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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 16.12.2015**

% **RSA 272/2015 and C.M. No. 13087/2015**

AMIR ABDUL RASHEED Appellant

Through: Md. Mobin Akhtar & Mr. H.A.
Siddiqui, Advocates.

versus

ABDUL HALEEM Respondent

Through: Mr. M. Tariq Farooqi, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment dated 30.03.2015 passed by the First Appellate Court, namely the ASCJ, Central District, Tis Hazari Courts, Delhi in RCA No.8/2013 preferred by the respondent/ plaintiff. By the impugned judgment, the First Appellate Court has set aside the order dated 27.02.2013 passed by the Trial Court, namely the Civil Judge, Central-03, Tis Hazari Courts, Delhi, whereby the plaint of the respondent/ plaintiff was rejected by invoking Order VII Rule 11 CPC.

2. The respondent/ plaintiff filed the suit in question to seek permanent & mandatory injunction and rendition of accounts against the appellant/ defendant on the premise that his father late Maulana Abdul Salam Bastawi

had created a Wakf, which is presently been managed by the defendant – his nephew. The plaintiff discloses that he is in occupation of a room/ hall having his belongings, almirahs, books, etc. in the suit property. As per the said plaint filed by him, he was having a driving license, LPG connection, license for manufacturing small electronic goods issued by the MCD and electricity connection, etc., which showed his occupation of the suit property. He stated that he used to visit the property for carrying on research work in the library of late Maulana Abdul Salam Bastawi, which is a private Wakf. His grievance was that the defendant had, however, prohibited his entry into the premises, particularly into the portion where his belongings and books are kept in the library of late Maulana Abdul Salam Bastawi, as shown in the plan. Upon his being beaten up, he had filed a police complaint on 13.05.2012. He claimed that late Maulana Abdul Salam Bastawi had given the books/ library for the private Wakf. He claimed that being a descendant of late Maulana Abdul Salam Bastawi, he has the right to visit the library of late Maulana Abdul Salam Bastawi and enjoy the benefits of the Wakf properties. He also raised a grievance that the defendant is raising unauthorised construction in the suit property. He also raised a grievance that his letter box was also removed from the property, and his signboard of “Islamic Research & Guidance Centre” had also been removed by the defendants. Consequently, he filed the suit claiming the following reliefs:

“a. Pass a decree for permanent injunction in favour of the plaintiff and against the defendant, thereby restraining him, his agents, attorneys, associates, employees, contractors, etc., from making the hindrance and threat for the entry of the plaintiff in the entire suit premises and particularly the occupation of the

plaintiff as shown red and yellow color in the site plan. The defendant and his contractor/ agent may kindly also be restrained not to raise in the suit premises bearing no.:4085, Gali Nal Wali, Machli Walan, Urdu Bazar, Delhi, without permission and sanctioned plan from the competent authority.

b. Pass a decree of mandatory injunction in favour of plaintiff and against the defendant, thereby directing to the defendant for rendition of account in respect of the Waqf Institution known as Masjid and Madarsa Riyazul Uloom and Library/books of Maulana Abdul Salam Bastavi and Kutub Khana Masidia, which is known now as Islamic Academy i.e. the book shop and a decree of mandatory injunction in favour of the plaintiff and against the defendant and other office bearers of Masjid and Madarsa Riyazul Uloom may also be passed directing thereby to preserve and maintain the books/library of Maulana Abdul Salam Bastavi as shown in the site plan in yellow colour and as per the list of books mentioned in the published books known as “Islami Wasiyat”. The defendant may kindly be further directed by way of mandatory injunction in favour of the plaintiff thereby directing to the defendant and the official of Masjid and Madarsa Royazul Uloom to reinstall the letter box and sign board of the plaintiff which was written as “Islamic Research and Guidance Centre” under the supervision of the plaintiff because the letter box and sign board were illegally removed by the defendant and his associates.

c. Any other or further relief(s), which this Hon’ble Court deems fit and proper in the facts, circumstances and development of the case, may also be granted in favour of plaintiff and against the defendant, in the interest of justice.”

