

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 850 of 2023

Al-Haj Moulana Syed Misbahul Arefin

Vs

**Chowdhury Mohammed Abu Jafar Alam @ Halim Chowdhury &
others**

For the Petitioner	:	Mr. S. S. Arefin, Adv. Mr. S.M. Arefin, Adv.
For the Board of Waqaf	:	Md. Salahuddin, Adv. Md. Ahsanuzzaman, Adv. Md. Raziuddin, Adv.
For the opposite party No. 1:		Mr. Mahammudul Hassan, Adv. Mr. Manas Kumar Das, Adv.
For the State	:	Mr. Suman Chattopadhyay, Adv.
Heard on	:	02.09.2026 & 08.09.2026
Judgment on	:	18.09.2026

Md. Shabbar Rashidi, J.:-

1. The instant revision application is in assailment of judgment and decree dated September 28, 2022 passed by the Wakf Tribunal, West Bengal in connection with Suit No. 16 of 2007.

2. By the impugned judgment and decree, the learned Wakf Tribunal dismissed the suit being Suit No. 16 of 2007.

3. According to the case made out in the suit, one Chowdhury Mohammed Salim of village Lodna was the owner of various lands and properties. He constructed a mosque in the village Lodna and dedicated several lands for religious and charitable purposes. Although, Wakf deed was executed by Chowdhury Mohammed Salim was not traceable but the Wakif acted himself as Mutawalli till his death. On his demise, his only son Chowdhury Elahi Box made and registered a Tauliatnama regarding the use of the properties dedicated by his father for the purpose of maintenance of mosque and other religious and charitable purposes as Wakf properties. Such Tauliatnama was registered on July 4, 1879. In such Tauliatnama, Chowdhury Elahi Box made a statement that his father dedicated the properties as Wakf property as mosque and other properties and appointed himself as Mutawalli of the Wakf Estate.

4. The said Chowdhury Elahi Box acted as second Mutawalli of the Wakf Estate till his death. He left behind two sons, namely, Ansari Bari Chowdhury and Afzal Bari Chowdhury who acted as Mutawallis in respect of the Wakf properties till their death. Ansari Bari Chowdhury died issueless whereas Afzal Bari Chowdhury had his only son, i.e. Chowdhury Mohammad. It is further case in the suit that on the death of Chowdhury Mohammad, his wife Momena Khatun

enrolled the Wakf Estate before the Board of Wakfs in terms of the provisions of Bengal Wakf Act, 1934. It was registered under E.C. No. 3974 known as Salim Chowdhury Wakf Estate being enrolled as a Public Wakf. On such enrolment, Momena Khatun herself became Mutawalli of the Wakf Estate as the children of her deceased husband Chowdhury Mohammad were minor. Upon attaining majority, the eldest son of Chowdhury Mohammad, namely, Chowdhury Kurshid Alam was appointed as Mutawalli to the Wakf Estate.

5. According to the case made out in the Suit No. 16 of 2007, the Wakf properties mentioned in the Tauliatnama were duly recorded in C.S. record of right as Wakf property. It was, accordingly, recorded in the record of right of the Wakf Board at the time of its enrolment by the wife of Chowdhury Mohammad, namely, Momena Khatun.

6. According to the case, at the time of revisional settlement, the then Mutawalli got three plots, namely, Plot No. 2351, 2103 and 2099 recorded in his personal name instead of Wakf property which included mosque as well. It was contended that Momena Khatun relinquished her Mutawalliship in respect of Chowdhury Kurshid Alam, when he attained majority. The daughters of Chowdhury Mohammad being defendant Nos. 1, 2 and 13 in this suit did not contest the suit. It was further contended that on the death of Chowdhury Kurshid Alam, his brothers, namely, Chowdhury Badre Alam and Chowdhury Nisaruddin Ahmed were recorded as Mutawalli

and Naib Mutawalli respectively by the then commissioner of Wakf by an order dated November 26, 1971.

