

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**SECOND APPEAL Nos.1372 AND 1492 OF 2017 AND  
125 OF 2018**

**COMMON JUDGMENT:**

All these Second Appeals are filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the common judgment and decrees dated 27.10.2017 passed in A.S. Nos.334 and 335 of 2013 and 350 of 2011 along with A.S. No.320 of 2011 on the file of the X Additional Chief Judge, City Civil Court, Hyderabad (for short, 'first appellate court'), wherein the first appellate court confirmed the common judgment and decrees dated 20.06.2011 passed in O.S.Nos.1446 of 2000 and 1025 of 2001 on the file of the I Senior Civil Judge, City Civil Court, Hyderabad (for short, 'the trial court').

2. Heard Sri P.Venugopal, learned senior advocate appearing for the appellant in S.A. Nos.1372 and 1492 of 2017 and 2<sup>nd</sup> respondent in S.A. No.125 of 2018, Sri Mirza Safiulla Baig, learned counsel for the appellant in S.A. No.125 of 2018 and the 2<sup>nd</sup> respondent in S.A. Nos.1372 and 1492 of 2017, and Sri Kishore Rai, learned counsel for the 1<sup>st</sup> respondent in all the Second Appeals, apart from perusing the material on record.

3. Learned counsel for the appellant in S.A. Nos.1372 and 1492 of 2017 and the 2<sup>nd</sup> respondent in S.A. No.125 of 2018 would contend that the suit schedule property is the Wakf property; as per the provisions of the Wakf Act, 1954, a Gazette notification bearing No.30-A dated 16.08.1984 has been issued; the Hon'ble

Supreme Court categorically held that when once the property is wakf property, it is always wakf property; the 1<sup>st</sup> respondent in all the Second Appeals invoked the common law remedy and filed O.S. No.1446 of 2000 before the trial Court for the relief of eviction, as if he is the owner of the suit schedule property and it is not the wakf property; the 1<sup>st</sup> respondent herein averred in the suit that the appellant in S.A. Nos.1372 and 1492 of 2017 is the tenant in respect of the suit schedule property on a monthly rent of Rs.1,200/-; if that be so, the suit filed by the 1<sup>st</sup> respondent is not maintainable for the reason that the Rent Controller has got jurisdiction under the provisions of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960; both the Courts below have not considered the evidence on record and erroneously gave findings which are contrary to law; that the civil court has no jurisdiction to try the suit, and ultimately, prayed to allow the Second Appeals by setting aside the common judgments passed by both the Courts below. He further contended that the following substantial questions of law arise for consideration in S.A. Nos.1372 and 1492 of 2017:

S.A. No.1372 of 2017:

1. Whether both the courts below were justified in entertaining and trying the suit in the manner as tried in the teeth of Section 85 of the Wakf Act, 1995?
2. Whether the courts below have jurisdiction to entertain and try the suit when there is a total bar of the jurisdiction under Section 85 of the Wakf Act?

3. Whether on the pleadings of the plaint itself having regard to the quantum of rent, the civil court was competent to entertain the suit, especially when there is a specific legislation on the subject namely, A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960?
4. Whether the judgments of the courts below are perverse?
5. Whether the courts below are justified in brushing aside the notification whereby the property which is the subject matter of the instant lis and the other properties abutting thereto were declared to be wakf properties?
6. Whether without any appropriate trial, could it be said that the property is not a wakf property in the teeth of the notification that is published in the official gazette holding that the property is a wakf property?
7. Whether the courts below were justified in ignoring the basic principles of deciding whether a property is a wakf property or not?

S.A. No.1492 of 2017:

1. Whether both the courts below were justified in dismissing the suit for injunction especially when the property does not belong to the 1<sup>st</sup> respondent?
2. Whether the judgments of the courts below are perverse?
3. Whether the courts below are justified in brushing aside the notification whereby the property which is the subject matter of the instant lis and the other properties abutting thereto were declared to be wakf properties?

4. Whether without any appropriate trial, could it be said that the property is not a wakf property in the teeth of the notification that is published in the official gazette holding that the property is a wakf property

5. Whether the courts below were justified in ignoring the basic principles of deciding whether a property is a wakf property or not?

