

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 09 OF 2020

- 01] Shaikh Masood s/o Shaikh Kareem,
Age : 69 years, Occu. Agriculture,
R/o. Azad Chowk, Jafrabad, Tq. Jafrabad,
Dist. Jalna.
- 02] Shaikh Yusuf s/o Shaikh Kareem,
Age : 67 years, Occu. Agriculture,
R/o. As above.
- 03] Shaikh Ayub s/o Shaikh Kareem,
Age : 65 years, Occu. Agriculture,
R/o. As above.
- 04] Shaikh Kayyum s/o Shaikh Kareem
Age : 64 years, Occu. Agriculture,
R/o. As above.
- 05] Shaikh Raees s/o Shaikh Kareem,
Age : 63 years, Occu. Agriculture,
R/o. As above.
- 06] Ahmedbi w/o Shaikh Kareem,
Age : 85 years, occu. Household,
R/o. As above.

...Appellants

Versus

- 01] Shaikh Yusuf s/o Shaikh Wajir,
Age : 51 years, Occu. Labour,
R/o. Andruni Fort, Jafrabad,
Tq. Jafrabad, Dist. Jalna.
- 02] Shaikh Daud s/o Shaikh Musa,
Age : 52 years, Occu. Labour,
R/o. As above.
- 03] Haji Javedoddin Hakimoddin,
Age : 41 years, Occu. Labour,
R/o. As above.
- 04] Sherkhan s/o Iqbalkhan,
Age : 53 years, Occu. Agriculture,
R/o. As above.

05] Mohd. Yusuf s/o Mohd. Yunus,
Age : 45 years, Occu. Agriculture,
R/o. As above.

... Respondents

...
Mr. N. S. Muthiyan – Advocate for the appellants
Mr. Shriram Deshmukh h/f Mr. Devang R. Deshmukh – Advocate for
respondent nos. 1, 2 and 5

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CORAM : S. G. MEHARE, J.
DATE : 11th OCTOBER, 2023

ORAL JUDGMENT :

1. Heard learned counsel for the appellants and the respondents nos. 1, 2 and 5.

2. The appellants herein are referred to as the 'defendants', and the respondents as 'plaintiffs'.

3. The plaintiffs had initially filed a suit for declaration and injunction. However, a prayer for declaration was withdrawn, and the suit for perpetual injunction was continued. The plaintiffs had sought a permanent injunction against the defendants that they shall not disturb their possession of the disputed land. The defendants appeared and raised an objection that since the suit property is Wakf property, the jurisdiction of the Civil Court is barred under Section 85 of the Wakf Act, 1995.

4. The learned Trial Court held that the Civil Court has no jurisdiction since the disputed property is admittedly a Wakf property. The plaintiffs preferred the appeal before the learned District Judge under Order 41 Rule 1 of the Code of Civil Procedure. The learned Additional District Judge – 1, Jalna on the basis of the judgment delivered by the Hon'ble Supreme Court in the case of **Ramesh Gobindram (dead) through Lrs Vs. Sugra Humayun Mirza Wakf** reported in **2011 (1) Bom.C.R. 311** held that, as per Section 85 of the Wakf Act, the jurisdiction of the Civil Court is barred for the suits that are filed under Sections 6 and 7 of the Wakf Act. It means if there is a dispute regarding the nature of the property, whether it is Wakf property or whether Wakf is Shia or Sunni wakf, then in that case, the Wakf Tribunal has exclusive jurisdiction.

5. Learned counsel for the appellants/defendants vehemently argued that the Hon'ble Supreme Court, in the case of **Rashid Wali Beg Vs. Farid Pindari and Ors** reported in **MANU/SC/1001/2021**, has settled the question of the jurisdiction of the Court granting injunction where the suit property is Wakf property. Referring to the relevant para, he submits that the view taken by the Supreme Court in the case of **Ramesh Gobindram** (supra) has been turned out, and it has been held that where the

disputed property is admittedly Wakf property, the Wakf Tribunal shall deal with a suit for injunction and not the Civil Court.

