

(2026) 04 KL CK 0214

In the High Court Of Kerala

Case No : Miscellaneous First Appeals (Waqf)No.9 Of 2026

Ayirani Juma Ath Palli And Burial Ground Represented By Its Mutawalli **APPELLANT**

Vs

Theyyampattil Abdul Rasaq **RESPONDENT**

Date of Decision : 01-04-2026

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 7 Rule 11, Order 10 Rule 2, Order 14 Rule 2
Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995 — Section 83(9)
WAQF ACT, 1995 — Section 3(i), 6, 7, 32(2)(g), 63, 64, 83, 83(5), 85

Citation : (2026) 04 KL CK 0214

Hon'ble Judges : Anil K. Narendran, J;Muralee Krishna S., J

Bench : Division Bench

Advocate : S.Parvathi, T.K.Sreekala, Nikitha Susan Paulson, Uthara Asokan, Krishnendu S.R., K.I.Mayankutty Mather, K. I. Mayankutty Mather, Krishnanunni, Jamsheed Hafiz

Final Decision : Allowed

Judgement

Muralee Krishna S., J

1. The plaintiffs in WOS No.60 of 2025 on the file of the Wakf Tribunal, Kozhikode (the 'Tribunal' for short) filed this MFA (Waqf), invoking the provisions under Section 83(9) of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995, as amended by the Waqf (Amendment) Act, 2025 ('Waqf Act' for short), being aggrieved by the order dated 16.01.2026 passed by the Tribunal in I.A.No.2 of 2025 filed by the appellants- plaintiffs for temporary injunction, under Order 39 Rule 1 of the Code of Civil Procedure, 1908 ('CPC' for short), whereby, the Tribunal dismissed that interlocutory application on the ground that the Tribunal has no jurisdiction to decide a dispute pertaining to the right of Mutawalliship and it is the Waqf Board which is having the jurisdiction to decide the issue in view of the judgment of the Apex

Court in *S.V.Cheriyakoya Thangal v. S.V.P.Pookoya* [2024 (3) KLT 123] and that of this Court in *Kunjabdulla v. Ahammed Varikkodi* [2024 (5) KLT 55].

2. The facts that can be discernible from the impugned order of the Tribunal and from the statement of facts of this MFA are as follows:

The appellants filed WOS No.60 of 2025 before the Tribunal for a permanent prohibitory injunction restraining respondents 1 to 3 and their men from trespassing into the plaint schedule property, from making any construction in the property and also from interfering in the management of Ayirani Juma-ath Palli and Burial ground. In the said suit, the appellants filed I.A.No.2 of 2025 seeking an order of temporary injunction for the aforesaid purpose until the final disposal of the suit.

2.1. According to the appellants, item No.1 of the plaint schedule property was dedicated as Waqf by the ancestors of the Kalliyath family. A mosque was constructed on that property by the Kalliyath family and was dedicated as a Waqf. Item Nos. 2 and 3 of the plaint schedule property, consisting of 96 cents in Re- survey No.453/13, were registered as Waqf at the Kalpakanchery Sub-Registrar Office, vide Document Nos. 538/1950 and 698/1950 in the name of the then manager of the Kalliyath family. A Madrassa and Khabarsthan are located in those properties. All these properties were registered with the Waqf Board, and the management has been carried out by the Mutawalli appointed from the Kalliyath family. After the death of the 1st Mutawalli, namely Kalliyath Veeravunni Haji, in the year 1957, his son Kalliyath Beeran Kutty took over the management. When Beeran Kutty had to move away due to his job as Revenue Inspector, he handed over the charge of Mutawalliship to his younger brother, Kalliyath Muhammed Master. In the year 1961, Kalliyath Muhammed Master was appointed as the Muthawalli, and the properties were with the Waqf Board under registration No.4338/RA in the name of Ayirani Juma-ath Palli. After the death of Kalliyath Muhammed Master on 16.09.2016, his son Amirudheen alias Monu, followed by Kalliyath Veeravunni's son Ibrahim Kutty, became the Mutawalli. After the death of Ibrahim Kutty, the 2nd appellant has been serving as the Muthawalli, by submitting accounts to the Waqf Board and performing all duties.