4. Learned counsel for the appellant/Wakf Board in S.A. No.125 of 2018 would contend that the first appellate court failed to consider that the Wakf Act, 1995, was amended by Act 27 of 2013 w.e.f. 01.11.2013 and by virtue of the said amendment Section 83(1) was amended and the Wakf Tribunal was empowered to adjudicate the *lis* relating to eviction of a tenant or determination of rights and obligations of lessor and lessee of wakf property; the trial court as well as the first appellate court ought to have dismissed O.S. No.1446 of 2000 and also ought to have returned the plaint as the suit schedule property, being a wakf property, and the civil court has no jurisdiction to entertain the same; and ultimately, prayed to allow S.A. No.126 of 2018 by setting aside the decree and judgment of both the Courts below. He further contended that the following substantial questions of law arise for consideration in S.A. No.125 of 2018:

a. Whether the First Appellate Court is justified in confirming the Judgment of Trial Court?

b. Whether the Civil Court is vested with the jurisdiction to try suit for eviction of properties which are disputed as Wakf?

c. Whether the Wakf Tribunal under Sections 83 and 85 of Wakf Act, 1995 is empowered to adjudicate the lis pertaining to eviction of Wakf properties, whose nature is disputed?

d. Whether the reliance placed by the First Appellate Court and the Trial Court on the Ramesh Gobindram's case decided by the Hon'ble Supreme Court to determine the jurisdiction of Wakf Tribunal is valid in the present lis?

5. Learned counsel for the 1<sup>st</sup> respondent in all the Second Appeals would contend that the trial Court rightly decreed O.S. No.1446 of 2000 filed by the 1<sup>st</sup> respondent for ejectment and recovery of past rents and future mesne profits and dismissed O.S. No.1025 of 2001 filed by the appellant for perpetual injunction and the first appellate court also rightly confirmed the said judgment passed by the trial Court; there are no circumstances to interfere with the said concurrent finding of both the Courts below; and ultimately, prayed to dismiss all the Second Appeals.

6. To adjudicate the *lis* and to answer the proposed substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The 1<sup>st</sup> respondent herein filed O.S. No.1446 of 2000 for eviction and recovery of past rent and future mesne profits. The 1<sup>st</sup>

respondent averred in the plaint that he is the owner of the suit schedule property, i.e., house bearing No.5-9-43, situated at Basheer Bagh, Hyderabad. The appellant in S.A. Nos.1372 and 1492 of 2017 is in occupation of premises bearing No.5-9-47/11 situated at Basheer Bagh, Hyderabad, having obtained possession on a monthly rent of Rs.1,200/- and subsequently it was increased. The appellant in S.A. Nos. 1372 of 2017 and 1492 of 2017 deliberately and wilfully stopped payment of rents in respect of the suit schedule premises and municipal tax also. The 1<sup>st</sup> respondent got issued a legal notice on 08.11.2000 under Section 106 of the Transfer of Property Act, 1882, terminating the tenancy of the appellant by 30.11.2000 and the same was received by the appellant on 08.11.2000 while filing written statement along with list of documents in O.S. No.2617 of 1999 (Later re-numbered as O.S. No.1025 of 2001). The appellant has not vacated the suit schedule premises till date. Therefore, the 1<sup>st</sup> respondent was constrained to file the suit for eviction and recovery of past rent and future mesne profits.

(b) The appellant in S.A. Nos.1372 and 1492 of 2017 filed written statement denying all the averments made in the plaint and contended that the property is the wakf property registered in the Wakf Board and a gazette notification was also issued at Serial No.1711 dated 30.08.1984. The suit schedule property is the part and parcel of the Masjid Nana Bagh. The Government of Andhra Pradesh had also constituted a house committee with regard to the

wakf properties. The appellant had filed O.S. No.2617 of 1999 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad, and the same was transferred to the trial Court and renumbered as O.S. No.1025 of 2001. The trial Court has no jurisdiction to entertain the suit as the suit schedule property is the wakf property and the A.P.Wakf Tribunal constituted by the Government of Andhra Pradesh has got jurisdiction to try the suit.

(c) The 2<sup>nd</sup> respondent in S.A. Nos.1372 and 1492 of 2017 and the appellant in S.A. No.125 of 2018, who was impleaded in O.S. No.1446 of 2000 as defendant, and contended that the suit schedule property is a part and parcel of the wakf property belonging to wakf instituted by Masjid Nana Bagh, Basheer Bagh with graveyard. The 1<sup>st</sup> respondent has no right whatsoever in respect of the suit schedule property and there is an element of malafide in filing the suit in connivance with the appellant.

(d) Basing on the above pleadings, the trial Court framed the following issues in O.S. No.1446 of 2000:

- 1) Whether the plaintiff is entitled for recovery of possession as prayed for?
- 2) Whether the plaintiff is entitled for recovery of arrears of rents as prayed for?
- 3) Whether the plaintiff is entitled for mesne profits as prayed for?
- 4) Whether the suit schedule property is wakf property and this court has no jurisdiction to entertain this suit?

5) Whether the suit within barred by limitation?

6) To what relief?

