



GAHC010114562016



2025:GAU-AS:9355

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Civil Revision Petition No. 221/2016

1. Anowaruddin Wakf Estate,
A Wakf Registered With the Assam Board of
Wakf, Rep. By Its Mutawalli Syed College
Road, Anowarpur, Bhangagarh, P.S.
Bhangagarh, P.O. Dispur, Ghy-5, Dist-Kamrup
Metro, Assam.

Petitioner

-Versus-

1. Sri Bipin Dey and 6 Ors.
S/o Late Janju Dey,
R/o Siliguri, North Bengal,
Pin-734004.
2. Md. Arifur Rahman,
S/o A. Rahman,
R/O Rangia,
Mauza-Panduri,
Dist-Kamrup, Assam, Presently R/O Srimantapur,
H/No. 3 Beside L.P. School Bhangagarh Ghy-32, Dist-
Kamrup Metro, Assam.



3. Md. Abdul Matlib,
S/o Azad Ali,
R/O BaihataChariali,
Mauza-Silasendurighopa, Pin-781381,
Dist-Kamrup, Assam.
4. Rajendra Kumar Kalita,
S/o Late Chana Ram Kalita,
Resident of Purnakamdev, Momitola, Pin-781350,
Dist-Nalbari, Assam.
5. Md. Amir Shah,
S/o Late Isar Ali,
Resident of Haligaon, Palasbari, District-
Kamrup(Assam), Pin-781122.
6. The Assam Board of Wakf Represented By its Chief
Executive Officer, Seuji Path, Hatigaon Road, Guwahati-
781038, District- Kamrup(Assam).
7. Khagen Chandra Kachari,
S/o Late Bipin Kachari,
Resident of Lachitnagar, Bye Lane-5,
Opp. Gaurav Deep Building Guwahati-7,
District- Kamrup, Assam.

Respondents

For Petitioner : Mr. A. Das, Advocate.
For Respondent(s) : Ms. S. Nazneen, Advocate.
Date of Judgment : 22.07.2025

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGEMENT AND ORDER(CAV)**

- 1.** Heard Mr. A. Das, the learned counsel for the petitioner. Also heard Ms. S. Nazneen, the learned counsel for the respondent No. 2.
- 2.** By order dated 02.04.2025, this Court has decided to proceed with the hearing of this case in the absence of other respondents as even after due service of notice against them, they were absent without any steps.
- 3.** This civil revision petition has been registered on filing of an application under Article 227 of the Constitution of India by the petitioner, namely, Anowaruddin Wakf Estate impugning two orders passed by the learned Presiding Officer Wakf Tribunal, Kamrup (Metro).
- 4.** Firstly, the order dated 18.04.2016 passed in W.T. Misc.(J) Case No. 4 of 2015 arising out of W.T. Case No. 1/2009, whereby the application filed by the present petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to implead the Punjab National Bank as a party in the case was rejected.
- 5.** Secondly, the order dated 13.06.2016 passed by the learned Presiding Officer, Wakf Tribunal, Kamrup(Metro), Guwahati on the petition No. 319/2016 dated 16.05.2016 arising out of WT Case No. 1/2009, whereby, the application filed by the

defendant Nos. 2, 3 and 4 under Order 18 Rule 17, read with Section 151 of the Code of Civil Procedure, 1908 for recalling of the PW-2, namely, Sri Khagen Chandra Kachari was allowed.

6. It is pertinent to mention herein that after filing of the instant Civil Revision Petition, the petitioner had filed another Civil Revision Petition under Article 227 of the Constitution of India which was registered as CRP No.230/2017, wherein the petitioner has again impugned the order dated 18.04.2016 passed in W.T. Misc.(J) Case No. 4 of 2015 arising out of W.T. Case No. 1/2009 passed by learned Presiding Officer, Wakf Tribunal. Though, it appears that the order dated 18.04.2016 has already been impugned by the petitioner in CRP No. 221/2016(*instant revision petition*), however, as more than one order was impugned in the instant CRP No.221/2016, hence, the petitioner had filed a subsequent Civil Revision No. 230/2017.
7. Though, as per Rule 20 (2) of Civil Court Rules and Orders of the Gauhati High Court, applications in regard to distinct subject-matter shall have to be made in separate petitions and as per Rule 20 (3) of the said rules, the petition should not ordinarily contain more than one prayer or one series of alternative prayers of same kind, however, as both the order dated 18.04.2016 as well as 13.06.2016 have been impugned

in this revision petition(CRP No. 221/2016), this Court proposes to consider the grievance of the petitioner in respect of both the impugned orders in the instant Civil Revision Petition only for the sake of convenience.