3. The appellant/ defendant filed an application under Order VII Rule 11 CPC, which, as aforesaid, was allowed by the Trial Court. The Trial Court, while allowing the application, observed that the plaintiff was seeking rendition of accounts of Wakf and injunction against construction of the

Wakf property. Section 85 of the Wakf Act was relied upon to say that the said provision bars jurisdiction of the Civil Courts in respect of any dispute, question and matter relating to Wakf and Wakf property. Reliance was placed on the Madras High Court judgment in *Salam Khan & Others Vs. Tamilnadu Wakf Board, Chennai*, AIR 2004 Madras 214. He also relied upon the judgment of the Supreme Court in *Dhulabai & Others Vs. State of M.P.*, AIR 1969 SC 78, wherein it was held that if a dispute falls within the ambit of Section 85 of the Wakf Act, the Civil Court had no jurisdiction. Consequently, the plaint was rejected.

4. The First Appellate Court, as aforesaid, has reversed the said decision. While doing so, the First Appellate Court has relied upon *Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf*, 2010 IX AD (SC) 629. The Supreme Court held in this decision that the Civil Courts' jurisdiction is excluded only in the cases where the matter and dispute is required, under the Act, to be determined by the Tribunal. In other cases, the jurisdiction of the Civil Courts is not barred. Applying the ratio of the said judgment in *Ramesh Gobindram* (supra), the order of the Trial Court was set aside by the First Appellate Court.

5. Learned counsel for the appellant submits that the suit filed by the respondent is a frivolous suit. His claim of possession is vague. He submits that after passing of the order of the First Appellate Court, the respondent has filed an application claiming that he has been dispossessed from the suit property with a view to cover up the fact that he was never in possession of the same. He further submits that the correct remedy available to the respondent is to invoke Section 70 of the Wakf Act, 1995 by making an

application to the Board to institute an inquiry relating to the administration of the Wakf. He submits that the Board has power to hold a comprehensive inquiry, as are vested in the Civil Court.

6. Learned counsel for the appellant has also argued that by straightaway filing a suit, the right of the appellant/ defendant to face an inquiry and answer the charge of mismanagement before the Board has been deprived. He submits that, thus, the jurisdiction of the Civil Court is impliedly barred, unless the remedy available under Section 70 is invoked and exhausted by the plaintiff.

7. Having heard learned counsel for the appellant, I am of the view that there is no merit in the present second appeal and no substantial question of law arises in the present appeal for consideration by this Court. A plain reading of the plaint shows that the plaintiff claims to be in possession of a portion of the suit property and also claims to be using the assets and properties of a private Wakf being a descendant of the Wakif/ late Maulana Abdul Salam Bastawi. Thus, on a plain reading of the plaint, it cannot be said that the same does not disclose a cause of action. For the purpose of consideration of the defendant's application under Order VII Rule 11 CPC, the defence of the defendant is not to be looked at. Thus, the plea that the plaintiff's claim of being in possession is bogus, cannot be the basis to reject the plaint. In fact, it is not on this basis that even the Trial Court allowed the appellant's said application.

8. So far as the maintainability of the civil suit is concerned, the First Appellate Court, in my view, has correctly placed reliance on **Ramesh**

Gobindram (supra). Pertinently, the appellant has not been able to point out that the Tribunal would have jurisdiction to deal with the disputes raised by the respondent/ plaintiff. Only in such cases, which fall within the jurisdiction of the Tribunal to determine – as is provided in Section 6 of the Wakf Act, the jurisdiction of the Civil Court is barred.

9. The submission that the respondent/ plaintiff should have first invoked Section 70 of the Wakf Act, and without exhausting the said remedy the suit is not maintainable, has no merit. There is no provision in the Act which requires invocation of Section 70 as a pre-condition to filing of a civil suit qua a dispute arising in relation to Wakf. There is no power vested in the Board to grant the reliefs as is sought by the respondent/ plaintiff. The powers of the Board under Section 64 are only in respect of action that may be taken against the Mutawalli. Thus, the aforesaid submission is also rejected.

10. For the reasons stated above, the present appeal is dismissed being devoid of merits.

VIPIN SANGHI, J

DECEMBER 16, 2015

B.S. Rohella