(e) The appellant in S.A. Nos.1372 and 1492 of 2017 filed O.S. No.1025 of 2001 for perpetual injunction. Originally, this suit was filed before the VIII Junior Civil Judge, City Civil Court, Hyderabad, and numbered as O.S. No.2617 of 1999, and some time thereafter, the same was transferred to the trial Court and re-numbered as O.S. No.1025 of 2001. The appellant filed the suit with the contentions raised in the written statement filed by her in O.S. No.1446 of 2000. The 1<sup>st</sup> respondent filed written statement in O.S. No.1025 of 2001 with the averments made in the plaint in O.S. No.1446 of 2000.

(f) Basing on the pleadings, the trial Court framed the following issues in O.S. No.1025 of 2001:

1) Whether the plaintiff is entitled for perpetual injunction as prayed for?

2) To what relief?

(g) The trial Court clubbed both the suits, conducted common trial and recorded evidence. On behalf of the 1<sup>st</sup> respondent herein, P.Ws.1 and 2 were examined and Exs.A.1 to A.19 were marked and on behalf of the appellant herein, D.Ws.1 and 2 were examined and Exs.B.1 to B.24 were marked. The trial Court after considering the entire evidence on record, decreed the

suit filed by the 1<sup>st</sup> respondent directing the appellant herein to vacate the suit schedule premises within three months from the date of decree and further directed the 1<sup>st</sup> respondent to file separate petition for mesne profits and dismissed the suit filed by the appellant for perpetual injunction vide common judgment dated 20.06.2011. Aggrieved by the said common judgment, the appellant in S.A. Nos.1372 and 1492 of 2017 preferred A.S. Nos.334 and 335 of 2013 and the 2<sup>nd</sup> respondent herein-Wakf Board preferred A.S. No.350 of 2011 and the first appellate court after appreciating the entire evidence on record, dismissed all the appeals vide common judgment dated 27.10.2017. Questioning the said dismissal of the first appeals, these Second Appeals are preferred.

7. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact nor on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the

particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

8. The factual matrix is not in dispute. The first appellate court had determined the issue and point with regard to jurisdiction of the civil court in entertaining the suit filed by respondent no.1 for eviction of the appellant. The first appellate court as well as the trial court examined in detail the provisions of Sections 83 and 85 of the Wakf Act, 1995 and held that civil court has jurisdiction to entertain the suit filed by respondent No.1 for eviction. In **Bansraj Laltaprasad Mishra v. Stanley Parker Jones<sup>1</sup>**, the principle of estoppel between the landlord and tenant has been reiterated by the Hon'ble Apex Court that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

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<sup>1</sup> AIR 2006 SC 3569

In **S.K.Sarma v. Mahesh Kumar Verma**<sup>2</sup> case also, the Apex Court held that no tenant of immovable property shall, during the continuance of tenancy, be permitted to deny title of the landlord. In **Joginder Singh and another v. Smt. Jogindero & others**<sup>3</sup> case, the Hon'ble Apex court held that a tenant, who has been let out and put into possession, cannot deny his landlord's title, however defective it may be, so long as he is not openly restored possession by surrender to his landlord. The courts below gave crystal clear finding that the appellant in S.A. No.1372 of 2017 and 1492 of 2017 was estopped from disputing title of respondent No.1.

9. Further, while dealing with the jurisdiction of the civil court to entertain the suit filed by respondent no.1, relying on the decisions in **Ramesh Gobindram (dead) through LRs v. Sugra Humayun Mirza Wakf**<sup>4</sup>, and **Faseela M. v. Munnerul Islam Madarsa Committee and another**<sup>5</sup>, the Courts below held that though there is a contention that the suit premises is notified wakf property, in view of the nature of the dispute between the parties, civil court alone is competent and has jurisdiction to try the suit filed by respondent no.1 for eviction.

10. Learned counsel for the respondent No.1 relied on the following decisions.

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<sup>2</sup> AIR 2002 SC 3294

<sup>3</sup> AIR 1996 SC 1654

<sup>4</sup> (2010) 8 Supreme Court Cases 726

<sup>5</sup> 2014 (4) ALD 81 (SC)

(a) In **Mohd. Taheruddin v. Mir Saber Ali Alvi & another**<sup>6</sup>,  
wherein it is held thus: (para 31)

“The undisputed legal position referred supra is that if the property belongs to wakf and the same is let out to any tenant and a dispute arises regarding the relationship of landlord and tenant, the civil court is incompetent to entertain such dispute and pass an order for eviction of the tenant in occupation of wakf property and the Wakf Tribunal constituted under Section 83 of the Wakf Act alone is competent to decide such disputes and order eviction of tenant in occupation of the wakf property by virtue of amended Section 85 of the Wakf Act. The Tribunal is competent to exercise such jurisdiction when the relationship of landlord and tenant is between the wakf property or Wakf Board and the person in possession of the property, but when the dispute is between two individuals regarding tenancy, the Wakf Tribunal will have no jurisdiction and the Rent Controller alone is competent to decide such dispute and order eviction subject to establishing any of the grounds under Sections 10, 11, 12 and 13 of the Rent Control Act.”

