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C.R.P.(NPD).No.1523 of 2022 and
C.M.P.No.7725 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (NPD).No.1523 of 2022 and
C.M.P.No.7725 of 2022

M.Shenbagavalli

... Petitioner

Vs.

1.Hazarath Baquer-e-Agah Dargah & Endowment
Called as Baqar Aga Dargah
Rep by its Joint Secretary
Namely A.K.Zarook Ali,
Having his Office at Door No.31, Big Street,
Triplicane, Chennai 600 005.
Amended as per order in I.A.No.67 of 2022 dated
22.02.2022.

2.The Tamil Nadu Waqf Board,
Rep by its Chief Executive Officer (C.E.O.),
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai 600 001.

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.621 of 2021 in O.S.No.37 of 2021 dated 28.02.2022, on the file of the Waqf Tribunal at Chennai.



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For Petitioner : Ms.Hema Sampath, Senior Counsel for
A.Ajimath Begum

For Respondents : Mr.L.Gavaskar

ORDER

This civil revision petition has been preferred to set aside the fair and decreetal order passed in I.A.No.621 of 2021 in O.S.No.37 of 2021 dated 28.02.2022, on the file of the Waqf Tribunal at Chennai.

2. Heard the learned senior counsel for the petitioner and also the learned counsel for the respondents.

3. The revision petitioner is a second defendant in the suit. The suit has been filed by the first respondent Waqf for the relief of permanent injunction restraining the petitioner / second defendant from putting up any construction in the suit property. The first respondent / plaintiff has also filed a petition in I.A.No.621 of 2021, for the relief of temporary injunction for restraining the petitioner / second defendant from putting up further construction till the disposal of the suit. The said petition was allowed. Aggrieved over that, the petitioner / second defendant has preferred this civil revision petition.



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4. The learned senior counsel for the revision petitioner submitted that the suit itself is barred by law because the first respondent / plaintiff had admitted the possession of the petitioner / second defendant in the suit property and without seeking any prayer for recovery of possession, the suit filed for the relief of permanent injunction restraining the second defendant from putting up construction, is not maintainable. It is further submitted that even if the suit is decreed, that cannot be an executable decree and the first respondent / plaintiff cannot recover possession by claiming that the suit property belongs to the waqf.

5. The learned counsel for the respondents submitted that the property is very much belongs to the waqf and the notification given to that effect was not challenged by the petitioner / second defendant or any one else, till now. The interim order has been granted by the Trial Court by properly appreciating the balance of convenience of the parties. It is further submitted that if the petition is not allowed and the revision petitioner/second defendant continues to put up construction in the suit property, that will even render the suit filed by the first respondent/plaintiff infructuous and he will go remedy less.



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6. The prayer in the plaint filed by the first respondent/plaintiff and the prayer sought by him in the interlocutory application filed under Order 39 Rule 1 and 2 are seem to be one and the same. Admittedly, the revision petitioner is in possession of the property. Only because the revision petitioner is in possession of the property and putting up construction, the first respondent/plaintiff has come forward with this suit. However, the first respondent/plaintiff has not chosen to file a comprehensive suit for recovery of possession along with permanent injunction.

7. The learned counsel for the respondents submitted that the property being waqf property, he can even evict the revision petitioner from the suit property by invoking Tamil Nadu Public Premises Act. In that case, there is no necessity to file the suit itself. The contention of the petitioner/second defendant is that she has title over the suit property. But, curiously the petitioner/second defendant has not filed any suit for declaring her title. Since the revision petitioner/second defendant is in possession of the property, she is capable of putting up constructions. Supposing if the revision petitioner continuously puts up construction and at some point of time, if she was



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evicted through due process of law by the first respondent/plaintiff, the irreparable loss and injury for having put up construction in the suit property would be suffered only by the revision petitioner and not the first respondent/plaintiff.

8. Further, the Court ought not to have granted the prayer sought in the suit itself as an interim relief. The learned Trial Judge ought to have taken into consideration of all the essential requirements contemplated under Order 39 Rule 1 for appreciating the necessity to grant temporary injunction. He omitted to properly weigh the balance of convenience. Hence, I feel the impugned order is liable to be reversed.

9. Accordingly, this civil revision petition stands allowed and the order passed in I.A.No.621 of 2021 in O.S.No.37 of 2021 dated 28.02.2022, by the District Judge, Tamil Nadu Waqf Tribunal, Chennai, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2022

Index: Yes/No
Speaking / Non Speaking Order
gsk



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To

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3. The Waqf Tribunal, Chennai.



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R.N.MANJULA, J

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