

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Application for Leave to  
Appeal under Chapter LVIII of the Civil  
Procedure Code

**CA No. LTA/0004/2021**

**WT Case No.  
WT/Ch.T./20/2019**

1. Tuan Sajjar Jainu Deen,  
No.23/16, Gunathilaka Mawatha, Mabola,  
Wattala.

2. Tuan Nassar Jainu Deen,  
No.125/1, Kaluwala Road, Ganemulla.

3. Ahamath Ibrahim Jainu Deen,  
No.24A, Bodhiyangana Mawatha,  
Mulgampola, Kandy.

4. Tuan Cassim Ahamed Jainu Deen,  
No.555, Tewatte Road, Gunasekera  
Mawatha, Ragama.

5. Mohamed Ghazali Jainu Deen,  
No.2001, 88, Erskine Avenue,  
Toronto, Ontario,  
Canada M4G1Y3.  
By his *Attorney Ahamed Ibrahim Jainu Deen,*

**Applicants**

-VS-

Abdul Hameed Mohamed Jhafir,  
No.10, Circular Road, Badulla

**Defendant**

*AND NOW BETWEEN*

Abdul Hameed Mohamed Jhafir,  
No.10, Circular Road, Badulla

**Defendant – Petitioner**

-VS-

1. Tuan Sajjar Jainu Deen,  
No.23/16, Gunathilaka Mawatha, Mabola,  
Wattala.

2. Tuan Nassar Jainu Deen,  
No.125/1, Kaluwala Road, Ganemulla.

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No.2001, 88, Erskine Avenue,  
Toronto, Ontario,  
Canada M4G1Y3.  
By his *Attorney Ahamed Ibrahim Jainu Deen,*

**Applicant - Respondents**

Before: **M. T. Mohammed Laffar, J.**  
**S. U. B. Karalliyadde, J.**

Counsel: N. M. Reyaz with G. B. H. Chandrika for the Applicant - Respondents.

M. R. M. Fazeen instructed by Ms. Sandya Kalpitiya for the Respondent – Petitioner.

Supported on: 02.06.2022.

Decided on: 21.09.2022.

**MOHAMMED LAFFAR, J.**

The Defendant-Petitioner (hereinafter referred to as the Petitioner) is seeking leave to appeal from the Order of the Wakfs Tribunal dated 27-02-2021. We heard the learned Counsel for the Petitioner in support of this application. We heard the learned Counsel for the Applicant-Respondents (hereinafter referred to as the Respondents) as well.

The Respondent, under section 9E of the Muslim Mosques and Charitable Trust or Wakfs Act, No. 51 of 1956 (as amended) (hereinafter referred to as the Wakfs Act), instituted action in the Wakf Tribunal, seeking *inter-alia*,

1. An Order against the Petitioner to hand over vacant possession of the premises in suit, and
2. An Order to hand over all the documents in the possession of the Petitioner, relating to the property in dispute, to the Respondents.

The Petitioners, having filed the answer moved for a dismissal of the Respondent's action. When the matter was taken up for trial, the learned Counsel for the Petitioner raised a preliminary legal objection (legal issues) as to the maintainability of the action stating that the Wakf Tribunal has no jurisdiction to hear and determine the matter as it is a possessory action, where the jurisdiction is vested in District Courts. The Wakf Tribunal, in its impugned Order, overruled the preliminary objection on the basis that the Petitioner, in terms of section 76 of the Civil Procedure Code, has not pleaded in a separate paragraph, objecting to the jurisdiction of the Tribunal and under section 39 of the Judicature Act No. 2 of 1978, objection to jurisdiction must be taken up at the earliest opportunity, which the Petitioner has not

followed. Being aggrieved by the said Order, the Petitioner is seeking leave to appeal.

