

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

**C.R No. 4902 of 2019
Date of decision:- 30.09.2019**

Randeep Kaur and others ...Petitioners

Versus

Baljinder Kaur and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rajvir Singh, Advocate
for the petitioners.

RITU BAHRI J. (Oral)

C.M. No. 20117-CII-2019

Application is allowed as prayed for.

Accordingly, Annexure P-6 is taken on record.

C.R. No. 4902-2019

Challenge in this petition is to order dated 08.07.2019 (P-1) vide which an application (P-4) filed by the petitioners/defendant Nos. 2 to 4 for grant of permission to make correction and to file counter claim, has been dismissed.

A bare perusal of the impugned order shows that the plaintiff filed a suit for partition of her 1/6th share in the suit property and defendant Nos. 2 to 4 filed written statement on 27.10.2017 wherein they have taken the plea of family partition. The plaintiff filed replication to the written statement and denied the said family partition. The application of the petitioners has been dismissed on the ground that there is nothing on record to show that despite due diligence the defendants could not raise this matter.

The defendants were well in the knowledge of denial of family partition

dated 12.12.1986.

Learned counsel is relying upon judgments of this Court in cases of *Sangrur District Corp Milk Producers Union through General Manager vs. National Insurance Co. Ltd, 2017 (4) PLR 491* and *Aadish Aggarwal and another v. Brijeshwar Swaroop and another, 2018 (4) CivCC 295*

The judgment of *Sangrur's case (supra)* cited by learned counsel for the petitioner will be of no help to the petitioner as in that case, the only amendment sought under Order 6 Rule 17 CPC was the replacement of the registration number of the truck, which has been wrongly mentioned. In this background the application was allowed and it was held that difference in mentioning of the registration number of the truck is on the premise of typographical error and same can be rectified at this stage and would not cause any change in the cause of action or nature of the suit.

Further the judgment cited by learned counsel for the petitioner i.e *Aadish Aggarwal's case (supra)* is not applicable to the facts of the present case, as in that case the amendment sought was that in para No. 4 of the preliminary objections of the written statement words “being joint Hindu Family property” were inadvertently left. The application was allowed on the ground that if the amendment is bona fide, then the procedural law cannot be an impediment in allowing such an amendment which would ultimately facilitate the Court in deciding the controversy in an appropriate manner.

However, in the present case, the defendant Nos. 2 to 4 filed written statement on 27.10.2017 wherein they have taken the plea of family partition and the plaintiff filed replication to the written statement and

denied the said family partition. The application has been moved by the petitioners at the stage of evidence and after the issues have been framed. The application has rightly been dismissed as the petitioners were well aware of family partition dated 12.12.1986. Thus this mistake is neither typographical error nor it is an inadvertent mistake.

In view of the discussion made above, the petition stands dismissed.

30.09.2019

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No

(RITU BAHRI)
JUDGE