

Smt. Salimabi Shamsher Shaikh
and Others ...Applicants
versus
The Khatik Masjid Wakf/Trust,
Satara ...Respondents

2] The impugned order came to be made in answer to the preliminary issue framed under Section 9A of Civil Procedure Code as to whether the civil Court has jurisdiction to try the suit in

view of the provisions of Section 85 of the Wakf Act, 1995 (*"the said Act"*).

3] The learned counsel for the Applicants submits that in the context of suit property, the Wakf Tribunal, in Appeal No. 2 of 2008 has made an order dated 26th April, 2010. According to the learned counsel for the Petitioner, such order will have an impact on the decision as to whether the civil Court would have jurisdiction to proceed in the matter.

4] In the aforesaid circumstances, interest of justice would be met if the learned Civil Judge once again goes into the issue as to whether the civil Court has jurisdiction to try the suit in the light of provisions contained in Section 85 of the said Act.

5] Accordingly, the impugned order dated 31st December, 2008 is set aside.

6] The matter is remanded to the learned Civil Judge, Senior Division, Satara for fresh decision. Such fresh decision shall be arrived after consideration of contentions that may be raised by all the parties including *inter alia* the contention in the context of order dated 26th April, 2010 made by the Wakf Tribunal in Appeal No. 2 of 2008.

7] It is made clear that this Court has not examined the merits of the matter and the remand is for the reason that material in the form of Wakf Tribunal's order dated 26th April, 2010 was not available before the learned Civil Judge when the impugned order was made.

8] All contentions of all parties in this regard are kept open for the decision by the learned Civil Judge.

9] Considering that the suit is of the year 1999, the learned Civil Judge is directed to decide

the preliminary issue under Section 9A of Civil Procedure Code as expeditiously as possible and in any case, within a period of four months from today.

10] Rule is made absolute to the aforesaid extent.

11] There shall be no order as to cost.

12] The Petitioner to appear before the learned Civil Judge on 28th April, 2015 at 11.00 am and produce the authenticated copy of this order.

(M. S. SONAK, J.)