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CRP.No.3735 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3735 of 2022

and

CMP.No.19688 of 2022

K.Nasser Ali Kirmani

... Petitioner

Vs.

Fazilath Begum @ Fathima Begum
Respondent

...

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 09.09.2022 passed in I.A.No.152 of 2022 filed in O.S.No.54 of 2020 by the learned Tamil Nadu waqf Tribunal.

For Petitioner : Ms.N.Nasreen Fathima



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for Mr.Shoukath Ali

ORDER

This Civil Revision Petition is filed, challenging the order passed by the Wakf Tribunal dismissing the petition for rejection of the plaint filed by the revision petitioner in I.A.No.152 of 2022.

2. The respondent herein filed a suit for bare injunction in O.S.No.54 of 2020. It is the case of the respondent that she had been residing in the suit property right from the date of her birth and the petitioner herein is making illegal attempts to disturb her.

3. The petitioner herein filed an application under Order 7 Rule 11 of CPC, seeking rejection of the plaint wherein, it is stated that the respondent has made false averments in the plaint as if the petitioner tried to evict the respondent illegally from the suit property. It is also stated that the respondent himself is not residing in the suit



property.

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4. It is further averred by the petitioner that the respondent is not at all residing in the suit property and the cause of action pleaded in the plaint is not correct. It is further averred by the petitioner that mere suit for injunction will not lie without a prayer for declaration when the alleged right of the respondent over the suit property is disputed.

5. The points raised by the revision petitioner with regard to the nature and character of the suit property and the right of the respective parties over the same etc., have to be decided only at the time of full fledged trial.

6. It is vehemently contended by the learned counsel for the petitioner that the petitioner is muthawalli and he cannot be restrained from entering into the suit property. It is always open to the revision petitioner to raise her defence and contend that the suit itself is not



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maintainable at the time of final disposal of the suit.

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S.SOUNTHAR, J.

dna

7. As far as the petition for rejection of the plaint is concerned, the Court is concerned with the averments contained in the plaint and plaint documents. The Court at this stage of rejection of the plaint cannot go to the worthiness of the defence raised by the defendant. In view of the same, I do not find any error in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

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