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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.8825-CII of 2019 in/and
Civil Revision No.617 of 2016
Date of Decision: 03.05.2019**

Santro (deceased) through LRs

.....Petitioner

Vs

Krishan Kumar and Anr.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. R.S. Tacoria, Advocate
for the petitioner(s).

Ms. R.K. Thind, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

CM No.8825-CII of 2019

At the very outset, learned counsel for the petitioner submits that the present application be treated under Order 22 Rule 3 CPC for impleading legal representatives of deceased-petitioner.

Petitioner died on 01.01.2019 during pendency of the present revision petition, leaving behind the legal representatives as shown in para no.3 of the application.

For the reasons mentioned in the application, the same

is allowed and the legal representatives of deceased-petitioner as shown in para no.3 of the application are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

Main case

[1]. This revision petition has been preferred against the order dated 27.08.2015 passed by the Addl. Civil Judge (Sr. Divn.) Ellenabad, whereby the plaint has been returned under Order 7 Rules 10 & 11 CPC.

[2]. Plaintiff/petitioner filed a suit for declaration to the effect that she was owner in possession of land in dispute and the oral partition given effect in the revenue record was forged and fabricated as the petitioner was never associated in any partition proceedings and rapat No.346 dated 19.07.1991 was illegal and was executed in connivance with the revenue officials.

[3]. The entire reading of the plaint would show that the suit was filed challenging the oral partition on the ground of violation of principles of natural justice. Partition and consequent proceedings for giving effect to the same in the revenue record were challenged.

[4]. The trial Court passed the impugned order primarily on the ground that under Section 158 of the Punjab Land Revenue Act, jurisdiction of the civil Court is barred and the proceedings

arising out of the implementation of Rapat No.346 dated 19.07.1991 could have been assailed by the plaintiff before the competent revenue Court/officer.

[5]. It is a settled principle of law that at the stage of consideration of application under Order 7 Rule 10/11 CPC, only averments made in the plaint are to be seen. If the order of partition has been assailed on the basis of violation of principles of natural justice, the civil Court has got jurisdiction under Section 9 CPC. The bare reading of the plaint would show that main thrust has been made by the plaintiff on the oral partition in which petitioner was never associated and the same was the result of collusion of the respondents with the revenue officials.

[6]. In view of law laid down by the Full Bench of this Court in **State of Haryana vs. Vinod Kumar, 1986(1) PLR 222** and **Gurbax Singh vs. The Financial Commissioner & Another, 1991 PLJ 192 (SC)**, it is a settled position that if the authority under the special statute acts in violation of principle of natural justice, the Civil Court has all the jurisdiction under Section 9 CPC to entertain the suit. If the clever drafting of the plaint has created an illusion of a cause of action, then the same should be nipped in the bud at the first hearing by examining the parties under Order 10 CPC. Ratio of **Church of Christ Charitable Trust and Educational Charitable Society vs. Ponnamman**

Educational Trust, 2012(8) SCC 706 can be relied in the aforesaid context.

[7]. Looking to the controversy from this angle, I am of the view that the trial Court is not justified in returning the plaint on the ground of jurisdiction as in the present set of circumstances, jurisdiction would remain debatable and would give rise to triable issue. However, the trial Court would be at liberty to decide the suit on merits after framing proper issue of jurisdiction in accordance with law. Consequently, the impugned order dated 27.08.2015 passed by the Addl. Civil Judge (Sr. Divn.) Ellenabad is set aside. This revision petition is allowed.

[8]. Both the parties are directed to appear before the trial Court on **27.05.2019**.

May 03, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No