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

**Civil Revision No.633 of 2019 (O&M)
Date of Decision: 17.09.2019**

Ghulla Singh and others

.....Petitioners

Vs

Amarjit Singh

....Respondent

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

Present:Mr. J.S. Brar, Advocate
for the petitioners.

Mr. Aman Dhir, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 22.11.2018 passed by the Addl. District Judge, Sri Muktsar Sahib vide which the order dated 15.02.2017 passed by the Civil Judge (Jr. Divn.) Gidderbaha was set aside and the application under Order 39 Rules 1 and 2 was dismissed.

[2]. The core issue between the parties is with regard to the status of defendant/respondent in the suit. Plaintiffs claimed themselves to be co-owners in the suit property and defendant has no concern with the ownership and possession of the suit

land. One of the brother of the plaintiff namely Amar Singh died issueless. Defendant claimed himself to be adopted son of Amar Singh and got entered mutation No.17318. The said mutation was challenged by Gurdev Kaur, daughter of Sahib Singh. The mutation was declared to be as contested mutation.

[3]. Learned counsel for the petitioners stated that the order dated 08.09.2017 passed by the Assistant Collector Ist Grade has already been set aside by the Collector, Sri Muktsar Sahib vide order dated 06.04.2018 and the mutation No.17318 in respect of inheritance of Amar Singh has been adjourned *sine die*. The adoption of the defendant has been denied by the plaintiffs.

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

[5]. Defendant claimed that plaintiffs are not in exclusive possession of the suit property. Plaintiffs along with Amar Singh were co-owners in the property. Mutation of inheritance of Amar Singh was sanctioned by the Assistant Collector Ist Grade vide order dated 08.09.2017 *qua* the area of village Kotbhai on the basis of registered sale deed dated 07.10.2003 and also in favour of his widow Surjit Kaur. The said Surjit Kaur has died and she has executed a Will in favour of the defendant.

Mutation of inheritance of Surjit Kaur has been sanctioned in favour of the defendant by holding him to be the adopted son of Amar Singh and Surjit Kaur.

[6]. On the basis of adoption and Will, the defendant would step into the shoes of Amar Singh, who was brother of the plaintiffs. In the revenue record viz. *jamabandi* for the year 2009-2010, Amar Singh was shown to be co-sharer along with other co-sharers. Entry of mutation of Amar Singh and Surjit Kaur was also reflected in revenue record. No challenge has been made by the plaintiffs to the Wills executed by Amar Singh and Surjit Kaur and those instruments have not been set aside by the competent Court so far.

[7]. Sanctioning or non-sanctioning of mutation does not confer any title over the defendant. By virtue of Will, defendant would step into the shoes of Amar Singh and would also acquire status of co-sharer in place of Amar Singh. In such eventuality, a suit for permanent injunction would be on questionable note as no injunction can be granted against other co-sharers unless and until plaintiffs are proved to be in exclusive possession of the suit property to the ouster of other co-sharers. In such circumstances, the plea taken in the plaint has to be appreciated. The ouster has to be pleaded and should depict as per *prima facie* material on record. The only remedy available is

to file suit for partition instead of maintaining a suit for permanent injunction.

[8]. In view of attending facts and circumstances of the case, I find no justification to interfere in the impugned order. This revision petition is accordingly dismissed.

September 17, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No