

C.R.P.(MD).No.1129 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.06.2026

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.1129 of 2026
and C.M.P(MD).No.5386 of 2026

Abubakkar (died)
Batcha (Died)
Samsudeen (died)
1.Jainul Abideen
2.Abbas
3.Nasar Ali
4.Jahir Ussain
5.Sikkandar Batcha
6.Abbas Ali
7.Mohamed Anifa
8.P.J.Syed Sikkandar
9.Mohamed Ali Jinnah
Ibrahim (died)
10.Kamal Batcha
11.K.Abdul Wahab
12.Sahul Hameed
13.Mohamed Usain

... Petitioners

Vs.

1.The Chief Executive Officer,
rep for the Tamil Nadu Wakf Board,
No.1, Vallal Seethakathi Nagar,
Jaffer Syrang Street,
Chennai District 600 001.

2.K.P.John
3.K.Sait
4.K.Akbar
5.K.Samsath

... Respondents



C.R.P.(MD).No.1129 of 2026

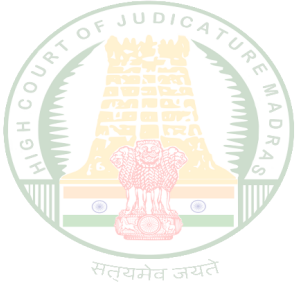
PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the dismissal order passed in I.A.No.3 of 2025 in O.S.No.1039 of 2013 dated 07.02.2026 on the file of the I Additional Subordinate Judge, Madurai, and to allow the civil revision petition.

For Petitioners : Mr.M.Abdul Rashith
For Respondents : Mr.D.S.Haroon Rasheed (for R1)
Mr.M.Venkatesan (for R2)

ORDER

The present civil revision petition arises against an order dismissing an application filed for rejection of plaint. The revision petitioners are the private defendants in the suit. The suit relates to a mosque known as 'Solavandan Nainar Pallivasal'. It is a Sunni Waqf. The plaintiffs claim the following reliefs in the suit:

- 1.தாவா சொத்து பள்ளிவாசல் வாதிகளுக்கு தனித்து பாத்தியப்பட்டது என்று விளம்புகை செய்து உத்தரவு பிறப்பிக்கும்படிக்கும்
- 2.மேற்படி தாவா பள்ளிவாசலுக்கு வாதிகள் தான் பரம்பரை டிரஸ்டி என விளம்புகை செய்து உத்தரவு பிறப்பிக்கும்படிக்கும்
- 3.1ம் எதிர்வாதியான தமிழ்நாடு வக்பு வாரியம் கடந்த 31.12.1955ம் தேதி உற்பத்தி செய்த புரோபார்மா மற்றும் இந்த நிர் 1ம் எதிர்வாதி கடந்த 27.05.1959ம் தேதியில் பிறப்பித்த தமிழ்நாடு வக்பு வாரிய கெஜட் சட்டப்படி செல்லத்தக்கதல்ல என்று விளம்புகை செய்த உத்தரவு பிறப்பிக்கும்படிக்கும்
- 4.25.04.2011ம் தேதியில் 1ம் எதிர்வாதி பிறப்பித்த நியமன உத்தரவை ரத்து செய்து உத்தரவு பிறப்பிக்கும்படிக்கும்



C.R.P.(MD).No.1129 of 2026

WEB COPY

5.இந்த நிர் எதிர்வாதிகள் சட்டத்திற்கு புறம்பாக கைப்பற்றிய தாவா பள்ளிவாசலை நிர் வில்லங்கமின்றி வாதிகள் வசம் ஒப்படைவ செய்ய உத்தரவு செய்யும் படிக்கும்

6.இவ்வழக்கு செலவு தொகையினை இந்த நிர் எதிர்வாதிகள் வாதிகளுக்கு கொடுக்க உத்தரவு செய்யும்படிக்கும்

2.The suit has been pending from 2013. The private defendants moved an application for rejection of plaint, stating that the suit must not be entertained by the Civil Court on several grounds, including Sections 83 and 85 of the Waqf Act of 1995. The learned I Additional Subordinate Judge, Madurai, dismissed the application for rejection of plaint. Hence, this revision.

3.I heard Mr.Abdul Rashith for the private defendants, Mr.D.S.Haroon Rasheed, learned Standing Counsel for the Tamil Nadu Waqf Board/first defendant and Mr.M.Venkatesan for the plaintiffs. I have gone through the records.

