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C.R.P.(PD) No.129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD) No.129 of 2022
and C.M.P.No.713 of 2022

1.D.Kethappan
2.D.Rangasamy
3.D.Muthusamy

.... Petitioners

-Vs-

1.R.Jayanthi
2.R.Vijayalakshmi
3.R.Suseela

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the petition and order passed in IA No.3 of 2021 in OS No.47 of 2021 on the file of the Subordinate Judge, Mettupalayam dated 02.12.2021.

For Petitioners : Mr.B.Kumarasamy

ORDER

The revision is directed against an order dismissing an application filed seeking rejection of the plaint under Order VII Rule 11 of CPC. The respondents launched the suit in O.S.No.47 of 2021 on the file of the Sub Court, Mettupalayam seeking partition and separate possession of their 1/4th share each in the suit properties. The respondents claimed that as daughters of Kuppammal, who is the daughter of



Dheenappa Gowder, the original owner of the suit properties, they will be entitled to 1/4th share of Kuppammal in the suit properties. The suit is being resisted by the defendants / petitioners herein contending that the deceased Kuppammal viz., the mother of the plaintiffs / respondents herein had executed a release deed even on 11.03.2004 after having received consideration. The defendants filed I.A.No.3 of 2021 under Order VII Rule 11 CPC seeking rejection of plaint on the ground that the deceased Kuppammal had executed a release deed dated 11.03.2004 and therefore the plaintiffs cannot claim a share. The trial court dismissed the application on the conclusion that the pleadings raised in defence cannot form the basis for rejection of the plaint. Heard Mr.B.Kumarasamy for the petitioners.

2. I do not think that rejection of the plaint could be based on the above facts. Order VII Rule 11 of CPC provides for rejection of plaint under certain circumstances. The status of the plaintiffs as daughters of Kuppammal is not disputed. The defence that is set up is that Kuppammal has released a right over the properties of her father. The fact as to whether the release is valid or not has to be tested only at the time of trial of the suit and the same cannot form basis for rejection of the plaint. Being a release deed, which is a document that requires attestation, the same has to be proved in the manner known to law. Therefore, I do not see any error on the part of the trial Court in having dismissed the application under Order VII Rule 11 of CPC. The Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.



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Index : Yes/No
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To

Subordinate Judge, Mettupalayam.



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R. SUBRAMANIAN, J.
KST

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