

IN THE COURT OF THE DISTRICT MUNSIF AT UDHAGAMANDALAM

Present: **Thiru. L. PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Friday, the 19th day of December 2025

E.A. No. 08 of 2025

In

EP. No. 39 of 2018

(C.N.R. No. TNNS030 - 00204 – 2018)

1. Elizabeth Antony (Since Deceased)

2. A.A. Joseph

... Petitioners/Respondents/Defendants

/Vs/

The Tamil Nadu Waqf Board,

Rep. by its Secretary

(At present Cheif Executive Officer)

... Respondent/Petitioner/Plaintiff

This petition came on 16.12.2025 for final hearing before me in the presence of Thiru. N. Arjjunan, learned Counsel for the Petitioners and of Thriu. Reinia Ignatius Santy, learned Counsel for the Respondent, upon having stood over for consideration till this day, this court delivered the following:

ORDER

1. This petition is filed under Order XVI Rule 7 R/w Section 151 of the Code of Civil Procedure, praying to summon the court Bailiff District Munsif Court, Nazar Section, Combined Court Complex, Ootacamund, The Nilgiris to adduce evidence regarding her visit on 02.12.2024 to give delivery of possession as per the warrant issued by this Honourable Court and the parties present in that premises on the particular date of her visit and regarding her report filed to this Honourable Court.

Gist of Petition and Affidavit:

2. The brief averment of petition is that, the 2nd petitioner is the Judgment Debtor No. 2 in the above execution petition states that, the above execution is filed for delivery of possession of the premises bearing old D. Nos. 131, 132 and 133, however, the 2nd petitioner is living in D. No. 130 (Old), New D. No. 190/14 of Ootacamund Town, which is entirely different from the execution petition scheduled premises. The Court Bailiff visited the 2nd petitioner's residence on 02.12.2024 to deliver possession, at that time, the 2nd petitioner filed objections through his counsel, and the premises bearing old D. No. 130, new D. No. 190/14 were locked as he was out of town, later the Court Bailiff filed her report on the same day without delivering the possession. The 2nd petitioner states that he has vital points to be elicited from the Bailiff's report to strengthen his case, and protect his lawful rights. Unless the Court Bailiff is examined regarding her report, would cause irreparable loss and great hardship, hence, prays to allow this petition.

Counter Statement:

3. On the other hand of the respondent side filed memo that no counter for this petition. Hence, the respondent has not filed any counter statement for this petition.

Points for Determination:

4. Heard, the petition and the case records perused carefully. The point for determination in this petition is that, whether this petition is liable to be allowed or not. This petition is filed under Order XVI Rule 7 read with Section 151 of the Code of Civil Procedure, praying to summon and examine the Court Bailiff attached to the District Munsif Court, Nazir Section, Combined Court Complex, Ootacamund, in connection with the alleged visit dated 02.12.2024 for effecting delivery of possession pursuant to the warrant issued by this Court and the report submitted by her.

5. The averments in the petition and affidavit are that the Court Bailiff visited the premises on 02.12.2024 to effect delivery of possession, that delivery could not be effected, and that certain aspects relating to the visit and the report are required to be elicited by examining the Bailiff. Hence, the present petition has been filed. On the side of the respondent, a memo has been filed stating that no counter is being filed for this petition.

6. At the outset, it is to be noted that though the petitioner seeks permission to summon and examine the Court Bailiff attached to the District Munsif Court, Nazir Section, Combined Court Complex, Ootacamund, the name of the Bailiff who allegedly visited the property on 02.12.2024 has not been mentioned either in the petition, in the supporting affidavit, or in the batta memo filed before this Court. As mandated under Order XVI Rule 1 of the Code of Civil Procedure, the party seeking to summon a witness shall furnish the name and particulars of the witness. In the absence of such particulars, this Court is not in a position to issue summons to an unspecified witness.

7. It is further seen from the records that the counsel for the petitioner had filed memos seeking permission to inspect the case records on two occasions, and the same were permitted by this Court. The counsel for the petitioner had perused the case records prior to filing the present petition. Even thereafter, the name of the Court Bailiff, which could have been ascertained from the records, has not been mentioned in the petition, affidavit, or batta memo.

8. It is further seen from the records that the original suit was filed in the year 1988, and the decree came to be passed on 24.04.1990. The first appeal in A.S. No. 25 of 1990 was dismissed on 20.09.1993, and the second appeal in S.A. No. 1638 of 1993 was dismissed by the Honourable High Court on 24.01.2017, thereby confirming the decree. Thereafter, E.P. No. 39 of 2018 was filed on 14.08.2018, and

delivery of possession was ordered by this Court on 08.11.2024. However, the decree holder has not been able to take delivery of possession till date, notwithstanding the decree having attained finality long ago.

9. It is also relevant to note that the petitioner herein had earlier filed E.A. No. 02 of 2023, which was dismissed by this Court on 27.03.2024, and the revision preferred there against in C.R.P. No. 2258 of 2024 was also dismissed by the Honourable High Court of Madras on 26.06.2024.

10. During the course of execution proceedings, the petitioner/respondent, while adducing evidence, has deposed during cross-examination that he has no objection to the delivery of possession of the properties mentioned in the decree schedule. In view of such admission, this Court is of the considered view that examination of the Court Bailiff in the present petition is unwarranted and would not serve any useful purpose.

11. The contention of the petitioner is that he is residing only in Door No. 130, whereas the door numbers mentioned in the decree are Door Nos. 131 to 133, and that he is not residing in the said door numbers. However, the Honourable High Court of Madras, in its order passed in C.R.P. No. 2258 of 2024, has observed that the mother of the petitioner, who was the original defendant in the suit, had admitted in her written statement that her husband, Mr. M.G. Mathew, was a tenant under the respondent/decreed holder and that after his death she continued in possession of the suit property. Based on the said admission, the Honourable High Court has observed that the petitioner is staying in the suit property and that the petitioner is attempting to protract the execution proceedings.

12. Further, the execution petition is filed for delivery of possession, and no application is pending before this Court with regard to identification of the property.

In the absence of any dispute regarding the identity of the property covered under the decree, this Court is of the considered view that examination of the Court Bailiff is not necessary for effective adjudication of the execution proceedings.

13. In the light of the prolonged history of litigation, the repeated attempts made by the petitioner to reopen settled issues, the omission to mention the name of the witness despite inspection of records, the admission made by the petitioner during cross-examination, and the observations already made by the Honourable High Court, this Court is of the view that the present petition does not merit consideration and appears to have been filed only to delay the execution proceedings. Hence, this court not inclines to allow this petition. Further, considering the delay occasioned by the filing of the present petition, which has been purposely filed without mentioning the name of the Court Bailiff with the apparent intention of prolonging the execution proceedings, this Court finds it just and necessary to impose reasonable costs on the petitioner.

Result:

14. In the result, this petition is dismissed with cost of ***Rs.1,500/- (Rupees One Thousand and Five Hundred only)*** payable by the petitioner to the respondent/decreed holder on or before the next hearing date.

Dictated by me to the steno-typist, typed by her in computer, corrected and pronounced by me in open court, this the 19th day of December 2025.

**DISTRICT MUNSIF,
UDHAGAMANDALAM.**

Draft/Fair Order:

**E.A. No. 08/2025
in
E.P. No. 39/2018**

Dated: **19.12.2025**

**District Munsif Court,
Udhagamandalam.**