2.2. It is the further case of the appellants that the Mutawallis are chosen by the Kalliyath family traditionally. The appointment of the 2nd appellant as Muthawalli has been recognised and confirmed by the Waqf Board through a formal letter. Though a registered committee was formed to assist the Mutawalli in the administrative matters, the management has been carried out by the family members of the Kalliyath family, who are chosen as Mutawalli.

2.3. It is pleaded in the plaint that some individuals have been attempting to hijack the administration of the Waqf, and as a part of the same, a person named Pullisseri Abdul Latheef filed O.P.No.91 of 2024 before the Waqf Board, falsely claiming that a committee named Ayirani Juma-ath Mosque Mahal

Committee is managing the properties. It has come to the notice of the appellants that the respondents-defendants, acting as office bearers of the said committee, without the knowledge and consent of the 2nd appellant as Mutawalli, registered a committee in the name of the 4th respondent. This registration was created through false and forged documents to grab the Waqf properties and its administration. Using the registration, they are attempting to make unauthorised collections and construction. In such circumstances, the appellants filed the WOS seeking a permanent prohibitory injunction.

3. Respondents 1 to 4, on getting notice in the interlocutory application and summons in the suit, filed a counter to the interlocutory application. In the counter filed by the respondents, it is contended that Ayirani Juma-ath Palli, Tharbiyathul Islam Madrassa and Darz are administered and managed by the 4th respondent, which is a society registered under the Societies Registration Act, and the said society is the Mutawalli of the Waqf. Ayirani Juma-ath Palli is situated in the property bearing Survey No.453/12, and there is no document or Waqf deed with respect to that property. The adangal extract maintained by the revenue authorities would show that the said property is in the name of Juma-ath Palli. At no point in time, item No.1 of the plaint schedule property was dedicated by the family of the appellants as pleaded in the plaint. There was no hereditary Mutawalli with respect to the above Waqf. The property owned, possessed and enjoyed by Ayirani Juma-ath Palli was dedicated by various persons and families. The appellants or their predecessors cannot claim any right or authority over the administration of the Ayirani Juma-ath Palli. The Mutawalliship is not individually vested with the Kalliyath family. The respondents have no knowledge with respect to the filing of O.P.No.91 of 2024. The same may be a collusive action between the appellants for accepting the 2nd appellant as the Muthawalli of the Ayirani Juma-ath Palli. The minutes book, account books, receipt books, vouchers, Nikah register, etc., are properly maintained by respondents 1 to 3, who are office bearers of the 4th respondent society. The appellants have no prima facie case. The balance of convenience and injury aspects is in favour of the respondents. With these pleadings, the respondents resisted the interlocutory application filed by the appellants.

4. For the purpose of disposing of the interlocutory application, Exts.A1 to A40 documents were marked from the side of the appellants, and Exts.B1 to B38 documents were marked from the side of the respondents. After hearing both sides, the Tribunal, by the impugned order dated 16.01.2026, dismissed the interlocutory application on the finding of maintainability. Being aggrieved, the appellants-plaintiffs are now before this Court with this MFA.

5. Heard Shri. K. I. Mayankutty Mather, the learned Senior Counsel for the appellants, Shri. Krishnanunni, the learned Senior Counsel for respondents 1 to 4 and Shri. Jamsheed Hafiz, the learned Standing Counsel for Kerala State Waqf

Board for the 5th respondent.

6. The learned Senior Counsel for the appellants would argue that, as far as the jurisdiction aspect is concerned, it is the pleadings in the plaint that have to be considered by the Tribunal. In support of the aforesaid preposition, the learned Senior Counsel relied on the judgments of the Apex Court in *Sanwarmal Kejriwal v. Vishwa Cooperative Housing Society Ltd* [(1990) 2 SCC 288] and *Exphar S.A v. Eupharma Laboratories Ltd.* [(2004) 3 SCC 688]. By relying on the aforesaid judgments, the learned Senior Counsel submitted that from the reliefs sought for in the plaint, it is evident that the appellants did not seek any declaration regarding Mutawalliship of the 2nd appellant, nor have they sought any direction for the appointment of the Mutawalli. The reliefs in the suit are confined strictly to injunctive reliefs and do not extend to questions of appointment, declaration of status or removal from office of the Muthavalli. From the counter affidavit filed by the respondents, it is clear that the relief sought by the appellants is one for an injunction on the ground that the 2nd appellant is the Mutawalli. In those circumstances, the Tribunal erred in holding that the suit ought to have been instituted before the Waqf Board.

