



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.07.2026

Pronounced on: .08.2026

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THE HON'BLE MR.JUSTICE P.B. BALAJI**CRP. No.908 of 2011
and M.P. No.1 of 2011**

1.M.Damodaran
2.G.Karunamurthy (Deceased)
3.K.Jeyanthi
4.K.Prathap
5.K.Divya
(Petitioners 3 to 5 are brought on record
as legal representatives of the deceased
2nd respondent vide order dated 14.12.2011)

..Petitioners

Vs

P.Syed Razack

..Respondent

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 30.12.2005 made in O.S. No.270 of 2000 on the file of the Subordinate Judge, at Vellore and dismiss the suit with costs.

For Petitioner(s): Mr.Ashok Menon

For Respondent(s): Mrs.V.Srimathi



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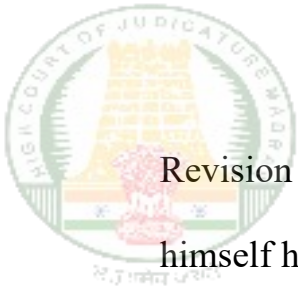
ORDER

The defendants in O.S.270 of 2007 on the file of the Sub Court, Vellore, are the Revision Petitioners, challenging the Judgment and Decree in the said suit dated 30.12.2025. I have heard Mr.B.Balachander, learned counsel for the Petitioner and Mrs.V Srimathi, learned counsel for the Respondent.

2. Brief facts that are necessary for deciding the present revision are as follows. The Respondent as plaintiff filed the suit for declaration and for permanent injunction. The Revision Petitioners defended the suit by filing a written statement. The suit was tried by the Subordinate Judge, Vellore. The following issues were framed by the Trial Court after considering the pleadings:-

- i. Whether the suit property is a public Waqf?*
- ii. Whether the Plaintiff is possession and enjoyment of the suit property?*
- iii. Whether the claim by the Defendants in regard to items 2 and 3 of the plaint schedule true and valid?*
- iv. Is the plaintiff entitled to the declaration?*
- v. Is the plaintiff entitled to the relief of permanent injunction?*
- vi. It is barred by limitation as per the proviso under Section 6(i) of the Waqf's Act, 1995?*

3. At trial, on behalf of the Respondents, two witnesses were examined as PW-1 and PW-2 and Exhibits A1 to A49 were marked. On the side of the



Revision Petitioners, 1 witness was examined. The first petitioner examined himself has PW-1 and Exhibits B1-B6 were marked.

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4. On consideration of the pleadings and evidence, the Trial Court decreed the suit as prayed for. Challenging the decree, A.S. No. 630 of 2006 came to be filed by the Petitioners. Pursuant to the order dated 20.01.2011, the first appeal was directed to be converted as a revision petition and accordingly the above revision came to be taken on file.

5. The arguments of the learned counsel for the Petitioners are summarised as follows:- Firstly, the very suit filed by the Mutawalli was not maintainable and according to the counsel for Petitioner, it is only the Waqf Board which should have initiated the proceedings. In this regard, reliance has been placed on the decision of this Court in ***The Secretary, Tamil Nadu Waqf Board, Santhome High Road, Madras vs. Kancheepuram Oili Mohamed-Pettai Labbai Jumma Masjid, by its Muthavalli and Ors. reported in 2010 (4) CTC 516***

Secondly, without prejudice to the maintainability of the suit, Mr. Balachander, Counsel for the Petitioner contended that under Section 54 of the Waqf Act, 1995, the remedy was available before the Waqf Board and therefore, without approaching the Waqf Board, the suit not ought not have been instituted in the first place. This ground of objection is also touching the maintainability of the suit. In this regard, learned Counsel relied on Division Bench judgment of the



Karnataka High Court in *Hooghly Building and Investment Company Limited and anr vs. The State of West Bengal and others* reported in 2024: **CHC-OS:198-DB.**

