

IN THE COURT OF THE DISTRICT JUDGE, ETAH.

Present : Sri O. P. Agrawal : HJS

SCC Revision No. 01 of 2017

Haseen, s/o Qazi Ajij, tenant shop No.4
Madina Masjid, G.T.Road,
tehsil & district Etah --- --- Defendant/ Revisionist.

Vs.

Madina Masjid tehsil wali, G.T. Road Etah
Waqf No.109 through Mohd. Israr, s/o Gazi Khan,
Chairman Majid, r/o 534 Rewari Mohalla, tehsil and
district Etah --- --- Plaintiff/ Respondent.

JUDGMENT

This is a Small Causes Courts Revision preferred under Section 25 of Provincial Small Causes Courts Act against the order dated 30.11.2016 passed by Civil Judge (S.D.) FTC, Etah in exercise of the powers of Small Causes Court in a landlord and tenant SCC Suit by which issue No.12 has been disposed of and it has been held that the suit in question is well within the jurisdiction of the Court concerned and it is not barred by Section 85 of Waqf Act and hence defendant's objection in this regard has been turned down. The said order has been challenged on the grounds that it is against the provisions of Wakf Act 1995 (43 of 1995) and particularly in the memo of revision the order in question has been impugned on the strength of the provisions contained in Section 85 of the said Act and it has been said that the law cited by the revisionist was not appreciated by the Court below in correct prospective and provisions

of law has been totally ignored by the Court below and as such the order of the Court below has become without jurisdiction and as such it has been prayed that it be held that the Court below while exercising the powers of Small Causes Courts is not competent to hear the suit in question and the suit of the plaintiff has to be dismissed on this ground that it has been filed in a Court which is having no jurisdiction to try the suit.

I have heard the parties and gone through the record of the learned lower court.

Brief facts of the case are that a SCC Suit No.6/2015 in the name of Madina Masjid Vs. Haseen was instituted in the Court below for recovery of rent and ejectment of the defendant and this suit was pending in the Court of Civil Judge (SD) FTC, Etah as Judge Small Causes Courts. This question has been raised by the defendant/ revisionist in his W.S. that the rented property in suit is the property of Wakf No.109 which is registered Wakf and the Wakf Act 1995 has been amended on 1.11.2013 by which Section 85 of the said Act has been amended and Civil Courts, revenue Courts and other authority has no jurisdiction to decide the dispute relating to Waqf property and this is the sole question which is to be decided by this revisional court.

If we see the order of the Court below which has been attacked in this revision, there is reference of decision of Hon'ble High Court given in case of **Nizamul Haq @ Titu Vs. Mohd. Ahmad and others**, a judicial pronouncement of the Hon'ble Apex Court given in case of **Akkode Zamayat Palli Pariplana**

Committee Vs. P.V. Ibrahim Hazi & others 2013 ACJ 2090 and another, judicial pronouncement given by the Hon'ble Supreme Court in case of **Bhanwar Lal & others Vs. Muslim Wakf Board Rajasthan & others 2013 ACJ 1949** and the Court below has based its order on the aforesaid pronouncements and the previous propounded in them but the counsel for the defendant/ revisionist vehemently pressed before this revisional court that all the judicial pronouncements which have been cited by the plaintiff side are of the legal position before the Amendment of 2013. Hence, the said judicial pronouncements cannot be taken to be in favour of the plaintiff at all and it is the main emphasis of the defendant/ revisionist's counsel that after the amendment tribunal has only jurisdiction to try with all suits relating to the disputes to Waqf and Waqf property. So, it is the solitary controversy before this revisional Court which is to be settled.

For going further in this controversy, it is most expedient in the interest of justice that the said section 85 of Waqf Act, 1095 be narrated here-

“85- Bar of jurisdiction of Civil Courts

No suit or other legal proceeding shall be in any civil court, revenue court and any other authority in respect of any dispute, question or other matters relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

If we go through the amended provisions of this law by the Amendment Act which is Act 27 of 2013 which came into force

on 20.09.2013 the words “civil court” have been substituted by the words as “civil court, revenue court and any other authority “. So, it is the intention of the legislature that in this section 85 the legislature wants that not only the civil court but the revenue court and any other authority also included in the net work of such court barring the jurisdiction in respect of any dispute, question or other matter relating to Waqf and Walf property. So, because it has been admitted by the counsel for the revisionist that there are some judicial pronouncements in favour of the proposition that a matter between landlord and tenant is out of the purview of the jurisdiction of the specific tribunal and they are to be tried by the civil courts but because the counsel for the defendant/ revisionist is emphatically pressing them by virtue of amendment, legal position has changed because the judicial pronouncements are based upon previous unamended provisions contained in section 85 of the Waqf Act. So, according to him, now the legal position has changed and this suit has become barred by virtue of Amended Act 27/2013 which has come into force on 20.09.2013. But the argument of the learned counsel for the defendant/ revisionist is totally untenable in view of the clear cut judicial pronouncement given by the Hon'ble Apex Court in case of **Faseela M. Vs. Musnnerul Islam Madrasa Committee and another AIR 2014 Supreme Court 2064** which is directly based on interpretation of section 6, 7 of the Waqf Act (43 of 1995), section 9 of the Code of Civil Procedure (5 of 1908) and in this judicial pronouncement the Hon,ble Supreme Court is dealing with Section 6 and 7 of the Waqf Act of 1995 which deals with the

