

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

134

**RSA-1614-2021 (O&M)
Date of Order: 21.04.2022**

SALIM (SINCE DECEASED) THR HIS LRS AND ORS. **..Appellants**

Versus

HARYANA WAQF BOARD AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajeev Sharma, Advocate
 for the appellants.

 Mr. Prateek Mahajan, Advocate
 for respondent No.1.

ANIL KSHETARPAL, J(Oral)

While assailing the concurrent findings of the fact arrived at by the Courts below, the defendants have filed this Regular Second Appeal.

Some peculiar facts are required to be noticed.

The Haryana Wakf Board instituted a suit on 19.08.2011, for possession by way of ejectment from the land measuring 270 square yards comprised in Khasra Nos.198 and 199, and for grant of decree of permanent injunction and for mesne profits for use and occupation of the property. It was alleged that the defendants are in unlawful possession of the property. The defendants contested the suit on various grounds. They claim that they are in possession for quite a some time and the property in dispute has been attached by the Sub-Divisional Magistrate in exercise of powers under Section 145 and 146 Cr.P.C. The defendants also stated that the Court has no jurisdiction. On appreciation of the pleadings, the trial Court culled out the following issues:-

- “i. Whether the plaintiff is entitled to possession of the suit property?*
- ii. Whether the plaintiff is entitled to permanent*

injunction restraining the defendants from alienating the suit property and changing its nature?

iii. Whether the suit filed by the plaintiff is not maintainable in the present form?

iv. Whether plaintiff has no locus standi and cause of action to file the present suit?

v. Whether the suit filed by the plaintiff is barred under Order 2 Rule 2 CPC?

vi. Relief.”

Both the Courts below decreed the suit.

This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook and the record, which was requisitioned.

The learned counsel representing the appellants contends that the Civil Court had no jurisdiction to pass the decree in view of the provision relating to the jurisdiction of Civil Court under Section 85 of the Wakf Act, 1995.

It is evident that except objecting to the jurisdiction of the Civil Court while filing the written statement, the defendants did not either pray for framing of an issue on that account or have pressed the aforesaid objection before the Courts below. The litigation is pending for a period of more than 10 years. Even before the First Appellate Court, the defendants never objected to the decree passed by the trial Court on the ground that the Civil Court has no jurisdiction. When the suit was filed, the scope of jurisdiction of the Tribunal was being debated in the Courts.

Under the Wakf Act, 1995, the provision has been made to constitute a Tribunal. Such Tribunal is presided over by a serving Judicial Officers in State of Haryana. The defendants have failed to show any right, title or interest in the property, therefore, they are encroachers. In such circumstances, the question is whether the High Court in exercise of its

jurisdiction to interfere in the matter particularly when the obvious effort on the part of the defendants is to continue their illegal encroachment. Previously, the scope of jurisdiction of the Tribunal constituted under the Wakf Act, 1995, was debatable. At that time the suit was filed. The Tribunal is also manned by Judicial Officers who discharge dual functions and the defendants have not suffered any prejudice, as they have already been given a reasonable opportunity to defend their case. At this stage, decree passed by both the Courts cannot be set aside on mere technicalities particularly when it defeats the justice.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

April 21st, 2022

Ay

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*