7. It was alleged that during their tenure, Chowdhury Badre Alam and Chowdhury Nisaruddin Ahmed treated the Wakf properties as their personal secular properties and mismanaged the properties as also misappropriated usufructs of Wakf properties. A complaint, in this regard, was made and upon hearing of such complaint, the Commissioner of Wakf removed Chowdhury Badre Alam and Chowdhury Nisaruddin Ahmed from the office of Mutawalli by an order passed on December 15, 1978 and appointed the mother of plaintiff No. 1, namely, Ozmatunesa Begum as Mutawalli under the provisions of Bengal Wakf Act, 1934. The said order passed by the Commissioner of Wakf was challenged by Chowdhury Badre Alam and Chowdhury Nisaruddin Ahmed in a proceeding being CR Case No. 10355(W) of 1978. However, such writ application was dismissed on December 13, 1985. The term of Mutawalliship of the mother of plaintiff in Suit No. 16 of 2007 was extended by an order dated March 1, 1986. Subsequently, owing to her medical conditions, the mother of the plaintiff resigned from Mutawalliship whereupon the Commissioner of Wakf appointed Chowdhury Nisaruddin Ahmed as Mutawalli and after his demise, defendant No. 13 was appointed receiver to the said Wakf Estate. Chowdhury Badre Alam and

Chowdhury Nisaruddin Ahmed expired in the meantime and their sons were impleaded as defendant Nos. 1 and 2.

8. It was also contended that the Mutawalli appointed under the Wakf Estate treated the Wakf Estate as their personal properties and recorded their personal names in the record of right. The matter was reported to the Board of Wakf but the Board did not take any steps for correction of records of right. It was further contended that the receiver appointed to the Wakf property also did not manage the Wakf properties properly and did not submit any account before the Board.

9. At the time of hearing, learned Advocate for the petitioner submitted that the learned Tribunal failed to appreciate the materials placed before it for declaration of the properties as Wakf properties under the Wakf Act, 1995. Learned Advocate for the petitioner also submits that the learned Tribunal erred in dismissing the suit. On perusal of the materials placed before learned Tribunal including the written statement filed by the defendants, a decree on admission ought to have been passed declaring the properties to be Wakf properties. He further submits that the learned Tribunal came to an erroneous finding that the plaintiff, in this suit, failed to prove that the defendant had no right and title in respect of the properties involved in the proceeding.

10. Learned Advocate for the petitioner also submitted that the learned Tribunal failed to appreciate that the plaintiffs in the suit are

not given an opportunity to cross-examine the evidence to be adduced on behalf of the defence.

11. Learned Advocate for the petitioner further submits that, although, the learned Tribunal held that the properties involved in the proceeding were Wakf properties and that the defendants in this suit shall not alienate or dispose of the aforesaid properties nevertheless the suit was dismissed. In support of his contention to this effect, learned Advocate for the petitioner relied upon **(1998) 2 SCC 642 (Sayyed Ali And Others. vs. A.P. Wakf Board, Hyderabad and Others)**.

12. Learned Advocate for the petitioner also contended that, although, a specific relief was not sought in the suit with regard to the correction of record of rights, however, such relief can be granted by this Hon'ble Court in terms of the provisions of Order VII Rule 7 of the Civil Procedure Code, 1908. To such proposition, learned Advocate for the petitioner relied upon **1951 SCC 136 (Srinivas Ram Kumar Firm vs. Mahabir Prasad And Others)** and **1965 SCC OnLine SC 111 (Bhagwati Prasad vs. Chandramaul)**.

13. On the other hand, learned Advocate appearing for the opposite party No. 1 contended that the great grandfather of opposite party No. 1 executed a registered Deed of Wakf and settled certain properties for the maintenance of the descendants and for other religious purpose. He further submits that, although, at the time of

hearing, learned Advocate for the petitioner has relied upon CS record of right, however, neither such record of right was produced before the learned Tribunal nor it was admitted in evidence. Learned Advocate for the opposite party No. 1 also stated that the suit was filed by the petitioner with an ulterior motive. According to him, the petitioner never approached or applied before the authorities for correction of record of right. Learned Advocate for the petitioner submits that his predecessors dedicated the properties to Wakf and the present opposite party No. 1 has been working as a Mutawalli of the said Wakf Estate.

14. Learned Advocate for the opposite party No. 1 also submitted that in the registered Deed of Tauliatnama as well as the Deed of Wakf, Chowdhury Elahi Box made a Rule of Succession regarding appointment of Mutawallis. As per such Rule of Succession, indicated in the aforesaid deeds, the office of Mutawalliship was kept reserved for the male descendants of wakif's family from generation to generation.

15. At the time of hearing, it was admitted by learned Advocate for the opposite party No. 1 that the properties involved in the suit are Wakf properties and those were duly recorded with the Board of Wakf with E.C. No. 3974.