6. Learned counsel for the respondents/plaintiffs would submit that the suit was for the injunction protecting the possession. The issue of possession was a civil right; therefore, the Civil Court has jurisdiction. He further submitted that the jurisdiction of the Civil Court is ousted if a dispute is filed under Sections 6 and 7 of the Wakf Act. He further argued that though the suit property is Wakf property, the defendants were disturbing the possession of the plaintiffs unauthorizedly. Hence, the Judgment and order of the first appellate Court is legal and proper, and the suit is maintainable.

7. What falls for consideration of this Court is whether the suit for injunction is tenable before the Civil Court where the suit property is admittedly Wakf property.

8. The learned District Judge, by its judgment and order, held that as per Section 85 of the Wakf Act, the jurisdiction of the Civil Court is barred for the suits that have been filed under Sections 6 and 7 of the Wakf Act. The opinion was based on the ratio laid down by the Hon'ble Apex Court in the case of Ramesh

Gobindram (supra). However, that issue again fell for consideration before the Supreme Court in the case of Rashid Wali Beg (supra). In the said case, the Hon'ble Apex Court considered all the judgments on the said issues, including the judgment in the case of Ramesh Gobindram (supra). Relevant paragraph no. 41 is reproduced hereunder for the ready reference;

41. Since Ramesh Gobindram, focused mainly upon the two questions indicated in Sections 6(1) and 7(1) and reached a conclusion that the Tribunal would have no jurisdiction to adjudicate upon disputes concerning properties which are admittedly waqf properties, some of the decisions which followed Ramesh Gobindram took to the extreme view that if a property is admitted to be a waqf property, by both parties, the Waqf Tribunal would not have jurisdiction to adjudicate upon a dispute concerning the said property. Such a conclusion led to an incongruity namely that the Tribunal would have jurisdiction to determine the larger question whether a property is a waqf property or not, but not smaller questions relating to what are admittedly waqf properties. Normally while interpreting a clause relating to bar of jurisdiction of civil courts in statutory enactments, this Court would tend to think, depending upon the language employed, that larger questions could still be decided by civil courts, while smaller questions are to be decided by the special Fora constituted under the Act. But in the case of Waqfs Act, 1995, the reverse has happened, with the courts ruling that if a property is admittedly a waqf property, the Tribunal would have no jurisdiction, though it would have jurisdiction to decide whether or not a property is a waqf property at all."

9. In paragraph no. 55 of the said judgment, it has been observed that it is well settled that the Court cannot do violence to the express language of the statute. Section 83(1), even as it stood before the amendment, provided for the determination by the Tribunal of any dispute, question or other matter (i) relating to a Waqf and (ii) relating to a Waqf property. Therefore, to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a Waqf property is indigestible in the teeth of Section 83(1).

10. In paragraph no. 56 of the aforesaid judgment, it has been observed that Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure while trying a suit or executing a decree or order. This is why this Court held in **Syed Mohideen and Anr. v. Ramanathapura Peria Mogallam Jamath and Ors.** MANU/SC/0550/2010 : (2010) 13 SCC 62 that the Waqf Tribunal will have powers to issue temporary injunctions under order XXXI, Rule 1 of the Civil Procedure Code.

11. The issue that where the disputed property is admittedly Waqf property, the Civil Court had no jurisdiction to

entertain the suit for injunction, is no more *res integra*. All earlier judgments on the issues involved, including the case of Ramesh Gobindram, were also considered in the case of Rashid Wali Beg (supra). The issue of the jurisdictions of the Civil Court and the Waqf Tribunal has been set at rest and held that Section 85 of the Waqf Act bars the jurisdiction of the Civil Court to entertain the suit for injunction. Hence, the appeal deserves to be allowed.

ORDER

- [i] The Appeal is allowed.
- [ii] The impugned judgment of learned Additional District Judge – 1, Jalna, passed in Regular Civil Appeal No. 107 of 2015 dated 20.10.2018 is quashed and set aside.
- [iii] The order of learned Civil Judge (J.D.), Jafrabad, passed in R.C.S. No. 03/2012 below Exh.1, stands restored.
- [v] Pending Civil Application/s, if any, stand/s disposed of.

12. Rule made absolute in the aforesaid terms with no order as to costs.

[S. G. MEHARE]
JUDGE