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CRP.Nos.3521-3523 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.Nos.3521 to 3523 of 2017  
and  
C.M.P. Nos. 16303 to 16305 of 2017

1. P.M. Venkatachalapathy(Died)  
2. V.S. Senthil Kumar,  
3.Sathyalakshmi,  
4. V. Krishnaveni  
Petitioners

..

(In all petitions)

(Petitioners 3 & 4 brought on record as LR's of the deceased  
P1, namely P.M. Venkatachalapathy vide order dated 14.09.2021  
made in CMP No.12064/2021 in CRP No.3521/2017,  
CMP No.12066/2021 in CRP No.3522/2017, CMP No.12070/21 in  
CRP No.3523/2017

Versus

1.Jamia Masjid  
Rep. by Muthavalli Ameer Basha,  
D. No.25, Godon Street,  
Hosur Town.

2.Tamil Nadu Wakhf Board,  
Rep. by its Chief Executive Officer,  
No.1, Jaffer Syrang Street,  
Vallal Seethakadhi Nagar,  
Chennai-600 001

.. Respondents



(In all petitions)

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**Common Prayer:** These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.08.2017 passed in I.A. Nos.126 to 128 of 2017 in W.O'S. No.33 of 2016 on the file of the learned Principal Subordinate Judge, Krishnagiri.

For Petitioners : Mr.Suresh Sakthi Murugan

For Respondent 1 : Mr. S. Sadasharam

For Respondent 2 : Mr. S. Haja Mohideen Gisthi  
(In all petitions)

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### **COMMON ORDER**

These Civil Revision Petitions have been filed by the petitioners seeking to set aside the fair and decreetal order dated 29.08.2017 passed in I.A. Nos.126 to 128 of 2017 in W.O'S. No.33/2016 on the file of the learned Principal Subordinate Judge, Krishnagiri.

2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in the Original Suit.

3. The case of the petitioners is that the 1st respondent herein filed



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the suit in W.O.S. No.33 of 2016 on the file of the Sub-ordinate Judge, Hosur, seeking for relief of direction to the defendants to deliver the possession of the suit land and to set aside the sale deed dated 30.06.1995 under Registered Document No.5900 of 1995. Pending the suit, the 7<sup>th</sup> defendant has filed the said I.A. Nos. 126 to 128 of 2017 under Order 11, Rule 1 of C.P.C r/w. Section 57 of C.R.P to order the respondents/plaintiffs for delivery of interrogatories. Having heard both sides, the Trial Court dismissed the aforesaid application by its order dated 29.08.2017 holding that whether the cause of action for the suit and W.O.S. No.2 of 1998 are one and the same, can be determined only after filing the written statement and after full fledged trial and the petition is also pre-mature one and is not allowed at that stage. Being aggrieved by the aforesaid dismissal order, the petitioners have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that the Trial Court has miserably failed to appreciate that the interrogatories were posed to narrow down the controversial issues between the parties. If the facts are admitted by the adverse party, no need to let in evidence during the



course of trial. Further, the Trial Court has not formed any opinion to strike out the following interrogatories are prolix or unnecessary which are as follows:

- “1. Do you admit Royathwari Patta under TD No.1399?*
- 2. Do you admit the suit in O.S. No.2 of 1998 filed before this Court?*
- 3. Do you admit that suit was dismissed for default?*
- 4. Have you obtained any permission from the Court to bring fresh suit on the same cause of action?*
- 5. Do you admit compromise in the S.A. No.1856 of 1986 dated 08.04.1991?*
- 6. Do you admit that you have suppressed this compromise in S.A. No.1856 of 1986 done before the High Court of Madras?*
- 7. Do you admit the Compromise Decree in O.S. No.16 of 1986 of District Munsif Court, Hosur?*
- 8. Do you admit the Vendors of the defendant to the document No.4677 of 1996, 5678 of 1995 and 5900 of 1995 were not added as parties to the suit?*
- 9. Do you admit that your suit seeking relief to declare Sale Deed No.4677 of 1996, 5678 of 1995 and 5900 of 1995 as null and void is barred by limitation?*
- 10. Do you admit that your suit is barred by Order 2 Rule 2 C.P.C.*
- 11. Do you admit possession of 20 cents as per compromise decree?*
- 12. Do you admit Vendor of the defendant or the parties to the compromise to the second appeal No.1856 of 1996 dated 08.04.1991?*
- 13. Do you admit Patta No.2173, 2174 and 2175 standing in the name of the defendants 2 and 3?*