6.Thirdly, the learned counsel further contends that the suit was hopelessly barred by limitation. Relying on Section 6 and the proviso thereto, the very institution of the suit was belated and not under the timeline provided under the proviso to Section 6(1) of the Waqf Act, 1995. Mr. Balachander has elaborated on the above three primordial grounds of attack on the decree, and by also placing reliance on the decision of the Court in *Arulmigu Viswewaraswami, and Veeraraghava Perumal Temple Tiruppu vs. R.V.E. Venkatachala Gounder and Another*, reported in 1996 (2) CTC 199, the judgment of the Privy Council in AIR (33) 1946 PC 59 and the judgment of this court in *Kammavar Sangam, through its Secretary R. Krishnasamy vs. Mani Janagarajan*, reported in 1999 (3) CTC 304.

7.Per contra, Mrs. V Srimathi, firstly contended that the waqf is a notified waqf and the notification was duly gazetted and there was no requirement for the Waqf Board to file the suit in respect of the relief sought for by the Plaintiff. As regards, the power available to the Waqf Board on which arguments are advanced by the learned Counsel for the Petitioners, she would contend that merely because Section 54 provides for similar reliefs to be granted by the Waqf Board, it cannot



take away the right of the competent Civil Courts to grant such reliefs, especially when the primary relief sought for was a declaratory relief. As regards limitation, the learned Counsel contends that Section 6(1) proviso will not have any application to the facts on hand and rightly, the Trial Court has rejected the plea of limitation. The learned counsel, therefore, prays for the Civil Revision Petition to be dismissed.

8.I have carefully considered the submissions advanced. I have also gone through the judgment of the Trial Court.

9.With regard to the attack on maintainability of the suit, two grounds have been raised by the Petitioners. Firstly, it is contended that the Mutawalli was not competent to represent the Waqf and it was only the Board which could have sued. To this effect, strong reliance has been placed on the decision of this Court reported in *The Secretary, Tamil Nadu Waqf Board, Santhome High Road, Madras vs. Kancheepuram Oili Mohamed-Pettai Labbai Jumma Masjid, by its Muthavalli and ors. reported in 2010 (4) CTC 516*. That was a case where the court took note of Section 32(2)(i) Waqf Act, 1995 and no doubt held that suit filed by the Mutawalli representing the Plaintiff mosque was not maintainable in the eye of law. However, it is relevant to examine the context in which the said decision was rendered. In the facts of that case, the Mutawalli of a mosque representing the mosque as Plaintiff, filed a suit without even issuing a pre suit



notice. The relief sought for in the suit was that the defendants had wrongfully gained monies as honorarium over a period of time and a criminal complaint was also lodged in respect of various offences alleged to have been committed under the Indian Penal Code, by the Defendants 1 to 9 in the said suit. This Court, taking note of the admitted position that a pre suit notice under Section 89 of the Waqf Act, 1995 was a condition precedent even for filing of a suit against the Waqf Board and also being aligned to the position that in terms of Section 32(2)(1) of the Act, the Waqf Board can also file and defend suits and proceedings pertaining to waqf lies with the Board. In fact, at para 36, this Court specifically made it clear that even though no relief was claimed against the Waqf Board, on the basis of facts and circumstances of the case, on the surface, proceeded to allow the second appeal holding that a public statutory body and its subordinates cannot be held personally liable.

10.The Waqf Act, 1995 only confers the power of general superintendence of all waqfs on the Board and further making it a duty of the Board to exercise powers under the Waqf Act to ensure that Waqfs under its superintendence are properly maintained, controlled and administered and income thereof is duly applied to the objects and purposes of which such waqfs are created or intended. In the light of the object of Section 32(1) of the Waqf Act, 1995, I do not see how the present suit instituted by the Mutawalli of the waqf can be found fault with. The relief sought for by the waqf is in the nature of



a declaratory relief to declare that the suit property is a public waqf and for a consequential permanent injunction to restrain the defendants from interfering with the plaintiff's management of the suit property. In the light of the relief sought for against the Defendants in the suit, I am unable to see that Section 32 would act as a bar to even consider the arguments of the Counsel for the Petitioners that the suit itself was not maintainable in view of Section 32(1) Waqf Act 1995.

