

Court No. 16
(266284)
15.12.2025
(AD 32)
(S. Banerjee)

FMA 1877 of 2025
Jb. Mohinuddin Hassan Akhtar
Vs.
Zahur Khan

Mr. Goutam Misra
Mr. Vaskar Pal

...for the appellant

1. The present appeal has been preferred against an order whereby the learned trial Judge has returned the plaint under Order 7 Rule 10 of the Code of Civil Procedure, for presentation before the proper forum, on the finding that the eviction suit filed by the plaintiff/appellant involves a question as to whether the property is a Wakf property. The learned trial Judge held that the said Court has no jurisdiction to entertain and try the instant suit on such ground.
2. Learned counsel appearing for the appellant hands over copies of the plaint and written statement filed in the suit as per the Court's direction and places reliance on a judgment by a learned Single Judge of this Court in the matter of *Sk. Abdul Matallib @ Sk. Saiful Islam -Vs.- Abu Naim Siddique* (judgment dated April 20, 2016, passed in CO 4061 of 2015) for the proposition that in an eviction suit, there is no question of the Wakf Tribunal having

determination but it is the civil court which has the jurisdiction to decide such suit.

3. However, we are unable to accept such contention for the following reasons:
4. Section 6 of the Wakf Act, 1995 categorically stipulates that if any question arises whether a particular property specified as Wakf property in the list of Wakfs is a Wakf property or not, the Board or the Mutwali of the Wakf “or any person interested therein” may institute a suit in the tribunal for the decision of the question and the decision of the tribunal in respect of such matter shall be final.
5. In the judgment of the learned Single Judge cited before us, in paragraph 11, it was held that if it is an ejectment/eviction suit of the Wakf property and no disputes are raised which are specified in Section 6 and 7 of the Act, then the suit for eviction against the tenant relating to a Wakf property is very much within the domain of the Civil Court and not within the jurisdiction of the Wakf Tribunal. However, in the present case, a dispute as to whether the suit property is a Wakf property has been raised by the defendants in paragraph 11 of their written statement by stating that the

defendants deny and dispute that the suit property is a duly enrolled Wakf property under Moulvi Abdul Jawed Wakf Estate as alleged or at all. Thus, since the said objection has been specifically raised, which squarely comes within the purview of Section 6 of the 1995 Act, the principle as laid down in *Rashid Wali Beg –Vs.- Farid Pindari*, reported at (2022) 4 SCC 414, which has been relied on by the learned trial Judge and in which case the previous judgments governing the field were discussed, applies.

6. Accordingly, the civil court does not have jurisdiction, which conclusion was rightly arrived at by the learned trial Judge. In such view of the matter, we do not find any scope of interference with the impugned order.
7. Accordingly, FMA 1877 of 2025 is dismissed under Order 41 Rule 11 of the Code of Civil Procedure without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)