



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Revision Petition No. 189/2023

1. Shakur Shah S/o Naurang Shah, Aged About 71 Years, By Caste Musalman, Resident Of Near Vedon Ki Bagechi, Phalodi, District Phalodi.
2. Fakardeen S/o Shri Haji Khan, Aged About 62 Years, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.

----Petitioners

Versus

1. Eliyas S/o Aalam Khan, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.
2. Mujibar S/o Fate Khan, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.
3. Nibab S/o Ata Mohammad, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.
4. Fate Khan S/o Jadam Khan, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.
5. Sultan Khan S/o Hasnu Khan, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.
6. Eliyas S/o Bage Khan, By Caste Musalman, Resident Of Village Kalra, Tehsil And District Phalodi.

----Respondents

For Petitioner(s) : Mr. Roshan Lal
For Respondent(s) : Mr. Moti Singh

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

20/02/2025

1. Heard the parties.
2. By the impugned order dated 06.09.2023 passed in Civil Suit No.48/2023, learned Civil Judge, Phalodi has refused the prayer of the petitioners to reject the plaint under Order VII Rule 11 CPC.



3. Contention of the petitioners is that the grievance disclosed in the plaint was maintainable before the Waqf Tribunal and not before any other court in view of the bar of jurisdiction of civil court contained under Section 85 of the Waqf Act.

4. Learned counsel for the respondents contends that the plaint does not disclose that the property is Waqf property nor the property is entered in the register of Waqf property, therefore the remedy lies before the civil court and not before the Waqf Tribunal.

Learned counsel contends that the subject matter of the suit is Madina Zama Masjid which was erected with the financial help of Muslim society of the village Kalra, Tehsil Phalodi; From time to time repairing and extension of the Masjid was done by the said villagers.

5. Defendant No.1 executed a vasiyat in respect of the Masjid property in favour of defendant No.2 claiming that the land on which Masjid is constructed is recorded in the name of ancestors of defendant No.1. The plaintiff prayed that the defendants be restrained by permanent injunction from disturbing the peaceful use of Muslim society as per their religious belief and to do religious rituals like namaz etc. and defendant be restrained from creating any obstruction in the same.

6. Learned trial court was of the view that the suit property was not entered in the Waqf register as Auqaf property, hence, it was not a Waqf Property and unless the property was a Waqf Property, the jurisdiction of civil court was not barred.

7. Section 85 of the Waqf Act reads as follows:-



"85. Bar of jurisdiction of civil courts.- No suit or other legal proceeding shall lie in any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal."

8. Section 3 (r) defines 'Waqf' as follows:-

(r)"waqf" means the permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable and includes-

(I) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) "grants", including mashrat-ul-khidmat for any purpose recognized by the Muslim Law as pious, religious or charitable; and;

iv) a waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognized by Muslim law, and "waqif" means any person making such dedication;]"

9. Evidently, claim of the plaintiff is of permanent dedication of the immovable property for construction of Masjid aforesaid for the purpose recognized by the Muslim Law as religious and includes other items disclosed in the definition aforesaid.

10. It is not disputed that Masjid is a place used for religious purpose for praying Namaz etc., therefore, it comes within the definition of 'Waqf' and once the suit property is Waqf, any dispute in respect of the Waqf property is to be adjudicated by the Waqf Tribunal only and not by any other court including civil court in



view of the bar under Section 85 of the Waqf Act. Therefore, the plaintiff was fit to be rejected under Order VII Rule 11 (d) CPC and the trial court has wrongly exercised jurisdiction vested in it.

11. Accordingly, the impugned order stands hereby set aside and this Civil Revision stands allowed. The plaintiff would be at liberty to move to the Waqf Tribunal within four weeks from today.

(BIRENDRA KUMAR),J

27-nitin/-