

GAHC010235842023



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

Case No. : CRP/177/2023

PRAN GOPAL DAS AND ORS
S/O LATE MONINDRA LAL DAS, R/O CHARBAZAR, WARD NO. 23,
KARIMGANJ TOWN, P.O.-CHARBAZAR, P.S. AND DIST-KARIMGANJ,
ASSAM

2: ON THE DEATH OF MD. ASAD UDDIN
HIS LEGAL HEIRS

2.1: RAJIA BEGUM
WIFE
VILL-CHANDSREEKUNA
P.O.-TILLABAZAR
P.S. AND DIST-KARIMGANJ
ASSAM

2.2: WAHID UDDIN
SON
VILL-CHANDSREEKUNA
P.O.-TILLABAZAR
P.S. AND DIST-KARIMGANJ
ASSAM

2.3: MOHID UDDIN
SON
VILL-CHANDSREEKUNA
P.O.-TILLABAZAR
P.S. AND DIST-KARIMGANJ
ASSAM

2.4: OLID UDDIN
SON
VILL-CHANDSREEKUNA
P.O.-TILLABAZAR
P.S. AND DIST-KARIMGANJ

ASSAM

2.5: ALIM UDDIN
SON
VILL-CHANDSREEKUNA
P.O.-TILLABAZAR
P.S. AND DIST-KARIMGANJ
ASSAM

3: MRS. JAMILA KHATUN
(MUTAWALI
K.B. SHAMSUDDIN KHAN WAKF ESTATE)
W/O LATE TASLIM UDDIN KAZI
R/O HATIGAON
P.O.-HATIGAON
GUWAHATI
ASSAM
PIN-78103

VERSUS

SHYAM SUNDAR DAS
S/O LATE SUBAL CH. DAS, R/O CHARAKURI, P.O.-KARIMGANJ BAZAR, P.S.
AND DIST-KARIMGANJ, ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

Date : 13-12-2023

JUDGMENT & ORDER (ORAL)

Heard Ms. R Choudhury, learned counsel for the petitioners.

2. Because of the nature of the questions/issues raised in this revision petition, we have requested Mr. D Mozumdar, learned senior counsel to assist the Court to answer the issues raised therein.

3. The petitioner, Pran Gopal Das was a defendant in T.S. No.200/2016 in the Court of the learned Munsiff No.1 Karimganj presently the learned Civil Judge Junior Division No.1 in a tenancy suit instituted by the respondent Shyam Sundar Das.

4. In the suit, a plea had been taken that the tenanted property is a wakf property and, therefore, under Section 83(1) of the Wakf Act of 1995, the dispute ought to have been raised before the Wakf Tribunal as may be constituted under Section 83 of the Waqf Act of 1995. But a stand has been taken that as the Wakf Tribunal had not been constituted under Section 83 of the Wakf Act 1995 in respect of the Karimganj district, therefore, the suit was instituted in the regular civil court.

5. Being dissatisfied with the judgment and decree dated 23.08.2023 in T.S. Suit No.200/2016, whereby the suit of the plaintiff was allowed and the counter claim of the defendant was dismissed, the present revision petition has been instituted under Section 115 read with Section 151 of the CPC, further read with the proviso to Section 83(9) of the Wakf Act 1995. According to the petitioner, the revision under Section 115 read with Section 151 of the CPC read with Section 83(9) further read with the proviso to Section 83(9) of the Wakf Act 1995 has been instituted, *inasmuch as*, the tenanted property in dispute is a

wakf property and, therefore, it is only the Wakf Tribunal who would have jurisdiction over the matter and had the matter been adjudicated by the Wakf Tribunal, no appeal against such judgment and order would be maintainable as per Section 83(9) of the Wakf Act and, therefore, in the absence of there being any provision for appeal, the present revision has been instituted.