- 8.** The facts relevant for consideration of the instant Civil Revision Petition, in brief, are that the petitioner, namely, Anowaruddin Wakf Estate as plaintiff had filed a Title Suit No. 190/2004 which was re-numbered as W.T. Case No. 1/2009 which is pending before the learned Presiding Officer, Wakf Tribunal, Kamrup (Metro) at Guwahati. In the suit, the petitioner has claimed the relief of declaration of its right, title and interest over the suit land as well as for grant of injunction against the defendants.
- 9.** In the main case, the petitioner had also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of temporary injunction. The said application was registered as W.T. (Misc.) Case No. 1/2009. In the said Misc. Case, by Order dated 06.09.2010, the opposite parties were directed to maintain status quo in respect of the suit property till disposal of the main suit, i.e. W.T. Case No. 1/2009.
- 10.** Let us first consider the impugned order dated 18.04.2016 passed in W.T. Misc.(J)Case No. 4 of 2015 in W.T. Misc. Case

No. 1/2009. On 27.05.2015, the petitioner had filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 in W.T. Misc.(J) Case No. 4 of 2015 in connection with W.T. Case No. 1/2009 for impleadment of Punjab National Bank as a defendant in the W.T. Case No. 1/2009.

- 11.** It has been stated by the petitioner in the aforesaid application that on 13.12.2014, when the petitioner had visited the suit land he found that the Punjab National Bank has affixed a sign board upon the suit land indicating that they have taken symbolic possession of the suit land. Upon inquiry, the petitioner came to know that the defendant No. 2 (Md. Arifur Rahman) had mortgaged a part of Schedule-'A' land with Punjab National Bank against a loan taken by his brother Fidusur Rahman proprietor of M/s. NAFNE Industries.
- 12.** The petitioner has stated in his petition that the Punjab National Bank, in spite of knowing about the order dated 06.09.2010 passed by the learned Presiding Officer, Wakf Tribunal in W.T. Misc. Case No. 1/2009, whereby the parties were directed to maintain status quo, has illegally mortgaged the said land by violating the status quo order. It was also pleaded by the petitioner in the petition that the bank has also published an *e-auction* Sale Notice in the newspaper in respect of the suit land. In the aforesaid premises the petitioner has

prayed for impleading the Punjab National Bank as one of the defendants. However, by the impugned order dated 18.04.2016 passed in W.T. Misc.(J) Case No. 4 of 2015 in W.T. Case No. 1/2009, the learned Presiding Officer, Wakf Tribunal Kamrup (Metro), Guwahati had rejected the prayer for impleadment of Punjab National Bank as one of the defendants in W.T. Case No. 1/2009.

- 13.** The learned counsel for the petitioner has submitted that the petitioner had filed the W.T. Case No. 1/2009 for declaration of its right, title and interest over Schedule-'A' plot of land and also for cancellation of sale deed Nos. 2076 dated 27.04.1993, 2077 dated 27.04.1993 and 2078 dated 24.04.1993.
- 14.** The learned counsel for the petitioner has submitted that on the basis of sale deed No. 2076 dated 27.04.1993, the defendant No. 2 had mortgaged the plot of land measuring 1katha 10lechas to the Punjab National Bank and had obtained some loan against the said mortgage. However, on failure of the defendant to repay the said loan, the Punjab National Bank by exercising its powers under SARFAESI Act, 2002 had taken the possession of the mortgaged land.
- 15.** The learned counsel for the petitioner has submitted that the aforesaid land was mortgaged to the Punjab National Bank by the defendant No. 2 on 12.12.2014. Whereas, on 06.09.2010,

the learned Presiding Officer, of the Wakf of Tribunal Kamrup(Metro) Guwahati had directed the parties to maintain status quo as regards to the suit property by passing the order in W.T.(Misc.) Case No. 1/2009.

- 16.** The learned counsel for the petitioner has submitted that the presence of the Punjab National Bank is very much essential for deciding the dispute in W.T. Case No. 1/2009. He further submits that unless the bank is impleaded as one of the parties in the aforesaid case, the petitioner may not be able to seek any relief against the bank which has claimed to be in possession of part of Scheduled- 'A' land.
- 17.** The learned counsel for the petitioner has submitted that mortgage of a portion of Scheduled-'A' land to the bank in spite of the status quo order dated 06.09.2009 passed in W.T. Case No. 1/2009 is illegal mortgage, therefore, it is required to seek a relief against the Punjab National Bank also in the said case.
- 18.** The learned counsel for the petitioner has also submitted that to avoid multiplicity of the proceeding, the Punjab National Bank is required to be impleaded as a defendant in W.T. Case No. 1/2009.

