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

CR No. 8261 of 2017

Date of Decision: 11.04.2019

Imrat (deceased) through LR Sukhdev

-Petitioner

Vs

Hari Chand and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: None for the petitioner.
Mr. Jai Bhagwan, Advocate, and
Mr. Sandeep K. Rana, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

1. Deceased-petitioner through LR Sukhdev has preferred this revision petition against the order dated 11.09.2017 passed by Civil Judge (Junior Division), Palwal vide which application filed by respondents under Order 7 Rule 11 CPC was allowed thereby directing the plaintiff to pay *ad valorem* Court fee and opportunity was granted to the plaintiff to affix the deficit Court fee on the value of the suit land.

2. Plaintiff filed a suit for possession and permanent injunction.

3. Paras No.1,4 and 6 of the plaint are relevant to be quoted herein:-

“1. That the plaintiff is owner in

possession of the agricultural land bearing its Khewat/Khatoni no.166/225, Rect. No.46, Killa No.2 (7-17) total measuring 7 Kanals 17 Marlas, situated within the revenue estate of village Katesara, Tehsil and District Palwal. A copy of jamabandi for the year 2002-03 is enclosed herewith the plaint.

4. That the land detailed in para no.2 of the plaint came into the share of the defendants is adjacent with the land of the plaintiff detailed in para no.1 of the plaint but the defendants being forceful and strong headed persons at the back of the plaintiff have encroached an area of 435 Sq. yards area in the eastern side of the property of the plaintiff in the month of January, 2014.

6. That the plaintiff requested the defendants to remove the unauthorized construction from the property of the plaintiffs detailed in para no.5 of the plaint but the defendants did not adhere any heed to the request of the plaintiff and now the defendants are bent upon to raise further construction over the suit property and if the

defendants succeed in their illegal motive and mission then in that case the plaintiff will suffer an irreparable loss and injury, costs of which can not be compensated.”

4. As per pleadings in the plaint, the land is agricultural land bearing Khewat/Khatoni no.166/225, Rect. No.46, Killa No.2 (7-17) total measuring 7 Kanals 17 Marlas, situated within the revenue estate of village Katesara, Tehsil and District Palwal according to the jamabandi for the year 2002-03.

5. It is a settled principle of law that at the time of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The pleas taken by the defendants in the written statement are wholly irrelevant. If the allegations made in the plaint are vexatious and clever drafting of the plaint has created an illusion in respect of a cause of action, the remedy available to the defendants is to avail stage of Order 10 CPC i.e. at the first hearing by examining the parties and then to avail his legal remedies in accordance with the principles as laid down in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706.**

6. Learned counsel for the respondents vehemently contended that even though the land is agricultural in nature but

he has constructed the land and the land loses nature of agriculture.

7. At this stage, no such consideration can be made on the plea which has been taken by the plaintiff-petitioner in his written statement.

8. If the clever drafting of the plaint by the plaintiff has created an illusion in respect of cause of action, defendants would be well advised to avail their legal remedies in terms of Order 10 CPC and then act in accordance with law.

9. In view of above, this revision petition is allowed. Impugned order dated 11.09.2017 passed by Civil Judge (Junior Division), Palwal is hereby set aside.

10. Normal consequences to follow.

11.04.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No