

IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM, VELLORE DISTRICT.

**Present : Thiru.M.N.Rajanandhivarmasiva, B.E., L.L.B.,
District Munsif, Gudiyattam.**

Wednesday, the 12th day of April 2023

IA.1/2022 in OS.199/2013

CNR.No.TNVL10-000121 – 2013

1. Loganathan.
2. Munirathinam.

...Petitioners/Defendants 1 and 2.

// Versus //

1. Saleem Basha (Died)
2. Maseetha Kathoon.
3. Mohammed Zayeem.
4. Azima Zaheena.
5. Sara Zaheena.
6. Mohammed Zabeer.
7. A.Shammel Ahmed.

...Respondents/ Plaintiffs.

This petition came up on 12.04.2023 before me for final hearing in the presence of **Thiru.G.Ramachandran, M.A.,B.L.**, Advocate for Petitioner/Defendants 1 and 2 **Thiru.A.L.Suresh Babu, B.Sc., B.L.**, Advocate for the Respondent/Plaintiffs upon hearing both sides and having stood over for consideration, this Court delivered the following

ORDER

Petition filed Under Order 14 Rule 5 of CPC to frame the Additional issues in the above said suit which arises out of the Additional Written Statement filed by the petitioners/Defendants 1 and 2 Dated 13.04.2022 to render justice and to pass such other order or orders ad deem fit and necessary under the circumstances of the case.

I. Brief Averments of the Petition :-

1.1. Petitioners are filed additional written statement in this suit after the death of 3rd defendant on 13.02.2022 and this Court ought to have framed the petition

schedule mentioned additional issues on the basis of the additional written statement filed by the petitioners on 13.04.2022. But this Court passed order stating no additional issues and adjourned the suit for defendants evidence. The additional issues described in the petition schedule that arises out of the additional written statement dated 13.04.2022 are vital to decide the above case. If the Trial of the above case is proceed further without framing those additional issues petitioner will be put to hardship and irreparable loss.

II. Brief Averments of the Counter :-

(Filed by the 7th Respondent/Plaintiff)

2.1. The above said suit for declaration and injunction against the petitioners/defendants. The petitioners/defendants have also filed their original written statement and 1st additional written statement on 01.06.2017 and 2nd additional written statement on 04.06.2028. The 3rd plaintiff has examined himself as PW.1 in the above said suit and the petitioner was cross examined on 01.11.2018, 26.11.2018 19.12.2018 on side of the petitioners/defendants and the 7th plaintiff has examined himself as PW.2 in the above said suit and he was cross examined on 29.01.2019 and 19.07.2019. Infact the cross examination of PW.1 and PW.2 on nthe side of the petitioners/defendants is pending for more than two years. Infact the petitioners/defendants have successfully got several adjournments to cross examination of PW.1 and Pw.2 and thereby harassed the PW.1 and PW.2 and dragon nthe proceedings. Subsequently, the respondents/plaintiffs side evidence was closed on 24.02.2020 and posted for petitioners/defendants side evidence on 02.03.2020 and subsequently, it was adjourned on 10.03.2020 and subsequently due to lockdown

adjourned the case on 27.03.2020 and 16.04.2020 and again posted for defendant side evidence on 02.06.2020, 18.06.2020, 03.07.2020, 07.08.2020, 14.09.2020, 19.10.2020, 04.11.2020 and finally on 04.12.2020 this Court closed the petitioners/defendants side evidence and posted for arguments due to non appearance of defendants and no representation and posted on arguments on 10.12.2020 and the plaintiff side argument was taken as heard on 14.12.2020 and posted for defendant side arguments on 15.12.2020 and subsequently closed the defendant side arguments and posted for Judgment on 06.01.2021. Subsequently, the petitioners/defendants have filed an application to reopen their side evidence and arguments vide IA.No.1/2021 and 2/2021 on 04.01.2021 and the said applications were allowed after contest on 19.03.2021 itself and again posted for petitioners/defendants side evidence on 29.03.2021 and again adjourned on 05.04.2021, 09.04.2021, 02.06.2021, 24.06.2021, 26.07.2021, 09.08.2021, 19.08.2021, 09.09.2021, 22.09.2021 and finally adjourned on 05.10.2021.

1.2. Subsequently, the petitioners/defendants have filed an application to receive additional written statement vide IA.No.3/2021 and the same was dismissed on merits. Now once again filed the present application to drag on the proceedings and harass this respondent. That the petition as such filed by the petitioners is a tactics adopted by the petitioners only to drag on the proceedings. There is no merit in the application filed by the petitioners. The present application is vexatious one and it is filed only with an intention to drag on the proceedings. Therefore, dismiss the petition with cost.

No oral evidences adduced on either side, and no documents marked on

either side.

Heard both sides and records perused.

III. Point for Considerations: -

Whether the petition is to be allowed or not?

Petitioner contended that after the death of 3rd defendant this Court ought to have framed the petition schedule mentioned additional issues on the basis of the additional written statement filed by the petitioners on 13.04.2022. But this Court passed order stating no additional issues and adjourned the suit for defendants evidence. The additional issues described in the petition schedule that arises out of the additional written statement dated 13.04.2022 are vital to decide the above case. Without framing those additional issues petitioner will be put to hardship and irreparable loss.

Per contra Respondent contended that the petitioners/defendants have filed an application to receive additional written statement via IA.No.3/2021 and the same was dismissed on merits. Now once again filed the present application to drag the proceedings and harass this respondent. That the petition as such filed by the petitioners is a tactics adopted by the petitioners only to drag on the proceedings. Therefore, dismiss the petition with cost.

On perusal of additional written statement filed by the defendant it is clear that the additional issues is to be framed the petitioner contention is that the IA.No.3/2021 is dismissed to receive the additional written statement by this Court

now this petitioner filed this petition to drag on the proceedings. On perusal of notes paper it is clear that on 13.04.2022 this Court received additional written statement. From the petitioner. It is settled portion that once the additional written statement filed, the Court has to frame additional issues if it is necessary. Hence, this Court inclined to allow this petition for the above said reason.

In the result this petition is allowed. No order as to cost.

Directly Dictated to Steno typist, typed by her corrected and pronounced by me in the open Court on this the 12th day of April 2023.

**District Munsif,
Gudiyattam.**

Both side Witnesses and Exhibits :- Nil

**District Munsif,
Gudiyattam.**