Under section 76 of the Civil Procedure Code, if the Defendant intends to dispute the jurisdiction of the Court, he should dispute the same, expressly in a separate plea, which reads thus;

*“If the defendant intends to dispute the averment in the plaint as to the jurisdiction of the court, he must do so by a separate and distinct plea, expressly traversing such averment.”*

In terms of section 39 of the Judicature Act No. 2 of 1978 (as amended), the objection to the jurisdiction has to be taken up at the earliest opportunity, failing which, the Court is permitted to proceed with the matter. The said section is reproduced as follows;

*“Whenever any defendant or accused party shall have pleaded in any action, proceeding or matter brought in any Court of First Instance neither party shall afterward be entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such action, proceeding or matter.”*

Having scrutinized the case record, particularly the answer of the Petitioner, it appears to this Court that the Petitioner failed to adhere to the foregoing provisions of law, and therefore, the finding of the Wakf Tribunal is not erroneous.

Be that as it may, according to the application made by the Respondents to the Wakf Tribunal, the property in dispute is owned by the Zahira Mohammedan Trust registered under R/792/BD/34. By deed of settlement bearing No. 76, the said property was vested with the Trustees of the said Trust. Subsequently, the Trustees have appointed the Petitioner to look after the said property. Even though, the Petitioner, before the Wakf Tribunal in case No. WT 220/2014, agreed to hand over the vacant possession of the subject matter to the Trustees, he failed to do so. Hence, the Respondents instituted proceedings before the Wakf Tribunal to obtain possession of the Trust property from the Petitioner. It is to be noted that, in terms of section 9E (3) of the Wakf Act, the Respondents have obtained certificate (sanction) from the Director<sup>1</sup> to institute proceedings in the Wakf Tribunal. In this scenario, it appears that the property in dispute is governed by the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Act.

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<sup>1</sup> Director for Mosques and Muslim Charitable Trusts or Wakfs.

In terms of section 9J of the Wakf Act, the jurisdiction exercisable by the Wakf Tribunal in respect of matters relating to Muslim Mosques and Charitable Trusts or Wakfs shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any Court or Tribunal of first instance.

Section 9G of the Wakfs Act, reads thus;

*“In any proceedings under this Act, the Tribunal shall follow the procedure of a District Court, and in the execution of its orders and judgments, shall have all the powers of a District Court and the provisions of the Civil Procedure Code, relating to the procedures and powers of execution of a District Court, shall mutatis mutandis, apply to and in relation to the procedures and powers of execution of the Tribunal.”*

Having scrutinized the said section 9G of the said Act, the following matters have been clarified without any ambiguity.

- (1) The Tribunal shall follow the procedure of a District Court in respect of all the proceedings.
- (2) The Tribunal shall have all the powers of a District Court in respect of the execution of its Orders and Judgments in accordance with the provisions of the Civil Procedure Code.

According to Section 9G of the Act, it is apparent that the Tribunal is obliged to follow the procedure of a District Court, and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code. Every Order made by the Tribunal shall be deemed to be an Order made by a District Court and the provisions of the Civil Procedure Code governing appeals from Orders and Judgments of a District Court shall, *mutatis mutandis*, apply to and in relation to appeals from Orders of the Wakfs Tribunal.

In **Shahul Hameed and Others v. Aliyar and Others, CA/Wakfs/01/2011, CA Minutes of 26.06.2013, Salam, J. (agreeing with Anil Gooneratne and Sisire de Abrew JJ.)**, at page 7 echoed the same sentiments as follows;

*“Certain decisions of the Wakfs Board including an order of confirmation and appointment of trustees of a Mosque are appealable to the Wakfs Tribunal. The Members of the Tribunal are appointed by the Judicial Service Commission. The Tribunal is obliged to follow the procedure of a District Court and is vested with the power to enforce its decisions as provided for in the Civil Procedure Code. Every order made by the Tribunal shall be deemed to be an order made by a District Court and the provisions of the Civil Procedure Code governing appeals*

*from orders and judgments of a District Court shall, mutatis mutandis, apply to and in relation to appeals from orders of the Tribunal....”*

In these circumstances, it is the view of this Court that in terms of the provisions of the Wakfs Act, the Wakfs Tribunal is vested with the exclusive jurisdiction to hear and determine the dispute in relation to the property in suit.

Thus, I see no basis to grant leave to appeal against the impugned Order of the Wakf Tribunal, and accordingly, leave is refused and the Petition is dismissed with costs fixed at Rs. 75,000/- payable by the Petitioner to the Respondents.

*Leave refused.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. Karalliyadde, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**