6.1. The learned Senior Counsel for the appellants would further submit that Sections 32(2)(g), 63 and 64 or any other provisions in the Waqf Act, do not confer jurisdiction to the Waqf Board to deal with the relief of injunction sought for in the plaint. The relief of injunction sought in the suit is not based on the appointment of the 2nd appellant as Mutawalli under any provisions of the Waqf Act; rather, it is exclusively on the historical dedication, customary practice, and the rights claimed thereunder. Therefore, the outcome would not depend upon the appointment of the 2nd appellant or the respondents as Mutawalli.

6.2. The learned Senior Counsel for the appellants would argue that Section 83 of the Waqf Act covers all the possible disputes in relation to the Waqf or Waqf property, except on two situations, such as if specific powers are given by the Waqf Act to the Waqf Board to decide, then the original jurisdiction vest with the Waqf Board and same cannot be instituted directly in the Wakf Tribunal being the appellate forum. When any dispute or question on other matters relating to Waqf or Waqf property falls within the jurisdiction of the Wakf Tribunal, then the Civil Court cannot decide the matter. But if such power does not vest with the Tribunal, then the Civil Court can decide.

6.3. The learned Senior Counsel for the appellants vehemently submitted that the judgment in *S. V. Cheriya Koya Thangal* [2024 (3) KLT 123] relied on by the Tribunal does not apply to the facts of the instant case for the reason that a relief of injunction was not sought in that case and moreover, the earlier judgment of the Apex Court holding that the Tribunal is the authority to deal with the injunction suit was not considered in that judgment. The legal interpretation of the Section is also wrong. Therefore, the judgment in *S. V. Cheriya Koya Thangal* [2024 (3) KLT 123] can only be treated as per incuriam. It is the submission of the learned Senior Counsel that the conclusion

that the Waqf Board is the competent authority to decide rival claims to the office of Mutawalli based on the interpretation of the term competent authority in Section 3(i) of the Waqf Act in S. V. Cheriya Koya Thangal [2024 (3) KLT 123], was without proper appreciation of the different mode or, in other words distinct categories through which the office of Mutawalli may be held and the appointment by the Waqf Board is only one such mode and not the exclusive source of authority.

6.4. The learned Senior Counsel further pointed out that in the judgment dated 18.07.2024 in O.P.(WAKF)No.9 of 2024 in the matter of H. M. Shamshad v. Mohammed Hashim Ismail Sait, a Division Bench of this Court considered the issue whether the Tribunal or the Waqf Board would be competent to deal with the issue regarding the appointment of Mutawalli. But, in that case also, no relief of permanent prohibitory injunction was sought. Similarly, in the judgment of Kunjabdulla [2024 (5) KLT 55], the relief sought was a declaration regarding the Mutawalliship. In that judgment, this Court relied on the judgment of the Apex Court in S. V. Cheriya Koya Thangal [2024 (3) KLT 123]. Therefore, the judgments in those cases do not apply to the facts of the instant case. The learned Senior Counsel by pointing out Akkode Jumayath Palli Paripalana Committee v. P. V. Ibrahim Haji [(2014) 16 SCC 65] argued that in that judgment, the Apex Court held that the dispute that arose for consideration therein was with regard to the management and peaceful enjoyment of mosque and madrasa and the assets which relates to the Waqf and the nature of the reliefs clearly shows that the Tribunal has got the jurisdiction to decide those disputes. In Board of Wakf, West Bengal v. Anis Fatma Begum [2010 (4) KHC 866], the Apex Court held that the Tribunal can decide all disputes, questions or other matters relating to Waqf properties. In Paragraph 15 of that judgment, the Apex Court held that under Section 83(5) of the Waqf Act 1995, the Tribunal has all powers of the Civil Court under the C.P.C and hence it has all powers under Order 39 Rule 1, Rule 2 and Rule 2A of the C.P.C to grant temporary injunctions and enforce such injunctions. In Rashid Wali Beg v. Farid Pindari [2021 (6) KLT 482], the Apex Court held that a suit for permanent prohibitory injunction in respect of the Waqf property is maintainable before the Wakf Tribunal. By pointing out the judgment of the Apex Court in Habib Alladin v. Mohammed Ahmed [2026 KHC OnLine 6073] the learned Senior Counsel submitted that the fundamental distinction in Habib Alladin [2026 KHC OnLine 6073] and the present case is that, in Habib Alladin [2026 KHC OnLine 6073], the defendant disputed the Waqf character of the property, and whereas in the present case both parties admit that the property is a Waqf property. In that case, based on the contentions raised by the defendants that no mosque existed on the property, the property did not fall within the ambit of the Waqf Act, neither is the property specified in the list of auqaf as published in Chapter II, nor registered under Chapter V nor a Waqf property, the Apex Court in an application under Order 7 Rule 11 of C.P.C, held that the Wakf Tribunal lacks jurisdiction to grant an injunction in respect of a property not conferred with the status of Waqf under

