

[113] IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-358-2022 (O&M)

Date of Decision : 03.02.2023

Amrit Lal (Since Deceased) through his LRs ...Appellants

versus

Haryana Wakf Board thorough its  
Estate Officer, Ambala Cantt. ....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Vijay Kumar Jindal, Senior Advocate *assisted by*  
Mr. Vijayveer Singh, Advocate  
for the petitioners.

Mr. Ghulam Nabi Malik, Advocate for the respondent.

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B.S. Walia, J. (Oral)

[1] Challenge in the instant Regular Second Appeal is to judgment and decree dated 12.01.2022 passed by the learned Addl. District Judge, Ambala, dismissing the appeal filed by the appellants-defendants and upholding the judgment dated 02.05.2016 passed by the learned Civil Judge (Junior Division), Naraingarh, whereby the suit filed by the respondent-plaintiff was allowed.

[2] A perusal of the judgment and decree passed by the learned Civil Judge (Junior Division), Naraingarh in Civil Suit No.331 of 2013, decided on 02.05.2016 reveals that the claim therein was for possession of land Khewat No.28, Khatuani No.29, Khasra No.1//16(0-9), 2//20/2(3-2) Kittas-2, measuring 3 Kanal-11 Marlas, situated at Village Loutan HB (wrongly recorded as HM) No.91, Tehsil Naraingarh, District Ambala and also for recovery of mesne profit for illegal use and occupation of Waqf property during the pendency of the suit till handing over possession @

[3] On the pleadings of the parties, the following issues were framed:-

- (1) *Whether the plaintiff is entitled to a decree for possession by way of ejectment of defendant from the suit land as prayed for? OPP*
- (2) *If issue No.1 is proved, whether the plaintiff is entitled to recovery of mesne profit for illegal use and occupation of wakf property during the pendency of the suit till handing over the vacant possession? OPP*
- (3) *Whether the jurisdiction of the Court is barred? OPD*
- (4) *Whether the present has suppressed true and material facts from the Court? OPD*
- (5) *Relief.*

[4] Learned counsel for the appellants contends that despite specific plea having been taken that the learned Civil Court did not have jurisdiction in view of the provisions of Sections 83 & 85 of the Waqf Act, 1995, the learned trial Court by relying upon the decision of Hon'ble the Supreme Court in 'Ramesh Gobindram (dead) through LRs. versus Sugra Humayun Mirza Wakf', Civil Appeal No.1182 of 2006, decided on 01.09.2010 and 'Faseela M. versus Munnerul Islam Madrasa Committee and another' 2014(3) CCC 509, held that since the suit was for eviction filed by Waqf Board against the tenant, the Civil Court had jurisdiction to decide the matter, therefore, decided the issue against the defendants-appellants and in favour of the respondent-plaintiff. Appeal filed by the defendants-appellants met with the same fate on dismissal of

Appeal No.62 of 2016 vide judgment and decree dated 12.01.2022.

[5] Sole argument of learned counsel for the appellants is that in view of Section 83 read with Section 85 of the Waqf Act, 1995, the Civil Court would not have any jurisdiction to adjudicate the matter in view of the decision of Hon'ble the Supreme Court in 'RahidWali BegversusFarid Pindari and others', 2021(4) RCR (Civil) 718. Learned counsel refers to para No.53 of the decision in 'RahidWaliBeg's case (supra). The same is reproduced as under:-

*“ 52. We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of [Section 83](#) into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. [After Amendment Act](#) 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal. Though the proceedings out of which the present appeal arises, were instituted before the [Amendment Act](#), the words “any dispute, question or other matter relating to a waqf or waqf property” are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why Ramesh Gobindram was sought to be distinguished both in Anis Fatma Begum and Pritpal Singh and such distinction was taken note of in AkkodeJumayathPalliParipalana Committee. Additionally, this Court in Kiran Devi, refused to apply the ratio of Ramesh Gobindram, on the ground that the suit was originally instituted*

*before the Civil Court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through Ramesh Gobindram.*

53. *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\(1\)](#).*

56. *In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of [section 83](#) and [85](#) which speak of any dispute, question or other matter relating to a waqf or a waqf property. There is also one more issue. In the written statement, the Defendant No.1 has admitted the existence of the waqf and also admitted that the father of the plaintiff by name Riyaz Ahmad is the mutawalli. But the claim of the plaintiff that he is the beneficiary of the waqf has been denied. Therefore, a question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case. This question has necessarily to be decided by the Tribunal and not the civil court. ”*

and on the basis thereof contends that in view of the matter pertaining to the eviction of tenant from Waqf property, the Civil Court had no jurisdiction to entertain the civil suit even though the ownership

amendment of the Waqf Act of 2013.

[6] Mr. Ghulam Nabi Malik, learned counsel for the respondent candidly concedes that the position canvassed by learned counsel for the appellants is the law as laid down by Hon'ble the Supreme Court in 'RahidWaliBeg's' case (supra) and that in the circumstances, the Waqf Board be granted liberty to take out appropriate proceedings in accordance with law before the learned Tribunal constituted under Section 83 of the Waqf Act, 1995 for seeking redress of its grievance, as was the subject-matter of the civil suit which culminated in the judgment and decree passed by the learned trial Court as upheld by the learned first Appellate Court.

[7] The same is not opposed to by the learned counsel for the appellants.

[8] Accordingly, the question of law whether the Civil Court has jurisdiction to try and entertain suit in relation to determination of any dispute regarding Waqf and Waqf property in view of Sections 83 and 85 of the Waqf Act, 1995 is answered in favour of the appellants in the light of decision of Hon'ble the Supreme Court in 'RahidWaliBeg's' case (supra) by holding that the jurisdiction in respect thereto would not vest in the Civil Court but in the Tribunal constituted under the Waqf Act, 1995. Accordingly, judgment and decree dated 12.01.2022 passed by the learned Addl. District Judge, Ambala, dismissing the appeal filed by the appellants-defendants and upholding the judgment dated 02.05.2016 passed by the learned Civil Judge (Junior Division), Naraingarh, whereby the suit filed by the respondent-plaintiff was allowed are *set aside and the*

*made therein while*granting liberty to the respondent plaintiff to seek redress qua its grievance as was the subject matter of the Civil Suit in accordance with law before the Tribunal constituted under the Waqf Act, 1995.

[9] Appeal *allowed* in the aforementioned terms.

(B.S. Walia)  
Judge

03.02.2023  
'Rajneesh'

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|----------------------------|---|--------|
| Whether speaking/ reasoned | : | Yes/No |
| Whether reportable         | : | Yes/No |