16. Although, learned Advocate for the Wakf Board as well as learned Advocate for the State appeared during the hearing of the

instant revisional application but no separate pleadings etc. were submitted on their behalf.

17. Suit No. 16 of 2007 was filed by the petitioners, who claim themselves to be descendants of wakif, seeking the following reliefs namely:

- (a) *“For a decree of declaration that the properties described in Schedule-A of the plaint is properties of Selim Choudhury Wakf Estate E.C. No. 3974;*
- (b) *For declaration that defendant nos. 1 to 9 and 13 have no right, title, interest in the Schedule properties;*
- (c) *For permanent injunction restraining the defendant nos. 1 to 9 and 13 and each of them from transferring by way of sale, lease, mortgage or otherwise of Schedule properties treating them as their personal and secular properties;*
- (d) *For Receiver;*
- (e) *For Cost;*
- (f) *Such other or further order be passed as this Hon’ble Presiding Officer this Tribunal may think fit and proper.”*

18. As noted in the impugned judgment and decree, it was the case of the plaintiff that the suit A Schedule properties belong to Choudhury Md. Selim Wakf Estate. Chowudhury Md. Selim dedicated such properties into the wakf estate. Later on, his successor and Mutawalli, Choudhury Elahi Bux executed a registered Tauliatnama in this regard. According to the case made out by the plaintiffs, the predecessors of defendant nos. 1 and 2 sold out certain properties belonging to such wakf estate. It was also contended that defendant

nos. 1, 2 and 13 have been trying to transfer wakf properties taking advantage of erroneous entries in the Record of Rights. On the contrary, it was the case of the defendant nos. 1, 2 and 13 that Choudhury Md. Selim never dedicated any property to the mosque. Consequently, Choudhury Elahi Bux had no right to execute Tauliatnama as he was not the owner of the properties.

19. Based on the respective cases made out by the plaintiff and defendant nos. 1, 2 and 13, in their pleadings, the learned Tribunal framed the following issues for proper adjudication of the disputes.

1. *“Is the suit maintainable in its present form and prayer?”*
2. *Have the plaintiffs any cause of action to file this suit?*
3. *Is the suit barred by limitation?*
4. *Is the suit bad for non-payment of proper court fee?*
5. *Whether the plaintiffs are the rightful Mutawalli and beneficiary in respect of the properties mentioned in the A schedule of the plaint is the properties of Selim Choudhury Wakf Estate?*
6. *Are the plaintiffs entitled to get the decree as prayed for?*
7. *To what other relief or reliefs the plaintiffs are entitled to?”*

20. In order to prove their case, plaintiffs examined one witness. One Syed Shamsul Arefin was examined as PW1. In his deposition, PW1 stated that the suit A Schedule properties were recorded in the name of Choudhury Md. Selim Wakf Estate in the CSROR. However, during the mutawalliship of Choudhury Khurshed Alam, the same properties came to be recorded in his personal name in the RSROR. On the death

of Choudhury Khurshed Alam the schedule properties were recorded in the name of Choudhury Badre Alam and Choudhury Nesaruddin Ahmed. Subsequently, the said properties were recorded in the personal name of defendant nos. 1 to 9. The said defendants have divided the schedule properties amongst themselves as secular properties.

21. In support of his case, the plaintiffs relied on the following documentary evidence, that's to say:

Exhibit 1: Certified copy of Khatian No. 4 of Mouza Lodna.

Exhibit 2: Certified copy of latest ROR in respect of several khatians relating to Plot No. 2103.

Exhibit 2/1: Certified copy of LRROR in respect of Dag No. 2099, J. L. No. 4, showing existence of Masjid in the name of Choudhury Nesaruddin Ahmed and Choudhury Badre Alam.

Exhibit 2/2: Certified copy of LRROR in respect of Dag No. 2351 in the name of Masuda Begum and others.

Exhibit 3: Original receipt copy of notice U/s 89 of Wakf Act, 1995 dated 14.09.2007 given to Board of Auqaf.

22. Upon trial and considering the evidence adduced by the parties, the learned Tribunal did not find merit in the suit and consequently, dismissed Suit No. 16 of 2007. From the pleadings put in by the

plaintiffs, it transpires that it is their claim that the properties described in Schedule-A of the plaint are properties of Selim Choudhury Wakf Estate E.C. No. 3974 and that defendant nos. 1 to 9 and 13 have no right, title, interest in the Schedule properties.