the Waqf Act.

6.5. The learned Senior Counsel for the appellants submitted that the analysis of various judgments undertaken in *Habib Alladin* [2026 KHC OnLine 6073] was primarily to distinguish the judgments rendered in cases where properties were admitted to be Waqf property from those where such status was disputed. It is vehemently argued by the learned Senior Counsel that when two contradictory judgments of coequal benches are there in respect of the same issue, the earlier one will prevail. In respect of that argument, the learned Senior Counsel relied on the judgments of the Apex Court in *Sundeeep Kumar Bafna v. State of Maharashtra* [2014 KHC 4190] and *National Insurance Company v. Pranay Sethi* [(2017) 16 SCC 680]. It is the further submission of the learned Senior Counsel that in *Habib Alladin* [2026 KHC OnLine 6073], the relief of injunction sought was not in respect of the Waqf property and hence, the Apex Court held that the suit is maintainable before the Civil Court. The learned Senior Counsel concluded his arguments, stating that there is no provision in the Waqf Act which specifically states that the Waqf Board has jurisdiction to deal with a suit for injunction or even a suit for declaration or to decide a dispute regarding a rival claim of Mutawalliship. The provisions under Sections 32 (2)(g) or 63, or 64 do not confer such a right. Whereas, Section 83 (1) clearly says that any dispute can be decided by the Tribunal, and the courts have interpreted the same, stating that apart from Sections 6 and 7, all possible disputes can be dealt with by the Tribunal. Apart from that, Section 85, bar of jurisdiction, also clearly states that no other authority can deal with the matter which should be dealt with by the Tribunal.

7. On the other hand, the learned Senior Counsel appearing for respondents 1 to 4 would submit that, as per the judgments in *S. V. Cheriyaakoya Thangal* [2024 (3) KLT 123] and *Kunjabdulla* [2024 (5) KLT 55], the Tribunal has no jurisdiction to consider the issue and as per those judgments it is the Waqf Board that has got the jurisdiction. By the judgment of the Apex Court in *Habib Alladin* [2026 KHC OnLine 6073], it is the Civil Court that has jurisdiction to decide the issue in the present case. The learned Senior Counsel for respondents 1 to 4 submitted that the relief of permanent prohibitory injunction cannot be granted by the Waqf Board. Therefore, from the different judgments on the point rendered by the Apex Court highlighted by the learned Senior Counsel for the appellants, now the question is limited as to whether the jurisdiction in matters like the present one is with the Tribunal or with the Civil Court. The prima facie case, balance of convenience and the injury aspects, which have to be looked into as far as an order of temporary injunction is concerned, are in favour of the respondents 1 to 3. Therefore, on merits also, the contentions of the appellants will not sustain. However, the learned Senior Counsel further submitted that while deciding a temporary injunction application, the Tribunal ought not have decided the question of jurisdiction, since it is a matter to be decided as a preliminary issue after the filing of the written statement, as provided under Order XIV Rule 2 of C.P.C.

