

**IN THE COURT OF THE SUB JUDGE, CHERTHALA**

**Present:- Ms. Lakshmy.S., Sub Judge**

**Thursday 26<sup>th</sup> day of June 2025/ 05<sup>th</sup> Ashada 1947**

**I.A No. 06/2024 in O.S No. 18/2020**

(Filed on : 03.12.2024)

- Petitioners :-**
1. Sajitha, Mehar Villa, Arookutty.
  2. Rinshad, Mehar Villa, Arookutty.

**By Adv. D. Jayasree**

**Cr. Petitioner:-** Vaduthala Juma Ath Educational Trust,  
Represented by its Secretary.

**By Adv. N. Ratheesh**

This IA having been finally heard on 14.06.2025 and the Court on 26.06.2025 passed the following.

**ORDER**

This petition is filed by the defendants u/S.151 CPC to hear the question on maintainability of the suit before this court and its jurisdiction.

2. The contentions of the petitioners are as follows:

The suit is for realization of money said to be due from Late Ibrahimkutty, husband of the first petitioner. The suit was filed after the demise of Ibrahimkutty as during his life time, he disputed the deeds of the counter petitioner. The counter petitioner is a trust formed by the Vaduthala Kottoot

Kattupuram Pally Jama-ath for the management of the Secondary School established by the said Jama-ath. The plaintiff trust is only an institution coming under the Vaduthala Kottoot Kattupuram Pally Jama-ath, a Waqf governed by the provisions of the Waqf Act. So, no civil suit is maintainable. The matter in dispute also comes within the ambit of Sec.85 of the Waqf Act. The petitioners have specifically raised contention as to the maintainability of the suit and non joinder of necessary parties.

3. The counter petitioner filed objections as follows: The petitioners have no authority or right to file this petition. The defendants have filed written statement on 05.08.2022 and no contentions based on Waqf Act raised in this petition were raised there. The jurisdiction of this Court was also not disputed. The petition is filed when the suit was included in the list for trial. The plaintiff trust was registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act and there is no Waqf registration. So, the suit is maintainable and the IA is to be dismissed.

4. Heard and perused the records.

5. The following points arise for consideration: -

1. Is the suit not maintainable in view of the statutory bar u/S.85 of the Waqf Act?

2. Order and costs?

6. **Point No.1:** The plaintiff is Vaduthala Jama-ath Educational Trust and the suit is for realization of money against the legal heirs of Late

Ibrahimkutty. Sri.Ibrahimkutty was the Secretary of the trust from 1998 to 2007. It is alleged by the plaintiff that on audit it was found that Late Ibrahimkutty committed misappropriation of funds and falsification of accounts during his tenure as Secretary. Since, Ibrahimkutty died, the suit is filed against his legal heirs for realizing an amount of Rs.33,63,818/- with interest till realisation.

7. The petitioners have contended that the plaintiff trust is only an institution coming under the Vaduthala Kottoot Kattupuram Palli Jama-ath which is a waqf governed by the Waqf Act and hence civil suit is not maintainable. The petitioners have not taken any such contention in their written statement and the petition was filed only on the date when the suit stood listed for trial. So, undoubtedly, the petition is highly belated.

8. Now the matter to be considered is whether there is any merit in the contention raised by the petitioners regarding the statutory bar u/S.85 of the Waqf Act. S.85 of the Waqf Act bars jurisdiction of civil courts and revenue courts regarding matters that the Act mandates to be decided by a Waqf Tribunal. The bar extends to any dispute, question, or other matter related to any Waqf or Waqf property. The provision imposes a significant bar on civil courts jurisdiction concerning Waqf property mandating that all relevant disputes be resolved by the Waqf Tribunal. This includes disputes on property ownership, management, and other related issues. The exclusion of civil courts'

jurisdiction applies only when the matter in dispute is explicitly required by the Act to be determined by the Tribunal. If a dispute does not fall under this requirement, civil courts may retain jurisdiction.

9. Here, the petitioners have relied on the order of the Waqf Board in OP 70/2011 dt.13.12.2019 to support their argument that the plaintiff is only a trust formed by the Jama-ath governed by the Waqf Act. The said order was challenged before the Waqf Tribunal and the same was set aside vide order dt.01/03/2025 in WOA 56/2022. In the said order, the Waqf Tribunal has found that the plaintiff trust was registered under the Travancore – Cochin Literary Scientific and Charitable Societies Registration Act. It is further observed that the trust is governed by its own byelaw and in management of an aided school, which in turn is to be governed in accordance with the Education Act and Rules.

10. So, the argument of the petitioners herein that the trust is part of waqf or that its management is with the waqf are not seen accepted by the Waqf Tribunal. The petitioners herein have not produced any other authority to find that the management of plaintiff trust is governed by the Waqf Act.

11. The suit is for realization of money alleging misappropriation of the funds of plaintiff trust by its Ex-Secretary and hence it cannot be considered as a dispute, question or matter related to waqf or waqf property to find that suit is barred u/S.85 of the Waqf Act. There is no merit in the petition

questioning the maintainability of the suit and the point is found against the petitioners.

12. **Point No.2:** - In view of the finding on point No.1, the IA is to be dismissed, with costs.

**In the result, the IA is dismissed, with costs.**

Dictated to the Confidential Assistant, typed by her directly to the computer, corrected and pronounced by me in open court on this the 25<sup>th</sup> day of June, 2025.

Sd/-  
**LAKSHMY.S,**  
**SUB JUDGE.**

**Appendix:-NIL**

Id/-  
**SUB JUDGE**