



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 25.04.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

C.R.P. (MD)No.33 of 2018

and

C.R.P (MD) .No.115 of 2018

1.Nizar

2.Shahul Hameed

... Petitioners/Petitioners/  
Plaintiffs

-vs-

1.Muslim Muhalla Paribalana committee,  
Through its President,  
E.P.K. Gulam Muhideen,  
Inaiyam, Keezhkulam Village,  
Vilavancode Taluk,  
Kanyakumari District.

2.E.K.P.Gulam Muhideen, President,  
S/o.E.K.P.Peer Mohammed, President,  
Muslim Muhalla Paribalana committee,  
Inaiyam,  
School Street, Inaiyam,  
Keezhkulam Village,  
Vilavancode Taluk,  
Kanyakumari District.

3.H.Hareem

4.A.M.Ismail

5.Tamil Nadu Wakf Board,  
Through its Chief Executive Officer,  
No.1, Jaffer Syrang Street,  
Vallal Seethakathi Nagar,  
Chennai.

6.J.Shahul Hameed

7.A.Ayub

8.A.Siddiq

9.J.Siddiq

10.J.Peer Mohammed



11.M.Ameer Hussain

12.Syed Ali

13.M.Niyaz

14.A.Mohammed Iqbal

15.M.A.Basheer

16.M.Abdul Kalam

17.Mohammed Abbas

18.J.Sheik Abdul Kader

19.S.Ahamas

20.S.Kader

21.Safeek

22.S.Abdul Raheem

23.Khaja

(R6 to 23 are not necessary parties,  
hence notice to the Respondents 6 to 23 are dispense with)  
... Respondents/Respondents/Defendants

Prayer :- Petition filed under Section 227 of Constitution of India, to set aside the fair and decreetal order dated 22.12.2016 passed in I.A.No.338 of 2016 in W.T.O.S.No.1 of 2011 on the file of Principal Sub-Court, Nagercoil.

For Petitioners : Mr.K.Srinivasan  
Senior counsel for Mr.M.P.Senthil

For Respondents : Mr.K.K.Senthil for R5  
No appearance for R1 to R4

### ORDER

The plaintiffs in W.T.O.S.No.1 of 2011 on the file of the Principal Sub-Court, Nagercoil, are the revision petitioners herein.

2.According to the revision petitioners, W.T.O.S.No.1 of 2011 has been transferred to Wakf Board, Chennai and numbered as O.S.No.09 of 2019.



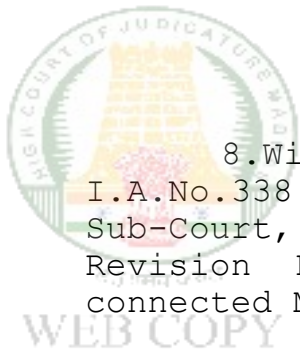
3. The W.T.O.S.No.1 of 20211 was filed by the plaintiffs for declaration that the election conducted by the Wakf is illegal and invalid. The plaintiffs further prayed for appointment of Advocate Commissioner to prepare the voters list in terms of the Bye-law. The plaintiffs further prayed for direction, directing the defendants 2 to 4 to render accounts of the first defendant-wakf for the financial years from 2005 to 2010. The plaintiffs further prayed for appointment of the Court Receiver to take possession of the first defendant-Wakf and to conduct the day to day administration of the Wakf. The plaintiffs further prayed for an order of permanent injunction restraining the defendants from convening any general body meeting. While the said Suit was pending, the plaintiffs filed I.A.No.338 of 2016, seeking permission of the Court to direct the first respondent to produce the schedule mentioned documents, which are in the custody of the first defendant. As per the annexure, 7 documents were mentioned in the list.

4. A counter was filed by the first defendant contending that some records of the years 1974 and 1964 are not available with them. Records in S.Nos.1 to 3 are available with them and other records S.Nos.4 to 7 are not relevant for the disposal of the suit.

5. The learned Trial Court after hearing both the parties dismissed the application on the ground that these documents are not relevant for the purpose of disposal of the suit. The said order is now under challenge in the present revision.

6. Heard the learned counsel for the revision petitioners and the counsel appearing for the Wakf Board. In the morning as well as in the evening session, there is no representation on behalf of the respondents 1 to 4.

7. On perusal of the counter affidavit filed by the respondents 1 and 2, it is seen that they have not disputed the fact that the first defendant is having the custody of the documents arrayed in S.Nos.4 to 7. The contention of the first defendant is that these documents are not relevant for the disposal of the suit and the said contention has been accepted by the trial Court. If really, the plaintiffs feel that those documents are necessary and relevant for the disposal of the present suit, they are always at liberty to produce the same as secondary evidence as contemplated under Section 65 of the Indian Evidence Act 1872. In case, the Court feels that the relevant documents have not been produced by the defendant, Court is also entitled to draw adverse inference as against the defendants as contemplated under Section 114 of the Indian Evidence Act. Hence, I do not find that any purpose would be served in compelling the defendants to produce the documents, which are in their custody.



8. With the above said observation, the order passed in I.A.No.338 of 2016 in W.T.O.S.No.1 of 2011 on the file of Principal Sub-Court, Nagercoil, dated 22.12.2016 is confirmed and the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tta

To  
Principal Sub Judge, Nagercoil.

+1 CC to M/s.M.P. SENTHIL, Advocate SR-21343

+1 CC to M/s.K.K. SENTHIL, Advocate SR-21057

C.R.P. (MD) No. 33 of 2018

Dated: 25.04.2022

KS (CO)

TR(13.06.2022) 4P 4C