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If the adverse party answers to the aforesaid interrogatories, it is materially important to draft the pleading in the event of filing of the Written statement. The dismissal of the application by the Trial Court without assigning any reason in the spirit of Order 11 C.P.C is clear abuse of Law as it is erroneous and illegal. Hence, the petitioners have filed the present Civil Revision Petition to set aside the order dated 29.08.2017 in I.A. Nos. 126 to 128 of 2017 in W.O.S. No.33 of 2016 passed by the Trial Court.

5. The learned counsel for the respondents would submit that the petitioners have filed the I.A. Nos. 126 to 128 of 2017 before the Trial Court seeking to order the respondents herein for delivery of interrogatories while the suit in W.O.S. No.33 of 2016 is pending for filing of written statement on the side of the defendants. Whether the cause of action for the suit in W.O.S. No.33 of 2016 and W.O.S. No.2 of 1998 are one and the same can be determined only after the commencement of Trial and filing of the written statement on the side of the defendants. Then, it would be possible to come with a proper conclusion and until then, the petitioners can very well proceed with their case, instead of protracting the



proceedings by filing the sort of petitions. Hence, the Trial Court after hearing both sides, dismissed the aforesaid application.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the respondents/the plaintiffs have filed the suit in W.O.S.No.33 of 2016 seeking for declaration of title and for delivery of possession against the defendants/petitioners herein before the Trial Court. During the pendency of the aforesaid suit for filing of the written statement, the defendants have filed the I.A. Nos. 126 to 128 of 2017 under Order 11 Rule 1 of C.P.C r/w. Section 57 of C.R.P seeking to order the respondents/plaintiffs for delivery of 13 number of interrogatories on the side of the respondents/plaintiffs instead of filing the Written statement enabling to the Trial Court to proceed the Trial further and record the oral and documentary evidence so as to adjudicate the issue raised in the suit in accordance with law. As per the contentions of the learned counsel for the petitioners, the petitioners/defendants have valid sale deed for the suit property however, per contra, the learned counsel for the respondents contended that the



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petitioners/defendants are the encroacher of the suit property. While being so, the parties concerned ought to have submitted their reliable evidence before the Trial Court to decide the title over of the suit property. Without putting forth the defense on the side of the defendants by way of Written statement to contest the suit and letting in oral and documentary evidence on the side of the defendants/petitioners herein, they have directly sought for answer from the plaintiffs/respondents herein for their questions is not sustainable and liable to be set aside. The Trial Court can determine only after the commencement of Trial and filing of the written statement on the side of the defendants as to whether the cause of action for the suit in W.O.S. No.33 of 2016 and W.O.S. No.2 of 1998 are one and the same. Until then, the defendants/petitioners should proceed with their case by filing the Written Statement and thereafter, during the Trial, the petitioners can raise all the questions during the cross examinations of witnesses enabling to the Trial Court to adjudicate all the queries raised by the petitioners herein. Hence, this Court is not inclined to interfere with the order dated 29.08.2017 passed by the Trial Court in I.A. No.128 of 2017.



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8. In the result, the Civil Revision Petitions are dismissed.

Consequently connected miscellaneous petitions are closed. No Costs.

**27.10.2022**

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Index : Yes/No

Speaking Order : Yes/No



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Copy To:

1. The Principal Subordinate Judge, Krishnagiri.
2. The Section Officer, V.R.Section  
High Court, Madras.



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**T.V.THAMILSELVI, J.**

Lbm

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