23. According to the case made out Chaudhury Md. Selim dedicated various properties into wakf for the maintenance of mosque. However, the deed in respect of such dedication to wakf was not traceable. Subsequently, on his death, the son of Chaudhury Md. Selim, namely Choudhury Elahi Bux executed a registered Tauliatnama on July 4, 1879 declaring that his father dedicated properties into wakf for the maintenance of mosque and other religious purposes and had executed a deed of wakf in this regard. According to the case made out by the plaintiffs, the said Tauliatnama also stipulated the terms for maintenance and management of the wakf properties, the order of mutawalliship and its appointment etc. it was also contended that such properties were duly registered as wakf properties with the Board of Auqaf, West Bengal under EC No. 3974.

24. The learner tribunal, while deciding such issues, held on the basis of evidence adduced at the trial that the plaintiffs did not produce any document to establish that the suit properties were actually dedicated into Waqf by Choudhury Md. Selim. Admittedly, the deed of Waqf or the deed of Tauliatnama was not proved at the trial. The defendant Board of Auqaf also did not produce any document to

establish the A- Schedule properties were registered with them as waqf properties under EC No. 3974. Though, it has been noted in the impugned judgment and order that Exhibit 1, i.e. RSROR goes to show that suit properties belong to Choudhury Md. Selim Wakf Estate.

25. So far as allegations of alleged transfer or attempt to transfer the wakf properties by the defendants is concerned, PW1, in his cross examination, failed to give the account of such transfer or the description of the wakf properties allegedly transferred by the predecessor of defendant nos. 1 and 2. He also failed to produce any deed or other document to prove such transfer of wakf properties. PW1 also could not give the details with regard to the allegation of the plaintiffs that the defendants were trying to sell out the wakf properties. On such score, the learned tribunal came to a conclusion that the allegations of alleged transfer or attempted transfer of wakf properties were baseless and unfounded. Learned tribunal also held that the tribunal was not the proper forum to agitate the issue of erroneous recordings in the record-of-rights. The parties are at liberty to take up such issue regarding correction of record-of-rights with appropriate authorities.

26. At the time of hearing, learned advocate for the petitioner has referred to the provisions of Order VII Rule 7 to contend that necessary directions for correction of record-of-rights may be issued

by this Court. In **Srinival Ram Kumar Firm** (supra), it was held by the Hon'ble Supreme Court that:-

“12. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the court to give him relief on that basis. The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit.”

27. Similarly, in **Bhagwati Prasad** (supra), the Hon'ble Supreme Court laid down that,

“15. It is hardly necessary to emphasise that in a matter of this kind, it is undesirable and inexpedient to lay down any general rule. The importance of the pleadings cannot, of course, be ignored, because it is the pleadings that lead to the

framing of issues and a trial in every civil case has inevitably to be confined to the issues framed in the suit. The whole object of framing the issues would be defeated if parties are allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues. But cases may occur in which though a particular plea is not specifically included in the issues, parties might know that in substance, the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed by one or the other of the parties, was in substance, at issue between them and that both of them have had opportunity to lead evidence about it at the trial that the formal requirement of pleadings can be relaxed. In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passed by the trial court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be futile to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law.”

28. However, to my opinion, this proceeding before this court is circumscribed by the provisions of Section 115 of the Civil Procedure Code, 1908 and/or Article 227 of the Constitution of India. The scope of the instant proceedings is confined to the exercise of powers by the learned tribunal in passing the impugned judgment and decree to the

limited extent of legality, validity and propriety of such judgment and decree. I am not minded to pass any direction which a court of regular appeal could have passed sitting in an appellate jurisdiction.

29. The learned tribunal decided issue no.1 partly in favour of the plaintiff. It was held that as there was no formal defect in form of the suit, the suit was maintainable. However, it was held that it was not disclosed in the plaint as in which capacity, the suit was filed by the plaintiffs. Out of 7 plaintiffs, only one was found to be descendant of wakif. Learned tribunal held that it was not clear as to the plaintiffs filed the suit in the capacity of interested person or a beneficiary or descendant of wakif. The provisions of Order I Rule 8 of the Civil Procedure Code, 1908 were also not complied, prior to filing of the suit. It held that the locus of plaintiffs to file the suit is shrouded with doubts.