4.Though several contentions were raised, one crucial aspect is the lack of pre-suit notice as contemplated under Section 89 of the Waqf Act. I pointed out to Mr.Venkatesan that prior to the presentation of the plaint,

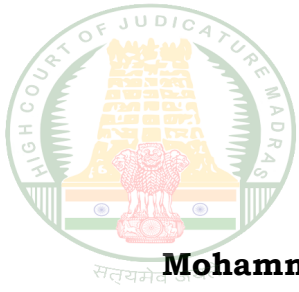


C.R.P.(MD).No.1129 of 2026

the mandatory notice as required under Section 89 of the Waqf Act had not been complied with. On account of this fact, I pointed out that there is a difficulty, which the plaintiffs will face, in view of the long standing judgment of this Court in **Rahmath Bi V. State Waqf Board, AIR 1982 Mad 202.**

5.Mr.Venkatesan pointed out that the defendants are not entitled to raise such a plea as they have waived their right to take that plea at the time of filing the written statement. The plea seems to be inspired by a judgment of the Privy Council in **Bhagchand Dagadusa Gujrathi v. The Secretary of State for India, AIR 1927 PC 176**, whereunder the Privy Council has said that it is possible for a defendant to waive the plea under Section 80 of the Code. The view taken by the Privy Council in **Bhagchand's case** had been reaffirmed in **Al. Ar. Vellayan Chettiar v. The Government of the Province of Madras, AIR 1947 PC 197.**

6.However, I pointed out to Mr.Venkatesan that in the following cases, it had been held that a notice under Section 89 cannot be waived [**see, i) Andhra Pradesh State Wakf Board V. Tati Venkata Seshagiri Rao, (2001) 2 APLJ 489 ii) Syed Abdul Razzaq V. Maharashtra State Waqf Board, 2009 SCC Online Bom 1017 iii) M.S.Abdul Hameed V. Sheik**



C.R.P.(MD).No.1129 of 2026

Mohammed, (2003) 3 LW 184]. While waiver is permitted under Section 80, such a clause is not available, either under Section 89 of the Waqf Act 1995 or under Section 56 of the Waqf Act, 1954. Mr.Venkatesan urged that the plaintiffs in the present suit had earlier filed the suit for injunction, restraining the Jamathar from interfering with their right as Muthavalli and that suit came to be decreed.

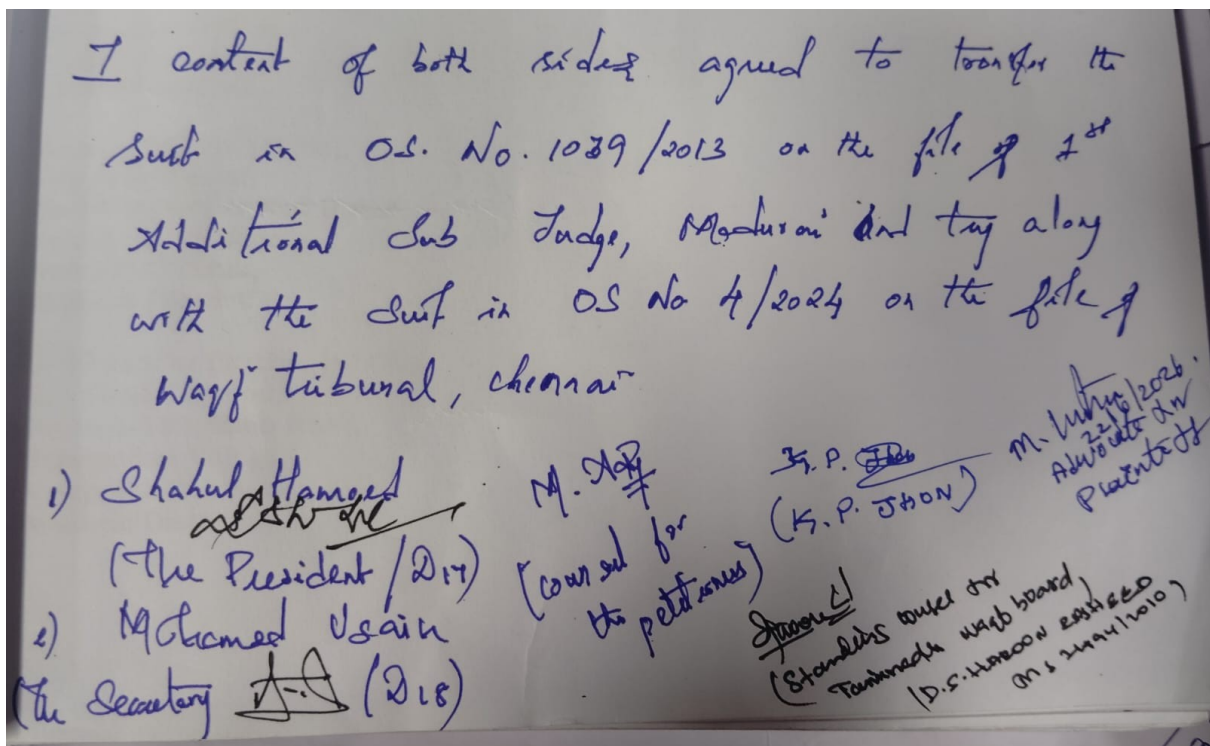
7. Several suits have been pending right from 1968. In fact, currently a suit is pending for recovery of possession in O.S.No.4 of 2024 on the file of the Waqf Tribunal at Chennai. The prayers pointed out above, in case it goes in favour of the plaintiffs, then it would be a jurisdictional fact as to whether any third party can interfere with the right of the plaintiffs. If St. George Gazette dated 27.05.1959 is upheld, then the further rights which the plaintiffs in this suit have, would also have to be decided by the Waqf Tribunal. If this suit is decreed, then the scope of enquiry in O.S.No.4 of 2024 would also be limited.

