



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2304 of 2021
and C.M.P. No.17444 of 2021

1.Venkatraman		
2.Govindammal (since died)	...	Petitioners / Plaintiffs

versus

1.Suseela		
2.Murugammal	...	Respondents / Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the docket order dated 11.07.2019 made in I.A.No.659 of 2018 in O.S.No.137 of 2015 on the file of the learned Principal Subordinate Judge, Krishnagiri.

For Petitioners : Mr.N.S.Kishore Kumar



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ORDER

This Civil Revision Petition is filed, challenging the order dated 11.07.2019 passed in I.A.No.659 of 2018 in O.S.No.137 of 2015 on the file of the learned Principal Subordinate Judge, Krishnagiri.

2. The learned counsel for the petitioners submitted that, petitioners filed the suit for partition against the respondents for dividing the suit properties into 12 equal shares and allot 9 shares to the petitioners. When the suit was pending, the respondents had executed the Release Deed on 13.07.2017 in respect of the suit properties. As per this Release Deed, respondents had relinquished their shares in the suit properties. Therefore, petitioners filed I.A.No.659 of 2018 under Order 23 Rules 1 and 3 of C.P.C for withdrawing the suit. This petition was contested by the respondents. The learned Principal Subordinate Judge, instead of permitting the petitioners to withdraw the suit, dismissed the petition. Challenging the said dismissal order, this Civil Revision Petition is preferred.



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3. The learned counsel for the petitioners further submitted that, respondents have released their share in the suit properties and when the petitioners sought permission for withdrawing the suit on the ground of release of the respondents' share in the suit properties and when there is nothing survives for decision of the trial Court, dismissing the petition filed for withdrawing the suit, is not correct.

4. Considered the submissions of the learned counsel for the petitioners and perused the records.

5. This suit was filed for the relief of partition. It is seen from the written statement filed by the respondents that, they disputed the claim of the petitioners for partition and respondents filed the counter claim in the written statement claiming 2/4 share in the suit properties. It is also seen from the counter affidavit filed in I.A.No.659 of 2018, the respondents complained that, the Released Deed alleged to have been executed by the respondents had been created by using illiteracy of the respondents. Respondents had never intended to release their share in the suit properties.



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It is specifically averred that the Release Deed had been created only for denying the share of the respondents. The learned Principal Subordinate Judge, considering the rival submissions found that, when the respondents seriously disputed, the Release Deed dated 13.07.2017 and when they made a counter claim in the suit, the petitioners cannot be permitted to withdraw the suit. On these reasons, this petition was dismissed.

6. It is settled proposition of law that, even when the plaintiffs do not want to proceed with the case further, the defendants are entitled to proceed with the counter claim. The Release Deed alleged to have been executed by the respondents is seriously disputed by them and they claim that they never intended to execute the Release Deed. In the said circumstances, this Court is of the considered view that, the alleged execution or non-execution of the Release Deed dated 13.07.2017 has to be enquired. Thus, this Court does not want to interfere with the order of the learned Principal Subordinate Judge, Krishnagiri and the order dated 11.07.2019 passed in I.A.No.659 of 2018 in O.S.No.137 of 2015, is hereby confirmed.



7. Resultantly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

28.10.2021

Speaking order / Non-speaking order
Index : Yes / No

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To

The Principal Subordinate Judge,
Krishnagiri.



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G.CHANDRASEKHARAN, J.

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