



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

CRP (PD).No.3600 of 2022

and

C.M.P.No.19103 of 2022

C.Nagammal

... Petitioner

Vs.

The Madras Cemeteries Board,
Rep, by its Secretary,
Having Office at No.300/88,
Kilpauk Garden Road,
Kilpauk, Chennai 600 010.

.... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.10 of 2022 in O.S.No.4597 of 2013 dated 10.10.2022 by the I Assistant Judge, City Civil Court, at Chennai.

For Petitioner : Mr.K.Balaji

For Respondent : Mr.D.Kanagasundaram



ORDER

This Civil Revision Petition is filed by the petitioner challenging the order dismissing the petition filed by the revision petitioner seeking the trial court to frame the additional issues with regard to the competency of the respondent/defendant to defend the suit.

2. The petitioner herein has filed a suit for injunction against the respondent restraining it from interfering with the peaceful possession over the suit property.

3. The respondent on its part filed the counter claim seeking recovery of possession. The trial in the suit has already commenced and it is half way through. Now the petitioner has filed this instant application in I.A.No.10 of 2022 seeking framing of additional issues touching the competency of the defendant to defend the suit.

4. The trial court framed three issues on 23.01.2015 and further additional issues were framed on 08.12.2015. The original issues and the additional issues framed by the court below are as follows:



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23.01.2015- Issues:

- “ 1. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
2. *Whether the defendant is entitled to delivery of possession of suit property from plaintiff?*
3. *To what relief the plaintiff and defendant are entitled to?”*

08.12.2015- Additional Issues:

- “1. *Whether the defendant is the owner of the suit property?*
2. *Whether the defendant's claim for recovery of vacant possession without praying for declaration is valid?”*

5. Already there are two issues touching the title of the defendant and his entitlement to recover possession from the petitioner. The additional issues now sought to be raised by the petitioner touching the competency of the respondents to defend the suit is incidental to the issues already framed on 08.12.2015. Therefore this court feels that the present application filed by the revision petitioner seeking framing of additional issues touching the competency of the respondent/defendant is unnecessary. It is also pertinent



to note that in an earlier round of litigation before this court in CRP.No.11235 of 2022, this court has observed as follows:

“ She also raised an issue of the competency of the one who now defends the defendant in the suit. This shows that they are alien to the present revision and let it be open to the revision petitioner to canvas the same during the final hearing of the suit.”

6. Therefore it is clear that it is always open to the petitioner to advance his arguments touching the competency of the respondent/defendant to defend the suit. In view of the matter that the impugned order will not cause any irreparable loss to the petitioner if allowed to stand. Therefore, I do not find any infirmity or illegality to interfere with the order passed by the court below,

7. In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

8. The learned counsel for the respondent made a request to fix the time limit to dispose of the suit. Since the suit is of the year 2013 and it is



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stated by the both the learned counsel that the trial is pending, this court is inclined to issue a direction to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

10.11.2022

Index : Yes/No

Internet : Yes/No

gv

To

The I Assistant Judge, City Civil Court,

Chennai.



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S.SOUNTHAR.,J.

Gv

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