(b) In *Mohd. Saber v. Rafiunnisa Begum (died) & others*<sup>7</sup>,  
wherein it is held thus: (para 18)

“Turning to the facts of the instant case, admittedly, the defendant was inducted as a tenant of the plaint schedule property by the plaintiff. Except a claim by the defendant that the Wakf Board is the owner, no evidence was adduced to show that the plaintiff had lost her title to the disputed properties. In view of the ratio in the decision of the Supreme Court, it is clear that the landlady and tenant relationship exists and therefore, there is no substance in

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<sup>6</sup> 2018 (2) ALD 12

<sup>7</sup> 2016 (4) ALD 308

the substantial question of law raised and the said question is devoid of merit.”

11. Learned counsel for the appellant relied on the decision in **Board of Wakf, West Bengal v. Anis Fatma Begum & another**<sup>8</sup>, wherein it is held thus: (paras 10 & 14)

“10. In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.”

In the instant case, the respondent no.1 had let out the property to the appellant in S.A. Nos.1372 and 1492 of 2017. Having accepted title of respondent No.1, the appellant entered into the premises and continued to be in possession thereof by paying rents to respondent No.1 for a considerable period. When a suit for eviction was filed, the appellant started agitating that the suit schedule property is a part of notified wakf property. In such an event, the factual aspects of the above decision and the factual aspects of the instant case are distinct. Further, number of

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<sup>8</sup> 2011 (1) ALD 61 (SC)

decisions of different courts were referred above with regard to right of the landlord to evict tenants and the principles governing the law of *estoppel*. Further more, no title to the suit schedule property was adjudicated either by the trial Court as well as the first appellate Court. Hence, the above decision has no application to the facts of the present case. There is no jurisdictional error in the case on hand.

12. As far as the appreciation of the evidence on record is concerned, the trial Court as well as the first appellate Court examined in detail the oral evidence and the documentary evidence adduced in the original suits and ultimately granted the relief of eviction. Non-examination of respondent No.1 and the credibility of evidence of P.W.1, who is her GPA, was also elaborately dealt with.

13. It is also pertinent to note that the appellant in S.A. No.125 of 2018 was simply added as a defendant in the suits. Except contending that the suit schedule property is a notified wakf property and civil court has no jurisdiction to entertain the suit in view of the wakf notification, the said appellant did not take any steps to get adjudication with regard to its contentions before the competent authority. Till date, no such steps are being taken by the said appellant. So, the contention raised by the said appellant that the civil court has no jurisdiction, is unsustainable. Moreover, the trial Court as well as the first appellate Court left open the issue with regard to title between the parties. Therefore, on these grounds, the impugned judgment and decree cannot be set aside.

14. Basing on the principles and settled legal position governing between landlord and tenant, the trial court was pleased to decree the suit filed by the respondent No.1 against the appellant in S.A. No.1372 of 2017 and 1492 of 2017 and was pleased to dismiss the suit against the wakf board without costs, and the appellant in S.A. No.1372 of 2017 and 1492 of 2017 was directed to vacate suit premises within 3 months and also directed to pay arrears of rent. The same was affirmed by the first appellate court vide the impugned judgment. Both the courts below were careful in not deciding the title of the property between the respondent No.1 and the wakf board. The said question is left open. The Wakf Board is not supposed to aid the appellants in S.A. No.1372 of 2017 and 1492 of 2017 either in protracting the litigation or their illegally continuing in possession of the suit schedule property. The stand taken by the Wakf Board is untenable. When the original suit was not to establish title to the property between the appellants herein and respondent No.1, in view of the language envisaged in Sections 83 and 84 of the Wakfs Act and also the decisions rendered by the Apex Court and our High Court (referred supra), the suit for eviction is maintainable. Both the Courts below have not committed any error in holding the same. Both the Courts below analysed the entire evidence on record and gave concurrent findings. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. Under these circumstances, no question of law, much less substantial question

of law, as contended by the appellants to deal with under Section 100 of the Code of Civil Procedure, 1908 comes up for determination. The Second Appeals are devoid of merit and is liable to be dismissed.

15. In the result, the Second Appeals are dismissed.

Miscellaneous Petitions pending, if any, in the Second Appeals shall stand dismissed. There shall be no order as to costs of the Second Appeals.

Date: 24.08.2018  
Siva/DRK

**Dr. SHAMEEM AKTHER, J**



**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**COMMON JUDGMENT**  
**IN**  
**SECOND APPEAL Nos.1372 AND 1492 OF 2017 AND**  
**125 OF 2018**



24.08.2018