat Petrol Pump, Near Dargah Kadoom Rasool And Muslim School, Moti Doongri Road, Jaipur.
5. Nasimuddin Khan Pyare Miya S/o Shri Hakim Salimuddin Khan, Mutawalli, Dargah Wakf Property Kadam Rasool Fateh Tiba, Moti Doongri Road, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Asgar Khan
For Respondent(s) : Mr. Suruchi Kasliwal

HON'BLE MR. JUSTICE SUDESH BANSAL
Order

29/02/2024

1. Both main applications have come up on two miscellaneous applications bearing No.1/2022 filed by and on behalf of respondents, seeking to recall/ modify the order dated 26.04.2022, to the extent of passing interim stay directing both parties to maintain status quo as to alienation in relation to property in question.
2. Heard counsel for both parties.
3. It has been pointed out that respondents-defendants are in possession of the property in question for which initially respondent No.5-Nasimuddin Khan Pyare Miya filed two separate Civil Suits No.66/2007 & 29/2012 for possession, however, later on he did not pursue both suits, therefore, the Rajasthan Board Of Muslim Wakf transposed itself as plaintiff.
4. It has been pointed out that during trial of both civil suits, vide order dated 18.05.2011, alienation/ transfer of the suit property was permitted subject to the principle of lis pendens and indicating a note of pending lis about property, in the deed of conveyance, in case executed by defendants.
5. It has been pointed out that later on, both suits were dismissed on merits vide judgment dated 09th April, 2019 with fact findings that the Rajasthan Board Of Muslim Wakf failed to prove the property of defendants to be a part of Wakf property.
6. The Judgment dated 09th April, 2019 has been challenged by the Rajasthan Board Of Muslim Wakf by way of filing these

miscellaneous applications under Section 83(9) of the Wakf Act, 1995.

7. Learned counsel for respondents urged that the interim stay order dated 26.04.2022 may be modified in terms of order dated 18.05.2011 which was passed with consent of both parties and remained operative during course of trial of the main suits.

8. Counsel appearing for Rajasthan Board Of Muslim Wakf does not dispute that during course of pendency of suits, stay order dated 18.05.2011 was passed by the Wakf Tribunal, with consent of both parties and same remained in operation until decision of suits on 9th April, 2019. He submits that at the time of passing the stay order by this Court on 26.04.2022, no one appeared on behalf of applicants, therefore, the order dated 18.05.2011 could not be brought to the notice of this Court.

9. In view of above, with the consent of counsel for both parties, the order dated 26.04.2022 passed by this Court is recalled and modified in the manner that the stay order dated 18.05.2011 passed by Wakf Board during course of trial of main suit, shall remain continue and in operation for both parties in respect of suit property during course of both main applications.

10. Accordingly, both miscellaneous applications (1/2022) as well as stay applications stand disposed of.

(SUDESH BANSAL),J