

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

OW104 No. 111/2016, IA No. 1/2016.

Date of Order: 28.02.2019.

Chamail Singh and others
Vs
Kuldip Singh and others

Coram:

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

For the appellant(s)/petitioner(s) : Mr. Vikram Sharma, Advocate.

For the respondent(s) : Mr. V. R. Wazir, Sr. Advocate with
Mr. Neeraj Magotra, Advocate.

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| i. | Whether approved for reporting in Press/Media | : | Yes/No |
| ii. | Whether to be reported in Digest/Journal | : | Yes/ No. |
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(Oral)

01. This is a petition under Section 104 of the Constitution of J&K against the judgment and order dated 19.08.2016, passed by the Principal District Judge, Reasi, whereby the application filed by the plaintiffs/petitioners herein under Order 8 Rule 9 of the CPC for filing a replication was rejected.

02. Briefly stated the material facts are as under:-

03. A suit for partition came to be filed by the petitioners herein. The case of the plaintiffs/petitioners as set up in the plaint was that they had a right to seek partition, inasmuch as, their father Prithi Singh was the adopted son of Late Shiv Ram, who had a share in the property sought to be partitioned. In the written statement filed, a defence was taken that Prithi Singh was never adopted by

Late Shiv Ram and, therefore, the right to seek partition was questioned in that status.

- 04.** The Court below vide judgment and order dated 19.08.2016 dismissed the application of the plaintiffs/petitioners herein by following the Delhi High Court Judgment passed in case titled "M/s Anant Construction (P) Ltd. Vs Ram Niwas" 1995(1) Current Civil Cases 154, and held that filing of replication was not permissible in law.
- 05.** On a perusal of the plaint filed by the plaintiffs, it can be seen that the plaintiffs/petitioners herein had in paragraph 3 only generally mentioned the factum of the plaintiffs claiming to be Prithi Singh in his capacity as an adopted son of Late Shiv Ram. However, in view of the specific denial of that status, by the defendants/respondents herein, the plaintiffs felt the need to explain the details with regard to the factum of adoption, which formed the basis for their proving the said fact during trial. Although, the Court below has held that the issue with regard to adoption would be framed and that the plaintiffs would have an opportunity to lead evidence on the material particulars of adoption, yet the plea for replication was denied.
- 06.** In my opinion, however, the replication sought to be filed by the plaintiffs/petitioners herein was only explanatory in character, which would be necessary for bringing about clarity on the issue of adoption of the predecessor in interest of the plaintiffs. Replication does not amount to setting up of a new case and therefore, no prejudice at all could visit the defendants/ respondents herein. Learned senior counsel appearing on behalf of the defendants/

respondents herein submits that in case replication is to be allowed then permission to file rejoinder be given to him. Ordered accordingly.

07. Disposed of accordingly along with connected IA.

(Dhiraj Singh Thakur)
Judge

Jammu
28.02.2019
(Muneesh)