11. In fact, the defence in view of the maintainability of the suit on this ground was not even taken by the first defendant in the written statement filed by him. Similarly, even with regard to the second limb of the argument touching maintainability of the suit has also not been taken as a defence in the written statement. Having not taken such pleas before the Trial Court and no issue also being framed, with regard to the maintainability of the suit, I am unable to see how in the revision, such issues can be agitated, leave alone be decided by this Court. Coming to the powers of the Board under Section 54, there is no quarrel with regard to the powers conferred on the Chief Executive Officer under Section 54 for taking action against any encroachments. The Division Bench of the Calcutta High Court relying on the ratio laid in the Hon'ble Supreme Court in ***Board of Waqf, West Bengal and another vs. Anis Fatma Begum and Anr reported in (2010) 14 SCC 588***, held that Waqf Tribunal constituted under Section 83 of the Waqf Act 1995 is a Special Tribunal to decide issues relating to



Waqfs in order to ease civil courts of the burden to decide matters pertaining to Waqfs and instead concentrate on other long pending matters. The Division Bench of the Calcutta High Court has not laid down the law that suit of the present nature is not maintainable and that because of the enormous powers conferred under Section 54 of the Waqf Act, 1995 the Chief Executive Officer alone can take steps for removal of encroachments from Waqf properties. I am unable to see how this decision will also apply, especially since it is not the prayer of the Plaintiff that the Defendants are encroachers and that action has to be taken against them. As already discussed, relief is sought for declaration and consequential permanent injunction, where the first respondent claims to be in possession of suit property and seeks to declare the waqf as a public waqf. The scope of the prayers sought for certainly do not fall within the ambit of Section 54 of the Waqf Act, 1995.

12. In fact, both Section 32 as well as 54 of the Waqf Act, 1995 are at best enabling provisions vesting powers with the Board and Chief Executive Officer of the Board and cannot be construed as the only avenue available for the redressal of grievances in all cases. There is no express or implied bar in both Section 32 or 54 of the Waqf Act, 1995 restraining the waqf itself being represented by its Mutawalli to institute suits and redress its grievances. Mutawalli himself is defined under Section 3(i) as a person appointed under any deed or instrument by which a waqf is created to perform duties of a Mutawalli



for managing and administering the waqf properties. In such circumstances, Mutawalli is not disrobed of his powers to institute appropriate legal steps to protect the interest of the waqf that he represents. The Hon'ble Supreme Court in ***Bibi Siddique Fatima vs. Saiyed Mohammad Madmood Hasan*** reported in ***AIR 1978 SC 1362***, held that under the Mohammadan law, which is a personal law, a Mutawalli has the right to file a suit in respect of waqf property and such right is not taken away even by any of these provisions of the Waqf Act, 1995. Similar view was taken by the Gujarat High Court in ***Syed Khersha Sajanshah Mutvalli, Bhuj Kutch vs. The Bhuj Municipality*** reported in ***AIR 1986 Guj 1***.

13. In fact, following the ratio laid down in ***Bibi Siddique Fatima's case***, this court in ***M.K. Sulthan v. Hameed Shafi*** reported in ***2013 3 MWN (Civil) 20***, as well as the Division Bench judgment in ***2011 (2) LW 1***, and also in ***President Ameerunnisa Begum Sahiba Endowments v. D. Ganesan*** in ***C.R.P. No. 3723 of 2019***, after discussing the various provisions of the enactment, held that a Mutawalli, being the guardian of the ascertained waqf property, during his period of Mutawalliship, is certainly entitled to institute a suit for protecting the interests of the waqf and Section 54 of the Act also will not denude the power as well as duty cast upon the Mutawalli under the scheme of the Act. Similarly, the Division Bench of the Andhra Pradesh High Court, in ***A.S. Abdul Khader Wakf v. Saber Miah***, reported in ***(2003) AIR AP 528***, has also held that the Mutawalli can



maintain a suit in the interest of the institution, as his position is akin to a Trustee.