30. As I have noted hereinbefore that the plaintiff did not prove the original wakf deed or the Tauliatnama. In order to decipher the intention of the wakif behind the dedication of properties is not brought on record. It is not clear if the wakf was for public charitable purposes or left interest for some beneficiaries. In absence of Tauliatnama, the intention of the wakif regarding order of appointment of Mutawallis cannot be ascertained. If that be so, plaintiffs cannot claim any right of mutawalliship. Without the intention of wakif in respect of appointment of mutawallis being

explicit, the right of the plaintiffs to file Suit No. 16 of 2007 seeking declaration and injunction is in question. In **Sayyed Ali** (supra), the Hon'ble Supreme Court observed as follows:-

“13. Lastly, it was contended by the learned counsel for the appellant that once patta, under the Inams Act, having been granted in favour of Mokhasadars, it was not open to the High Court to hold that the property was a wakf property. In other words, the argument seems to proceed on the basis that once patta has been granted under the Inams Act to Mokhasadars, the land has ceased to be a wakf property. It may be stated that a wakf is a permanent dedication of property for purposes recognized by Muslim law as pious, religious or charitable and the property having been found as wakf would always retain its character as a wakf. In other words, once a wakf always a wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as wakf. After a wakf has been created, it continues to be so for all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the wakf property. We accordingly find no substance in the last argument of the learned counsel for the appellant.”

31. Moreover, Section 89 of the Waqf Act, 1995 bars a suit without a notice disclosing a cause of action and a clear statement of such service upon the Board of Auqaf, two months prior to filing of the suit.

Board of Auqaf was a party to the suit and was served with a notice under Section 90 of the Act of 1995. Section 89 reads as follows:

“89. Notice of suits by parties against Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”

26. Learned tribunal while deciding issue no. 2 held that Exhibit 3, the notice alleged to be under Section 89 of the Act of 1995 did not disclose a cause of action. Not only that, it was held by learned tribunal that the suit was instituted on an allegation that predecessors of the defendants sold out certain properties belonging to waqf and that the defendants were in negotiation with several persons to dispose of the Waqf properties. However, no document whatsoever was produced and proved at the trial to substantiate such allegations. In fact no documentary evidence was produced by the plaintiff to establish that the predecessors of the defendants actually transferred certain properties belonging to the Wakf estate. In such view of the facts, Suit No. 16 of 2007 could not have been filed for non-compliance of the mandatory provisions of Section 89 of Waqf Act, 1995. The learned tribunal also held that the plaintiffs failed to

prove that a valid cause of action did exist for filing the suit. On the basis of materials and evidence on record, I find no reason to interfere with such finding of the learned tribunal.

27. Issue no. 3 dealing with limitation and issue no.4 with regard to proper court fee were decided in favour of plaintiffs. The learned tribunal held therein that the written statement filed on behalf of defendants although, raised these points but it failed to point out the precise incident on the basis of which it could be said that the suit was barred by limitation or payment of proper court fees. The learned tribunal also, on examination of the plaint, came to a conclusion that the suit for declaration and permanent injunction filed by the plaintiffs was not barred by the laws of limitation and that proper court fee was paid in accordance with extant laws. Nothing has been brought on record during hearing of the present proceeding to establish any patent error in the exercise of powers vested in the tribunal.

28. Issue no. 5 with regard to the rights of the plaintiff to be a mutawalli and beneficiary in respect of A schedule property, was decided against the plaintiffs. Deciding this issue, the learned tribunal noted that,

“There is no pleading that all the plaintiffs are rightful mutawallis and beneficiaries of the Waqf estate. There is no stipulation in affidavit in chief that plaintiffs and mutawallis are beneficiaries. PW1 without any proof deposed that

plaintiffs are committee mutawallis of Waqf estate. During the course of oral argument, learned advocate of plaintiffs submitted that plaintiff no. 1 is the descendant of wakif but there is no documentary proof to this effect. Neither general logical table has been produced no any other document have been filed to show that the plaintiffs are beneficiaries of the Waqf estate. Unless it is proved that plaintiffs are descendants of wakif as per deed of Waqf or Tauliatnama, their claim for mutawaalliship cannot be entertained. On the other hand, PW1 has admitted that defendant no. 1 & 2 are descendants of wakif. copy of Tauliatnama has not been placed on record and proved.

Thus, issue no. 5 is decided against the plaintiffs holding that the plaintiffs have failed to prove that they are rightful mutawallis as per Tauliatnama and they have also failed to prove that they are the beneficiaries of the schedule property”.

