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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 194/2016
AMRIT KAUR CHADHA Petitioner
Through Mr.P.P.Ahuja and Mr.J.S.Kohli,
Advocates

versus

DILMOHAN SINGH AND ORS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **05.12.2016**

CM No.44878/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

CRP.194/2016 & CM No.44879/2016 (u/o 41 Rule 5 CPC)

1. By the present petition under section 115 of the CPC the petitioner seeks to impugn the order of the trial court dated 29.8.2016 by which an application filed by the petitioner/plaintiff under Order 7 Rule 11 CPC for rejection of the counter-claim filed by defendant No.1/respondent No.1 was dismissed.
2. The centre of the controversy is a relinquishment deed dated 16.2.2004. In the counter-claim respondent No.1 prays that the said relinquishment deed dated 16.2.2004 be declared as null and void, ineffective and being got executed through misrepresentation, deceit, duress and coercion.
3. The trial court noted that on the basis of pleadings of the parties it

cannot be ruled out that defendant No.1/respondent No.1 came to know about the execution of the Relinquishment Deed when he received summons of the present suit from the court and he has filed the counter-claim well within the time. The trial court noted that under Order 7 Rule 11 CPC only the contents of the plaint/counter-claim is to be taken into consideration and not the defence of the petitioner.

4. A perusal of the counter-claim shows that the plea that is raised by the respondent No.1 is that he never executed the Relinquishment Deed in the said letter and spirit and that he has come across the said document for the first time. He has also stated that he is an illiterate person and has only learnt to sign in English but he is not competent to understand document in English language and was made to sign certain papers at the instance of the petitioner and her nephew. The document in question was informed to be a power of attorney in favour of Late Shri Jaswinder Singh to empower Shri Jaswinder Singh to sell the entire suit property and distribute the proceeds among all the legal heirs equally. Respondent No.1 did not comprehend what he was executing as he thought the document was a power of attorney.

5. Clearly, these are issues which have to be gone into at the stage of trial. The counter-claim could not have been dismissed under Order 7 Rule 11 CPC at this stage. There is no infirmity in the impugned order.

6. The present petition is dismissed. All pending applications also stand disposed of.

JAYANT NATH, J

DECEMBER 05, 2016/n