



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.1006 of 2019 and

C.M.P. (MD)No.5577 of 2019

1.S.Vellaisamy

2.S.Radhakrishnan

3.S.Muruganandam

4.S.Jothi

5.S.Nallammal

: Petitioners/Defendants

.. Vs ..

1.M.Lakshmi

2.M.Deivanai

: Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records pertaining to the suit in O.S.No.498 of 2018 on the file of the Subordinate Court, Palani, and strike off the same.

For Petitioners

:Mrs.K.R.Shivashankari

For Respondents

:Mr.D.Venkatesh

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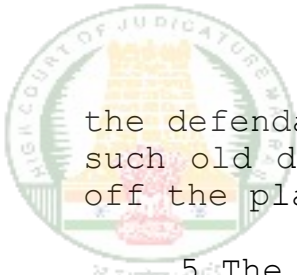
ORDER

This Civil Revision Petition is filed for a direction to direct the learned Subordinate Judge, Palani, to strike off the plaint in O.S.No.498 of 2018.

2.Heard Mrs.K.R.Shivashankari, learned Counsel appearing for the revision petitioners and Mr.D.Venkatesh, learned Counsel appearing for the respondents.

3.The respondents in this Civil Revision Petition, as plaintiffs, filed the suit in O.S.No.498 of 2018 on the file of the Subordinate Court, Palani, for partition of their 5/10 shares in all the suit properties. The plaintiffs are the daughters of one Muthukonda Maniagarar and the defendants are the descendents of brother of plaintiffs' father.

4.The revision petitioners, who are the defendants in the suit, have not even filed a written statement before the lower Court. However, this Civil Revision Petition is filed by the defendants in the suit to strike off the plaint on the ground that the plaintiffs have earlier executed a release deed on 30.07.1969 and a deed of maintenance dated 04.08.1969 relinquishing their right in favour of



the defendants' predecessor-in-interest. It is only on the basis of such old documents, this Civil Revision Petition is filed to strike off the plaint.

5.The contention of the revision petitioners is that the suit is vexatious in nature, having regard to the release deed executed by the plaintiffs in favour of the predecessor-in-interest of the defendants. It is well settled that a plaint cannot be rejected on the basis of the plea taken in the written statement. In the present case, the revision petitioners may have a defence to non-suit the plaintiffs on the ground that the suit for partition is not maintainable by virtue of the relinquishing deed executed by the plaintiffs way back in 1969.

6.The release deed is not a document, which is admitted. The admissibility, relevancy and genuineness of the document can be considered only at the time of trial. Even without filing a written statement, the petitioners have approached this Court to strike off the plaint. Normally, this Court will not entertain a revision petition to strike off the plaint, as specific provision is made available under Order VII Rule 11 CPC, conferring power to reject the plaint at the threshold. Even at that stage, the stand of the defendants in the written statement or in the petition for rejection of plaint is not relevant. Unless the plaint does not disclose a cause of action or barred by any law on a reading of plaint, plaint cannot be rejected.

7.When a specific provision is prescribed for rejection of plaint under Order VII Rule 11 CPC, a Revision Petition under Article 227 of Constitution of India cannot be entertained unless, there are extra ordinary circumstances warranting such interference to serve substantial justice or to prevent abuse of process of law. In the present case, the position, whether the plaint is liable to be rejected or not, depends upon a few facts and proof of documents. In such circumstances, this Court is not inclined to entertain this Civil Revision Petition. Hence, this Civil Revision Petition is dismissed as devoid of merits. However, liberty is given to the revision petitioners to file a petition under Order VII Rule 11 CPC, if the petitioners are advised so. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Palani.

2.The Section Officer,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.(2 Copies)

C.R.P. (PD) (MD)No.1006 of 2019
01.10.2020

VR (CO)

KK(18.11.2020) 3P 4C