nature of the cases for determination of certain disputes regarding Waqf only by the Waqf Tribunal. The Hon'ble Apex Court has not dealt with sole provision of law but all the provision as amended by Act 27 of 2013 have been dealt with by the Hon'ble Apex Court mby clearly mentioning and narrating all these provisions contained in section 6 and 7 of the Waqf Act as amended by Act 27 of 2013. The Hon'ble Supreme Court was dealing with a case in which a suit was filed for eviction by the landlord against tenant relating to Waqf property. It is the objection of the defendant/ revisionist in the case pending in this Court that the property was not Waqf property and the Hon'ble Apex Court in **Faseela M Vs. Munnerul Islam's** case also dealt with Sections 83 and 85 of the Waqf Act. The Hon'ble Apex Court was also discussing an earlier case known as **Ramesh Govindram (Dead) through L.Rs Vs. Sugra Humayun Mirza Waqf** in which Hon'ble Apex Court had earlier considered Sections 6(1), 6(5), 7(1), 7(5), 8d3 and 85 and view of the other provisions of the Act and had explained the jurisdiction of the Waqf Tribunal vis-a-vis Civil Court and the Hon'ble Apex Court had held in that case that as regards the suit for eviction against the tenant of Waqf property were concerned, the Court had held that such suit is triable by the Civil Court as it is not covered by Sections 6 and 7 of the Act. It was clearly held in that case which was cited in AIR 2010 Supreme Court 2897 in the followings words,

“In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a waqf property

or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.”

Further, the Hon'ble Apex Court also refreshed its decision by mentioning the case of **Bhanwar Lal and another Vs. Rajasthan Board of Muslim Waqf and others AIR 2014 SC page 758** and in that case the Hon'ble Apex Court had already considered the earlier cases but they were not directly related with the landlord and tenant dispute although Bhanwar Lal's had followed the line in reasoning in **Ramesh Govindram's** case. The Hon'ble Apex Court in **Faseela M. Vs. Munnerul Islam Madrasa Committee 's** case had clearly provided that “for determination of any dispute, question or other matter relating to a waqf or waqf property” appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a waqf or a waqf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.

So, according to this very recent judicial pronouncement in which all provisions of Amended Act has been discussed in detail a suit for eviction by landlord against tenant relating to waqf property is exclusively triable by the civil court and they have been held to be not covered by the dispute specified in

Section 6 and 7 of the Act.

Here in this case we are not any concern with any case relating to revenue court or any other but here we are only concern with the jurisdiction of the civil court in which suit in question has been filed. So, the Amended Act does not make any improvement in the legal position or earlier legal position as far as civil courts are concerned.

There is another aspect of the matter that in State of U.P., U.P. Rent Act (Act 13 of 1972) is applicable and the provisions of Provincial Small Causes Courts Act are also applicable in the whole of the Country and there are specific provisions in the Code of Civil Procedure regarding Provincial Small Causes Courts Cases and as far as the disputes between the landlord and tenant in respect of the recovery of rent and ejectment of the said property are concerned they are exclusively triable by the Court of Small Causes Court if there is no dispute as to title. Here, there is no dispute regarding title of the parties and memo of revision is also of no inclusive of any such objection that the plaintiff waqf is not the landlord of the suit property. So, certain civil courts have been conferred the powers of a Court of Small Causes and such Courts are only competent to deal with specified cases which have not been excepted from the cognizance of the Court of Small Causes and in State of U.P. The original sub section (2) and (3) of Small Causes Courts 1887 have been substituted and the suits by lessor for eviction of a lessee from the building or for recovery from him of rent in respect of the property in occupation thereof through

continuous lease or for compensation for use and occupation thereof after determination of the lease, suit can be filed in the Court of Small Causes Courts. Section 16 of Provincial Small Causes Courts Act 1887s specifically provides that the Courts of Small Cases have its exclusive jurisdiction in certain matters which are cognizable by the Courts of Small Causes and no other Court is competent to try the said suit. Apart from these provisions, order 50 of the C.P.C. Also deals with the suits in which certain provisions of the Code may be applied.

The Hon'ble Calcutta High Court also in case of **S.K. Abdul Matalib @ S.K. Saful Islam vs. Abu Naim Soddique** has held following judicial pronouncement given in **Faseela. M's** case and one another case relating to that Section 83(1) and 85 of the Waqf Act as amended in 2013. It is crystal clear that nowhere it is mentioned that the civil court jurisdiction has been waved, excluded or barred by these sections as far as the ejectment suits are concerned, because such disputes are not covered under Section 6 and 7 of the Waqf Act and it has been clearly held that a dispute as indicated does not exclude of a tenant from waqf property. So, Small Causes Court has exclusive jurisdiction to try, entertain and determine the ejectment suit in hand of the Small Causes Courts Act. It is also pertinent to be mentioned here that in Section 85 also there is no mention that Small Causes Court and by any stretch of interpretation the Small Causes Court cannot be said to be an authority but ut us a Court of Special jurisdiction. So, all the objections of the defendant/ revisionist are baseless and have no

weight and this SCC Revision filed under Section 25 of the Small Causes Courts Act has no force and deserves dismissal.

ORDER

This SCC Revision is hereby dismissed and the Small Causes Court is directed to deal with the case in accordance with law. Parties to appear in the Court below on 26.05,2017.

Let lower Court record be sent back without any delay.

May 09, 2017
VP/-

(O. P. Agrawal)
District Judge,
Etah.

Judgment signed, dated and pronounced in open Court today.

May 09, 2017
VP/-

(O. P. Agrawal)
District Judge,
Etah.