

259

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

**CM No.11322-CII of 2019 in/and
Civil Revision No.3873 of 2018 (O&M)
Date of Decision: 27.05.2019**

Naib Singh and another

.....Petitioners

Vs

Shiv Kumar and others

....Respondents

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

Present:Mr. R.S. Mamli, Advocate
for the applicants/petitioners.

Mr. Abhishekh Singh, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.11322-CII of 2019

For the reasons mentioned in the application, the same is allowed. Date of hearing of the main case is preponed for today.

The main is taken up today for final disposal as learned counsel for the parties intend to argue the case on merits.

Civil Revision No.3873 of 2019 (O&M)

[1]. Petitioners have preferred this revision petition against the order dated 15.03.2018 passed by the Civil Judge (Jr. Divn.)

Yamuna Nagar at Jagadhri vide which the application under Order 6 Rule 17 CPC for amendment of the written statement was dismissed.

[2]. Plaintiffs filed a suit for possession by way of partition of the suit land by pleading the same to be joint in question and not partitioned amongst them.

[3]. In the written statement the defendants/petitioners took a stand that in the year 1990, there was a family settlement between the predecessors of the parties namely Punjab Singh, Kali Ram and Roop Singh etc. and the suit property fell to the shares of predecessors of defendants No.1 to 8 and 9 to 16.

[4]. In the application filed by the defendants/petitioners under Order 6 Rule 17 read with Section 151 CPC, they sought to introduce a plea that in fact the partition took place in the year 1975. Defendants intend to replace the year of partition from 1990 to 1975-76 and also to incorporate dimensions of the property.

[5]. Admittedly, the plaintiffs have already concluded their evidence. After conclusion of defendants evidence, the case has reached the stage of rebuttal and arguments. In the cross-examinations of PWs, the defendants have already put a suggestion in respect of family settlement that has taken place in the year 1990. Evidently, the petitioners/defendants have not

led any evidence in the context of alleged family partition of the year 1975-76, rather they have pleaded the family settlement of the year 1990 and that settlement was put to the plaintiff's witnesses in their cross-examinations as well.

[6]. Since there is no evidence on record in respect of proposed amendment, therefore, the amendment at this stage without there being any right to lead evidence would be of no consequence. Further, the plea of the petitioners that they came to know about the wrong year only at the time of preparing the affidavit in affirmative evidence cannot be accepted. Since the PWs have already been cross-examined and suggestions were given to them in respect of family partition of the year 1990, therefore, such a stand cannot be appreciated at this belated stage.

[7]. Since the petitioners have concluded their defence evidence on the basis of pleadings in the written statement, at this stage allowing the amendment would lead to *de novo* trial and the basic character of the suit would be changed. No indulgence can be granted in this revision petition. This revision petition is accordingly dismissed.

May 27, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No