8. The issues are inextricably mixed. Whereas one side claims that it is a private mosque, the defendants / revision petitioners claim it is a public mosque. This core issue would have to be answered. If the suits are tried separately by the I Additional Subordinate Judge and by the Waqf Tribunal,

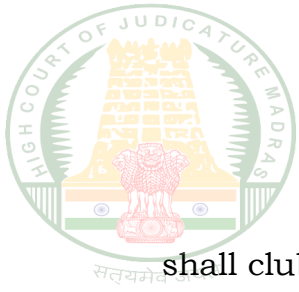


C.R.P.(MD).No.1129 of 2026

there is a possibility of conflict of opinions. When this aspect was pointed out to the parties appearing before this Court, all of them agreed to have a comprehensive disposal of the present suit, along with the suit in O.S.No.4 of 2024 on the file of the Waqf Tribunal at Chennai. Their consent is scanned and extracted hereunder:



9.Hence, instead of dealing with the rejection of plaint separately and passing any orders thereon, the suit in O.S.No.1039 of 2013 is withdrawn from the file of the I Additional Subordinate Judge at Madurai and transferred to the file of the Waqf Tribunal at Chennai. The Waqf Tribunal



C.R.P.(MD).No.1129 of 2026

shall club this suit after re-numbering and shall record evidence in the same and dispose of, both the present suit as well as O.S.No.4 of 2024, by rendering a common judgment. The issues may be recast accordingly.

10.It is made clear that this Court has not gone into the merits of the claim made by both parties. It is for the Waqf Tribunal to decide the issues on the basis of the evidence let in before it. As the suit has been pending for more than 13 years, the I Additional Subordinate Judge shall forthwith transmit the records, if necessary, by a special messenger to the file of the Waqf Tribunal at Chennai.

11.In view of the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

22.06.2026

NCC : Yes / No

Index : Yes / No

Rmk

Note : Issue order copy on 23.06.2026



C.R.P.(MD).No.1129 of 2026

Note to the Registry Records that have been sent to this Court for perusal

in this revision shall be returned to the I Additional Subordinate Judge to comply with the directions given herein.

To

- 1.I Additional Subordinate Judge, Madurai.
- 2.The Chief Executive Officer,
rep for the Tamil Nadu Wakf Board,
No.1, Vallal Seethakathi Nagar,
Jaffer Syrang Street,
Chennai District 600 001.
- 3.The Waqf Tribunal, Chennai.
- 4.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD).No.1129 of 2026

V.LAKSHMINARAYANAN,J.

Rmk

C.R.P.(MD).No.1129 of 2026

22.06.2026