IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 1670 of 2015

With

IA No.: CAN/1/2023

With

CAN/2/2023

Md. Salim & Ors.

VERSUS

The Committee of Management of the Hooghly Imambarah (The Haji Mohammed Mohosin Wakf Estate) & Ors.

For the petitioner: Mr. Jayanta Samanta, Adv.
Mrs. Karunamoyee Samanta, Adv.
Ms. Satabdi Bhattacharya, Adv.
Ms. Riddhi Naskar, Adv.

For the opposite party No. 1.: Mr. Arif Ali, Adv.
Mr. Yusuf Ali Mirza, Adv.
Mr. Sarban Bhattacharjee, Adv.

Last Heard on: September 14, 2026

Judgment on: September 30, 2026

Biswaroop Chowdhury, J:

The petitioners before this Court were defendants in a suit for recovery of possession, and permanent injunction and is aggrieved by Order dated 16-03-2015 passed by Learned 2nd Civil Judge Junior Division Alipore in T.S. No-109/2012 dismissing the application under Order VII Rule 11 of the Code of Civil Procedure.

The case of the petitioners/Defendants before the Learned Trial Court may be summed up thus:-

1. The suit is barred by limitation.
2. The plaintiff has no cause of action to file this suit.
3. The plaintiff has filed the suit on his plea that he is representing himself as a member of committee of Management of Hooghly Imambarah which according to him is an Wakaf Estate.
4. Since the suit has been filed for and on behalf of Wakf Estate the suit is barred under Section 84 and 85 of the Bengal Wakf Amendment Act 1995 and this Court is ceased of its jurisdiction to entertain this suit and/or proceed with the same.
5. The suit is barred for want of jurisdiction and the same is triable by a Tribunal under Section 84 of the Bengal Wakf Amendment Act 1995 and not by a Civil Court alike the present Court.
6. The above suit is false tainted with suppression of real and material facts.

The plaintiff contested the application by filing written objection. The plaintiffs/opposite party specifically denied that the plaintiff has filed the suit on his pleas that he is representing himself as a member of Committee of Management of Hooghly Imambarah which is descending to him is an Wakf Estate. It is contended by the plaintiff that the suit property is a 'Kharij Tauliat property' by the Govt. Order No. 219 dated 26-01-1876 by the British Government and the same is governed by the Act XV of 1895 and accordingly the same has been obtained by the plaintiff and/or rested to the plaintiff as a trust property for the purpose of institution as well as other purpose of the plaintiff. The suit property was/is outside the Wakf and/or is not a Wakf property and since obtaining and/or resting of the suit property to the plaintiff under control management as well as possession of the plaintiff, the plaintiff is all along enjoying the suit property in various ways.

Learned Trial Judge upon considering the petition and objection and upon hearing the Learned Advocates was pleased to dismiss the application by observing as follows:-

'On perusal of the petition plaint alongwith written objection its reply and further rejoinder by the plaintiff, this court finds that, in the present suit mixed question of law and fact has arisen.

The 07 R11 strictly speak about that only the averments/pleas in plaint is to be seen. Where as in present suit corroborated evidence is required to proof and substantiate the plea of defendants which is a subject matter of trial.

Thus on such findings and observation and further relying upon the reported case/cases being 2015(1) ICC. 797 (pb and Hm) and in consonance with the above observation and findings and uttermost the finding of judgment the petition u/o.7 R.11. r/w s.151 of CPC is considered and rejected on contest.'

The petitioners Defendants being aggrieved by the Order of dismissed of application under Order 7 Rule 11 CPC has come up with an application under Article 227 of the Constitution of India.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the Learned Trial Judge erred in dismissing the application of the petition under Order 7 Rule 11 CPC. Learned Advocate further submits that the learned Trial Judge ought to have dismissed the suit considering the provisions of Section 84 and 85 of the Bengal Wakf Amendment Act 1995. Learned Advocate also submits that the order passed by Learned Trial Judge cannot be sustained.

The Learned Advocate relies upon the following Judicial Decision:-

T. Arevandandam VS T.V. Satyapal and Anr.

(1997) 4 SCC 467.

Prem Kishore and others VS Brahm Prakash and others.

(2023) 19 SCC-244.

SK. Abdur Rauf Wakf Estate VS State of West Bengal

2007 SCC. Online Cal-699.

Garib Das and others VS Munshi Abdul Hamid and others

1969 SCC. Online S.C. 14.

Shannugam and Seven others VS Tamil Nadu Wakf Board.

1998 SCC Online Mad 875.

Learned Advocate for the opposite parties submits that the plaintiff in his plaint has specifically stated the suit property is not a Wakf property hence the suit is not barred under Section 84 and 85 of the Bengal Wakf Amendment Act 1995. Learned Advocate further submits that the Learned Trial Judge rightly dismissed the application under Order 7 Rule 11 of the Code of Civil Procedure. Learned Advocate also submits that this application be dismissed.

Upon hearing the Learned Advocates and considering the facts of the case, the judicial decisions relied upon and the Order passed by the Learned Trial Court this Court is of the view that it is well settled that while considering the application under Order 7 Rule 11 CPC Courts have to confine within the four corners of the plaint. The defendants from the four corners of the plaint of an eviction suit could not show as to how the suit is barred before Civil Court. The bone of contention of the defendant is that suit property is wakf property

and thus suit before Civil Court is barred under Section 84, and 85 of the Bengal Wakf Amendment Act 1995 when the plaintiffs have specifically contended that the suit property is not a wakf property. The Learned Trial Judge thus did not commit any error in dismissing the application under Order 7 Rule 11 CPC on the basis of averments made in the plaint. In the event the contention of the defendant is that the suit property is Wakf property the proper course is to file written statement and prove that suit property is a wakf property and not by application under Order 7 Rule 11 CPC. Thus this application under Article 227 of the constitution does not make out a case for invoking supervisory power under the Constitution as the defendants/petitioners have failed to show that on plain reading of the plaint suit is barred under Law, nor the petitioners could show there is abuse of the process of Court.

Hence this Application under Article 227 of the Constitution of India stands dismissed. It is however made clear that this Court has not gone into the merits of the suit and all points are kept open, to be decided by Trial Court.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)