19. In support of his submissions, the learned counsel for the petitioner has cited the ruling of Apex Court in the case of "**Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay**" reported in "(1992)2 SCC 524." He has also cited the ruling of this Court in the case of "**Indian Oil Corporation Limited vs. Amit Choudhary and others**" reported in "(2006) 3 GLT 193."
20. On the other hand, the learned counsel for the respondent No. 2 has submitted that the Wakf Tribunal has rightly rejected the prayer for impleadment of Punjab National Bank as one of the defendants in W.T. Case No. 1/2009 as the Punjab National Bank is not a necessary party in the said case. The learned counsel for the respondent No. 2 has submitted that the Punjab National Bank is neither a necessary party nor a proper party in the said case and it only had commercial interest in the suit property.
21. The learned counsel for the respondent No. 2 has submitted that even in the absence of Punjab National Bank, an effective decree may be passed in W.T. Case No. 1/2009, therefore, the Punjab National Bank is not a proper party.
22. The learned counsel for the respondent No. 2 has also submitted that the petitioner has filed a case against the respondent as well as Punjab National Bank before the Debt

Recovery Tribunal (DRT) under the SARFAESI Act, 2002 and therefore, the Wakf Tribunal has rightly rejected the prayer for impleadment of Punjab National Bank.

23. In support of her submissions, the learned counsel for the respondent No. 2 has cited a ruling of the Apex Court in the Case of "***Vidur Impex And Traders Private Limited And Others vs. Tosh Apartments Private Limited And Others***" reported in "***(2012) 8 SCC 384***" as well as in the case of "***Razia Begum v. Sahebzadi Anwara Begum & Others***" reported in "***AIR 1958 SC 886.***"
24. By the second impugned order dated 13.06.2016, the application filed by the defendant under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for recalling the PW-2 for the purpose of cross-examination was allowed by the Wakf Tribunal. The learned counsel for the petitioner has submitted that the Wakf Tribunal by the impugned order dated 13.06.2016 has exercised powers beyond jurisdiction and beyond the provisions of Order 18 Rule 17 of the Code of Civil Procedure, 1908. It is submitted that there is no provision in the Indian Evidence Act, 1872 as well as in the Code of Civil Procedure, 1908 for recalling a witness only for the purpose of recross-examination.

25. He submits that the power of the Court may not be exercised to facilitate one of the parties to fill up the lacuna in the evidence which has already been recorded. It is also submitted by the learned counsel for the petitioner that unless there is an ambiguity in the evidence, the question of clarifying the said ambiguity does not arise by invoking the powers under Order 18 Rule 17 of the Code of Civil Procedure, 1908.
26. In support of his submission, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of **"Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate"** reported in **"(2009)4SCC 410"** as well as the ruling of this Court in the case of **"Jhanwarlal Patwa v. Uday Narain Goswami and Anr."** reported in **"(2006) 3 GLT 458"**.
27. On the other hand, the learned counsel for respondent No. 2 has submitted that the Wakf Tribunal, by the impugned order dated 13.06.2016, has rightly allowed the defendants to recall the PW-2 for the purpose of limited cross-examination as it would only clarify the evidence on record.
28. The learned counsel for the respondent No. 2 submits that the purpose of recalling PW-2 is only to clarify the credibility and genuineness and authenticity of Exhibit-13 which is purported to be a sale deed executed between Bipin Kachari and Moulvi

Anowaruddin as no mention about the said sale deed is there in the pleadings. Neither the mention about said sale deed was there in the list of documents which is required to be filed under Order 13 Rule 1 of the Code of Civil Procedure, 1908.

- 29.** The learned counsel for respondent No. 2 has also submitted that apart from Order 18 Rule 17 of the Code of Civil Procedure, 1908 the Defendant had also filed the said application under Section 151 of the Code of Civil Procedure, 1908 which contains the inherent power of the Court to make such order as may be necessary for the ends of justice. Hence, she submits that the Wakf Tribunal has rightly allowed the recalling of PW-2 for the purpose of cross examination.
- 30.** I have considered the submissions made by the learned counsel for both sides and have gone through the materials on record. I have also gone through the rulings cited by learned counsel for both sides in support of their respective submissions.
- 31.** Under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908, the Court may at any stage of the proceeding direct any person who ought to have been joined as the party either as plaintiff or defendant if his presence before the Court may be necessary in order to enable the Court to effectually and

completely adjudicate upon and settle all the questions involved in the suit.