8. The learned Standing Counsel for Kerala State Waqf Board for the 5th respondent also submitted that the Tribunal ought not have decided the question of jurisdiction without considering the rival contentions of the parties on that point as a preliminary issue as provided under Order XIV Rule 2 of C.P.C.

9. We have carefully gone through the available materials placed on record. From the discussions in the impugned order of the Tribunal, we notice that the suit filed by the appellants is a suit for injunction simpliciter. In that suit the appellants sought the relief of a temporary injunction till the disposal of the suit. However, the pleadings narrated in the impugned order would show that the injunction sought by the appellants is based on the claim of Mutawalliship. But they claim the right of Mutawalliship as a hereditary right and not as appointed under the provisions of the Waqf Act.

10. As pointed out during the course of arguments, there are rival judgments on the issue of jurisdiction of the Tribunal based on the reliefs sought, such as claim of Mutawalliship, and the nature of the property under dispute.

11. In the present suit, the respondents-defendants have not filed their written statement till the disposal of the interlocutory application filed by the appellants for temporary injunction. The parties to this appeal are not in serious dispute on the point that the jurisdictional issue ought to have been considered by the Tribunal in the suit as a preliminary issue and not in the injunction application. At this juncture, it is apposite to refer Rules 1 and 2 of Order XIV of C.P.C, which deal with the framing of issues and pronouncement of judgment on the said issues. The said Rules read thus;

"Rule 1 - (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Rule 2 - (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue”.

12. A reading of the aforesaid provisions would show that when the question of jurisdiction is raised in the written statement filed by the respondents-defendants, in appropriate cases, the Court, in this case the Tribunal, shall raise that issue as a preliminary issue and decide the same before entering into the merits of the contentions. As stated above, in the instant case, the written statement was not filed by the respondents at the time of disposal of the interlocutory application. It is trite that as far as an application for temporary injunction is concerned, the Court has to look into a prima facie case, the balance of convenience and the injury aspects. The purpose of granting the said temporary injunction is only to preserve the property or maintain the status quo till the disposal of the suit. If a contention regarding non-maintainability of the suit and the injunction application, on jurisdictional aspect is raised, then that issue has to be decided as a preliminary issue to decide whether to proceed with the suit or not. The decision pertaining to the jurisdiction is not advisable to be taken in a petition for injunction, since the consideration of that issue in the suit, and the points to be considered in the temporary injunction application, are entirely different. It is true that if the suit is found as not maintainable, then the application for temporary injunction is also liable to be dismissed. But that will not be a ground to give a finding regarding the non-maintainability of the suit in the injunction application without considering that issue in the suit. In such circumstances, we are of the considered opinion that the impugned order of the Tribunal is liable to be set aside since the said order was passed solely on the ground that the Tribunal has no jurisdiction to entertain the suit, which decision ought to have been taken in the suit on merits after considering the rival contentions.

13. We are not proposing to consider the contentions raised by both sides on the issue of jurisdiction of the Tribunal in this M.F.A, since as found above, that issue has to be decided on merits by the Tribunal after considering the pleadings in the plaint as well as in the written statement.

14. Having considered the materials placed on record and the submissions made at the Bar, we are of the view that the matter has to be sent back to the Tribunal for deciding the issue of maintainability of the suit as a preliminary issue.

In the result, this M.F.A (Waqf) is allowed by setting aside the impugned order dated 16.01.2026, passed by the Tribunal in I.A.No.2 of 2025 in WOS No.60 of 2025, and the matter is remitted to the Tribunal for fresh consideration after deciding the issue of jurisdiction as a preliminary issue in the WOS. If the respondents have not filed the written statement to date in the suit, they shall file the same as expeditiously as possible, at any rate, within a period of seven days from the date of receipt of a certified copy of this judgment. It is made clear that if any interim orders are necessary in I.A.No.2 of 2025, before deciding the preliminary issue of jurisdiction, the Tribunal shall issue the same, purely based on the settled principles to be considered for disposal of an application for temporary injunction.