6. Considering the complexity of the question of law involved, we requested Mr. D Mozumdar, learned senior counsel to assist the Court for a proper decision to be arrived. Mr. D Mozumdar, learned senior counsel, firstly, submits that as per the Notification of this Registry dated 11.04.2003, the Industrial Tribunal had been constituted at Silchar and it had further been provided that the Industrial Tribunal in Silchar has been given concurrent jurisdiction over the subjects of the Labour Court in the Hill Districts of Karbi-Anglong, NC Hills, Cachar, Hailakandi and Karimganj and further that the Presiding Officer of the Industrial Tribunal at Silchar had also been vested with the powers under Section 83 of the Wakf Act of 1995 in order to enable to function as the Wakf Tribunal to be constituted under Section 83 of the said Act. From the said submission of Mr. D Mozumdar, learned senior counsel it firstly transpires that the T.S. No.200/2016 was wrongly instituted in a forum which did not have the jurisdiction over the matter and ought to have been instituted before the Wakf Tribunal which had already been constituted when the suit was filed. Secondly, although it has been pointed out to the Civil Court by the defendant that it did not have jurisdiction over the matter, but the Court by the judgment and decree dated 23.08.2023 by referring to the pronouncement of the Hon'ble Supreme Court rendered in *Ramesh Gobindram (Dead) through LRs. Vs. Sugra Humayun Mirza Wakf* reported in (2010) 8 SCC 726 arrived at its conclusion that the Civil

Court did have the jurisdiction over the matter. But it is noticed that the Wakf Act of 1995 had been amended in the year 2013 and after the amendment the Supreme Court had rendered another judgment in *Rashid Wali Beg Vs. Farid Pindari and Others* reported in (2022) 4 SCC 414, wherein in paragraph 54.18, it has been held that in respect of any dispute, question or other matters relating to a waqf property it is only the Waqf Tribunal which will have jurisdiction over the matter and in paragraph 54.19, it has been provided that eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property after the amendment by the Act of 27 of 2013 would be maintainable before the Waqf Tribunal. From such point of view, the law in this respect has been settled that even in respect of a tenancy dispute pertaining to a waqf property, it is the Waqf Tribunal constituted under Section 83 of the Wakf Act of 1995 that will have the jurisdiction over the matter. From such point of view, distinct jurisdictional error is noticed in the judgment and decree dated 23.08.2023 in Title Suit No.200/2016 of the learned Civil Judge Junior Division No.1 Karimganj. But, however, as it is a judgment and decree passed by a Civil Court, although jurisdictionally it ought to have been entertained by the Waqf Tribunal, we have to accept that as the suit has been decided by the Civil Court, it would be inappropriate to exercise the revisional jurisdiction under Section 115 read with Section 151 of the CPC further read with the proviso to Section 83(9) of the Wakf Act of 1995, *inasmuch as*, the bar of appeal under Section 83(9) would not be applicable in the facts and circumstances of the present case. Accordingly, it would be more appropriate for the petitioner to file a regular appeal against the judgment and decree dated 23.08.2023 of the Civil Court and in the appeal the jurisdictional issue as well as the incorrect determination by the Civil Court assuming its jurisdiction by referring to the

Supreme Court judgment in *Ramesh Gobindram* (supra) as well as any other error in determination as may be advised be raised before the appellate forum. The appellate forum to decide the matter as per law, firstly, on the question as to whether the Civil Court did have the jurisdiction to entertain a tenancy suit in respect of a wakf property. Secondly, whether the Civil Court was right in assuming jurisdiction by relying on the decision of the Supreme Court in *Ramesh Gobindram* (supra) ignoring the subsequent amendment by the Act of 27 of 2013 as well as the later judgment of the Supreme Court rendered in *Rashid Wali Beg* (supra).

7. The appellate court upon determining the question whether the Civil Court has jurisdiction and if arrives at a conclusion that the Civil Court did have the jurisdiction, to go into the other questions on merit, as may be raised on appeal. But on the other hand, if the appellate court arrives at the conclusion that the Civil Court does not have the jurisdiction to try the tenancy suit involving a waqf property, the appellate court may pass any order requiring the suit to be instituted before the Waqf Tribunal constituted under Section 83(1) of the Waqf Act of 1995. The parties may accordingly proceed in the matter.

8. Accordingly, it is further provided that the question of jurisdiction of the Civil Court be decided as a preliminary issue by the appellate court in the event any such appeal is filed.

9. We appreciate the services of Mr. D Mozumdar, learned senior counsel for enabling the Court to arrive at a correct and appropriate decision as regards the

jurisdiction of the Civil Court in respect of a tenancy matter involving the wakf property.

10. Accordingly the revision petition stand disposed of.

JUDGE

Comparing Assistant