29. Similarly, while deciding the issue nos. 6 & 7 with respect to the reliefs claimed in the suit, the learned tribunal decided these issues against the plaintiffs. The learned tribunal held that,

“So far as a prayer (a) is concerned, schedule property is not disputed to be not Waqf property. The schedule properties are stated to be Waqf property and the same was not denied by learned advocate during the course of oral argument. Plaintiffs have not filed certified copy of enrolment application, certified copy of Waqf register, certified copy of Tauliatnama to prove their case. However, as per Exhibit – 1, it is clear that suit property belongs to Chowdhury Md. Selim Waqf Estate having E. C. No. 3974. Board of Auqaf has not assisted this tribunal by filing a written statement, by producing DW and by producing relevant records. It seems that board of Auqaf is not at all interested in some cases for the protection and

preservation of the Waqf property. Defendant no. 1 & 2 have also not come with clean hands to disclose the real facts as to how much property was dedicated by the wakif and how much property is remaining with the Waqf estate.. There is allegation that predecessor of defendant no. 1 & 2 transferred Waqf property but no document has been produced to substantiate the allegation. We have already held while deciding issue no. 2 that plaintiffs have no cause of action to institute the present suit. We have also held that the notice U/s 89 of Waqf act, 1995 is totally defective. We have also held that plaintiffs have not been able to produce sufficient document such as certified copy of enrolment application, certified copy of Waqf register, certified copy of Tauliatnama, sale deeds by which Waqf property was transferred by predecessor of defendant no. 1 & 2. The onus of proof is on the plaintiff to prove their case. The plaintiffs cannot take advantage from the weakness of the defence of defendants. Defendant no. 1 & 2 is the main contesting defendant in this case who opted not to give defence evidence probably due to their contradictory stand taken in a written statement. Defendant no. 1 & 2 perhaps did not bring DW apprehending that the illegality committed by their predecessors may be disclosed during cross-examination. Defendant no. 1 & 2 have not disclose the real fact as to how much property was dedicated and how much property was transferred on not and how much property remains with the Waqf Estate. Learned advocate kept crying that defendant no. 1 & 2 are descendants of wakif and they are entitled to be Mutawalli of the Waqf Estate but did not disclose the real present status of the Waqf Estate. Defendant no. 1 & 2 are hanker over the post of mutawallis but are not honest at all to protect and preserve the Waqf Estate.”

So far as prayer (b) is concerned, plaintiffs have failed to prove that as to how defendant no. 1 & 2 and other defendants have no right, title and interest in the schedule properties. Plaintiffs have also failed to prove that they have right, title and interest in the suit property. There is an admission of PW 1 that defendant no. 1 & 2 are the descendants of wakif and if they are the descendants of wakif, they cannot be restrained by decree of declaration permanently. Descendants of wakif cannot be injunctive permanently as prayed in prayer clause (c). It is true that defendants have no right, to transfer Waqf properties by way of sale, lease, mortgage or otherwise. Other prayers are also not entered enable.”

30. Accordingly, on the basis of the evidence produced at the trial as discussed by the learned tribunal issue -wise, the learned tribunal dismissed the suit on the ground that sufficient evidence was not produced in support of the case made out by the plaintiffs. I have also noted hereinbefore that the learned tribunal was quite justified in holding that Suit No. 16 of 2007 could not have been instituted for violation of the provisions under Section 89 of the Act of 1995.

31. I have also noted that for nonproduction of the deed of Waqf or that of Tauliatnama, the intention of the wakif for the dedication of the properties to Wakf could not be ascertained. It was claimed at the trial that the Tauliatnama set forth the order of succession to the office of Mutawalliship. It was contended that such office was kept reserved for male descendants of the family of the wakif. However

such facts have not been proved by the plaintiff by producing the Waqf deed or Tauliatnama.

32. The instant proceeding has been filed in terms of the provisions under Article 227 of the Constitution of India. This is not a regular appeal from the impugned judgment and order in order to press the provisions of Order XXXXI into service. The learned Tribunal decided the issues on the basis of evidence led at the trial. As noted above, the necessary documents to prove the case of the petitioner were either not in existence or not placed before the learned Tribunal. In such view of the facts, I find no reason to interfere with the offence arrived at by the learned Tribunal on the basis of materials placed before it. I find no merit in the present application under Article 227 of the Constitution of India filed on behalf of the petitioner.

33. With the aforesaid observations, **C.O. 850 of 2023** is, accordingly, disposed of. Connected application(s), if any, shall also stand disposed of.

34. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]