Therefore, I am unable to countenance the arguments of Mr.B.Balachander with regards to the maintainability of the suit on both grounds.

14.Coming to the question of limitation and reliance placed on Section 6 of the Waqf Act, 1995, Section 6 states with determination of any question arising as to whether the particular property specified as waqf property in the list of waqfs is actually a waqf property or not. Here again, I do not see how the reliefs sought for in the suit can be brought within the ambit of Section 6 to contend that the suit is barred by limitation. It is also been primarily contented by Mr.B.Balachander that burden was very heavily on the Plaintiff to establish its title and in the absence of any satisfactory evidence adduced before the Trial Court, the Plaintiff was not entitled to any decree and in this regard, he has also relied on the decision of this court in *Arulmigu Viswewaraswami case*. This was a case where this Court held that entries in the municipal extracts and tax receipts could not prove the title of the Plaintiffs and if the said documents were discarded, then there was absolutely no acceptable evidence on the side of the Plaintiff entitling the plaintiff to the declaration sought for. However, in the present case, the Respondent/Plaintiff has exhibited as many as 49 documents including Ex. P1 Proforma Certified Copy and notification dated 11.02.1959 by Exhibit P2 as well as Certified Copies of T.D 112 & T.D 113 dated 12.10.1870. Apart from these documents, the Plaintiff has also exhibited Pattas in Exhibit A16 & A17 and Kist



Receipt in Ex. A34 to A47. There is sufficient oral and documentary evidence available on record in the present case, unlike the facts of the case in *Arulmigu Viswewaraswami case*.

15. Further, the Trial Court in its judgment has also discussed the pleadings and entire evidence available on record in a judicious manner, analysing the same in proper perspective and has rendered findings based on the pleadings and evidence available on record. The suit property consists of 4 items. The Petitioner disputed only items 2 and 3, contending that it belonged to them and that they had acquired the same for a valuable sale consideration under a registered sale deed in 1998. If really items 2 and 3 were not waqf properties, then it was for the predecessors in the interest of the Revision Petitioners to have challenged the inclusion of the said items as the properties of the Plaintiff Waqf. It is under such circumstances that Section 6 and its proviso would come into operation and not as contended by the counsel for the Petitioners. The Trial Court has also rightly held that though the Petitioners claim to have purchased items 2 and 3 of the suit properties, in the sale deed, in Exhibit B1, there is not even a reference with regard to tracing of title and vesting of the same with their vendors. The Petitioners have also not filed any revenue documents either in the names of their Predecessors in title or at least in their names. In fact, the Trial Court also noticed that the Petitioners did not even choose to examine their vendors to establish passing of valid title to the hands of the Petitioners. The Trial Court has rightly



found that there is no necessity for the Plaintiff to raise any dispute under Section 6 and it was only for a third party like the Revision Petitioners to have filed a suit, questioning the entitlement of the waqf, within a period of one year.

16.In view of the above, I am unable to countenance the arguments of Mr.B.Balachander that the suit itself, at its inception was not maintainable. Therefore, viewed from any angle, I do not see any perversity or illegality in the findings arrived at by the Trial Court wanting interference in the Revision.

17.In fine, the Civil Revision Petition is dismissed. No costs. Connected Civil Miscellaneous Petition, if any, is closed.

14-08-2026

Index: Yes
Speaking order
Neutral Citation: Yes

RKP

To
The Subordinate Judge, Vellore.



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CRP No.908 of 2



P.B.BALAJI, J.

RKP

Pre-delivery Order in
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