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

**Civil Revision No.5905 of 2018 (O&M)
Date of Decision: 19.11.2019**

Shiv Kumar and others Petitioners

Vs

Chhellu Ram and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Jagdish Manchana, Advocate
for the petitoners.

Mr. Chander Shekhar, Advocate
for respondents No.1 and 2.

Mr. Ravi Gakhar, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have preferred this revision petition against the order dated 10.08.2018 passed by the Civil Judge (Jr. Divn.) Kurukshetra, vide which the application filed by the defendants under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. From the pleadings of the parties, it appears that the claim with regard to *gair mumkin panjawa* was raked up by the plaintiffs to which the defendants have claimed some portion of the land on the basis of exchange done between the defendants on the one hand and Zile Singh and Sher Singh both sons of

Ram Kishan on the other hand. Civil Court decree dated 03.01.1992 has been relied in this context.

[3]. I have considered the submissions made by learned counsel for the parties.

[4]. The issue of jurisdiction has to be decided by the Court on preferential basis, if the allegations in the plaint are vexatious and meritless and do not disclose a clear right to sue. If the clever drafting has created an illusion of cause of action, it should be nipped in the bud at the first hearing by examining the parties under Order 10 CPC. Reference can be made to **Church of Christ Charitable Trust vs. Ponniammal Educational Turst, 2012(8) SCC 706.**

[5]. In the present case, the suit has been filed in a representative capacity under Order 8 Rule 1 CPC. Even one of the member of the Kumhar community has preferred a petition under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 for ejectment of the defendants. The said person is not party to the present suit.

[6]. At this stage of consideration of application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen. Issue of jurisdiction is dependent upon quality of evidence to be led by the parties at the relevant stage. Even the pleadings of petition under Section 7(2) of the Punjab Village

Common Lands (Regulation) Act, 1961 cannot be taken cognizance of without there being any proof of the same at this stage.

[7]. In view of aforesaid, this revision petition is disposed of by allowing the petitioners to move an appropriate application for framing of preliminary issue of jurisdiction before the trial Court. In the event of doing so, the trial Court shall pass appropriate order in accordance with law without being influenced by any statement of facts made hereinabove.

November 19, 2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No