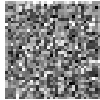


IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2024.PHHC:068300



SAO-21-2024 (O&M)
Date of decision: 15.05.2024

BABITA RANI

..Appellant

Versus

JOGINDER PAL (DECEASED) THROUGH LR & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. This second appeal against order has been filed by the plaintiff to assail the correctness of the concurrent order passed by the trial Court, which in appeal has been affirmed by the First Appellate Court while vacating temporary injunction granted in her favour. It has been found that the appellant while filing the suit has projected as if defendant Sh. Joginder Singh is alive and entire relief has been sought against him, whereas, it has been found that Sh. Joginder Singh was already dead at the time of filing of the suit. Moreover, the plaintiff has challenged the correctness of order passed by the competent authority partitioning property as per the provisions of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the '1887 Act').
2. The learned counsel representing the appellant submits that there was no intention on the part of the appellant to conceal the factum of the death of defendant No.1. He submits that the aforesaid error was a bonafide error. He admits that the jurisdiction of the Civil Court is barred under Section 158 of the 1887 Act, however, the Financial Commissioner

while disposing of the revision petition relegated the parties to the Civil Court.

3. This Court has considered the submissions of the learned counsel representing the appellant.

4. It is evident that both the Courts have concluded that the impleadment of defendant No.1 who was already dead particularly when the entire plaint is focused qua the relief against defendant No.1 does not appear to be bonafide, however, both the Courts below have already held that the final decision on this aspect can be taken only after the evidence is led. However, both the Courts below have held that it is not appropriate to stay the implementation of partition order passed by the competent Court of jurisdiction.

5. In these circumstances, there is no scope of interference, hence, the appeal is dismissed.

6. All the pending miscellaneous applications, if any, are also disposed of.

May 15th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No