

Shiya Central Board Of Wakf U.P Lucknow vs Munir Husain . on 9 January, 2020

Bench: D.Y. Chandrachud, Hrishikesh Roy

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 142 of 2020
(Arising out of SLP(C) No 24966 of 2015)

Shiya Central Board of Wakf U P Lucknow

....

Versus

Munir Husain & Ors

....Response

ORDER

1 Leave granted.

2 The High Court, by its impugned order dated 15 May 2015, r

revision filed by the appellant, the original defendant, against an order dated 14 December 2004 of the Civil Judge, Senior Division, Varanasi, rejecting an application under Order IX Rule 13 of the Code of Civil Procedure 1908¹ for recall of an ex parte decree dated 26 August 1997.² 3 The subject matter of the dispute pertains to certain immovable properties situated in Varanasi. The case of the appellant is that a wakf was created on 19 October 1895 by one Mehdi Begum. According to the appellant, the wakf was duly registered on 30 May 1936. According to the appellant, there was a dispute inter se in regard to the position of Mutawalli between one Zarina Begum and Wasi Hasan, the first plaintiff. Wasi Hasan, it is alleged, made an application before the appellant – Board on 1 CPC 10 February 1983 for the appointment of a Mutawalli. Thereafter, on 6 January 1994, a suit was instituted by Wasi Hasan and his brother Ali Zamin before the Wakf Tribunal, Varanasi praying for a declaration that the property is the private property of the plaintiffs. The plaintiffs also sought a declaration that they are in possession of the property which is not wakf property and the setting aside of the registration certificate issued by the appellant – Board. The suit was decreed ex parte on 26 August 1997. On 24 May 1999, the appellant applied under the provisions of Order IX Rule 13 of the CPC for setting aside the ex parte decree, together with an application for condonation of delay.

The Wakf Tribunal rejected the application on 14 December 2004. This order has been upheld by the High Court.

4 Learned counsel appearing on behalf of the appellant submitted that, as a matter of fact, the first plaintiff had sought the appointment of a Mutawalli which would postulate that the property had a wakf character and had been duly registered with the appellant – Board. Subsequently, a suit was instituted for a declaration that the property is the private property of the plaintiffs. Learned counsel submitted that the appellant – Board has a statutory character and, hence, it would be in the interest of justice if the proceedings are set down for hearing on merits. 5 On the other hand, learned counsel appearing on behalf of the original plaintiff, supported the impugned order of the High Court submitting that the Wakf Board had been duly served.

6 We are of the view that sufficient cause was shown by the appellant within the meaning of Order IX Rule 13 of the CPC. Having considered the rival submissions, in the interest of justice, we deem it appropriate and proper to remit the matter back to the Waqf Tribunal, Lucknow by setting aside the ex parte decree dated 26 August 1997. We accordingly allow the appeal and set aside the impugned order of the High Court dated 15 May 2015. In consequence, the ex parte decree dated 26 August 1997 shall stand recalled. The appellant would be at liberty to file its written statement within a period of eight weeks from the date of receipt of a certified copy of this order. The Wakf Tribunal would endeavour to expeditiously conclude the trial of the suit. There shall be no order as to costs.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hrishikesh Roy] New Delhi;

January 09, 2020

ITEM NO.26

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)

No(s).24966/2015

(Arising out of impugned final judgment and order dated 15-05-2015 in CR No. 36/2005 passed by the High Court of Judicature at Allahabad) SHIYA CENTRAL BOARD OF WAKF U.P LUCKNOW
Petitioner(s) VERSUS MUNIR HUSAIN & ORS. Respondent(s) Date : 09-01-2020 This petition was called on for hearing today. CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE HRISHIKESH ROY For Petitioner(s) Mr. Shakil Ahmed Syed, AOR Mr. Mohd. Parvez Dabas, Adv.

Mr. Uzmi Jameel Husain, Adv.

Mr. Vaibhav Tandon, Adv.

Mr. S.S. Kazi, Adv.

For Respondent(s) Mr. S.A. Zaidi, Adv.
 Mr. Kapil Sagar, Adv.
 Mr. Aftab Ali Khan, AOR

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order. There shall be no order as to costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)