- 32.** In the instant case, there is no dispute that during the pendency of the suit, a portion of the Schedule-'A' land was mortgaged by the respondent No. 2 to the Punjab National Bank. Moreover, same was done during the subsistence of a status quo order dated 06.09.2010 passed in W.T.(Misc.) Case No. 1/2009. Therefore, apparently there appears to be a violation of the doctrine of "*lis pendens*" as enshrined in Section 52 of the Transfer of Property Act, 1882. There appears to be the violation of status quo order passed by the Wakf Tribunal also.
- 33.** If we peruse the impugned order dated 18.04.2016, it appears that the Wakf Tribunal had rejected the prayer for impleadment of Punjab National Bank merely on two counts. Firstly, that in spite of having knowledge of the pendency of the W.T. Case No. 1/2009, the Punjab National Bank did not appear in the said case. Secondly, that the plaintiff had already filed an application before Debt Recovery Tribunal (DRT) under the SARFAESI Act, 2002 against Punjab National Bank. One of the principles to decide as to whether a party is necessary party or not is that in absence of such a party no effect decree can be passed in the suit. In the instant case, the relief is sought for by the petitioner in W.T. Case No.

1/2009 in respect of the Schedule-'A' land and admittedly a portion of the said land has been mortgaged during the pendency of the aforesaid case, by the respondent No. 2 to the Punjab National Bank. It also appears that the said bank has also taken symbolic possession over the said land and has also initiated e-auction process. Under such circumstances, this Court is of considered opinion that Punjab National Bank appears to be proper party in the W.T. Case No. 1/2009. The reasons cited by the Wakf Tribunal in the impugned order for rejecting the prayer for impleadment does not appear to be good reasons as apparently, if the Punjab National Bank proceed with the auction and alienate a portion of Schedule-'A' land, no effective decree may be passed in the W.T. Case No. 1/2009.

- 34.** Accordingly, the impugned order dated 18.04.2016 passed in W.T. Misc.(J) Case No. 4 of 2015 in connection with W.T. Case No. 1/2009 is hereby set aside and reversed. The petitioner is allowed to implead Punjab National Bank as one of the defendants in W.T. Case No. 1/2009.
- 35.** As regards the impugned order dated 13.06.2016, it appears that the Wakf Tribunal had allowed the prayer for recalling of the PW-2 for the purpose of cross-examination on the ground that the application for recalling the witness for the purpose of

cross-examination was made immediately after the cross-examination and the Wakf Tribunal was of the opinion that if the plaintiff is not given chance of cross-examination on limited point it would amount to denial of justice. It has also been observed in the impugned order that the truth should always be discovered before the Court and that can be done by way of cross-examination under the facts and circumstance of the present case. It also appears that the cross-examination has been allowed only on a limited point as regards the sale deed which has been exhibited as the Exhibit -13 by the PW-2.

36. It also appears that while allowing the recalling of the PW-2, the Wakf Tribunal also directed the expenses to be borne by the defendant side. Though, there is no dispute that the powers under Order 18 Rule 17 of the Code of Civil Procedure, 1908 may not be invoked to facilitate a party to fill up the lacuna in the evidence which has already been recorded, however, in the instant case, while allowing the application for recalling of the PW-2, the Wakf Tribunal has cited valid reasons for doing so. It appears that the Wakf Tribunal has exercised its discretion in allowing the recalling of PW-2 for the purpose of limited cross-examination for the ends of justice.

37. It is well settled that this Court, in exercise of the power of superintendence under Article 227 of the Constitution of India,

can interfere when there has been a patent perversity in the order of the Tribunal or where there has been gross and manifest failure of justice or basic principles of natural justice have been flouted. However, this does not appear to be the case in the instant case. In the instant case, the Tribunal felt it necessary to exercise its discretion in allowing the application for recalling of PW-2 to get more clarification about the sale deed executed by Bipin Kachari and Moulvi Anowaruddin.

- 38.** This Court is of considered opinion that merely because another view may be taken by this Court than from what has been taken by the Tribunal, the powers under Article 227 may not be invoked to set aside the impugned order if it is not otherwise perverse and it has not caused gross and manifest failure of justice.
- 39.** In view of the discussions made in the foregoing paragraphs, the impugned order dated 13.06.2016 is not interfered with and same is upheld.
- 40.** This Civil Revision Petition is partly allowed and accordingly disposed of.
- 41.** Send the records which were requisitioned in connection with this case back to the Wakf Tribunal, Kamrup (Metro), Guwahati, along with a copy of this judgment.



JUDGE

Comparing Assistant