

(2010) 10 P&H CK 0358

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 2509 of 2009 (O and M)

Amarjit Singh and Another

APPELLANT

Vs

Charanjit Kaur and Others

RESPONDENT

Date of Decision: Oct. 29, 2010

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Alok Singh, J.

Present petition is filed by the Defendants challenging the order dated 22.4.2009 passed by the Addl. Civil Judge (Senior Division), Fatehgarh Sahib, whereby amendment application moved by the Defendants, was rejected.

2. Brief facts of the present case are that the Plaintiffs ♦ Respondents have filed suit for joint possession of 1/9th share of the land in dispute. In the suit filed, the Defendant ♦ Petitioner has filed written statement stating therein that the property has already been partitioned and decree was passed on 10.6.1983 on the basis of private partition. By way of present application seeking amendment, Defendants want to plead that prior to the decree, there was a private partition between the parties. The application moved by the Defendant was rejected on the ground that after commencement of the trial, amendment should not be allowed, unless and until, parties seeking amendment establish that despite of due diligence plea sought to be added, could not be added.

3. I have heard learned Counsel for the parties and perused the record.

4. Undisputedly, present suit was filed in the year 1999, hence in the opinion of this Court, amended proviso to Rule 6 Order 17 Code of Civil Prosedure, which was enforced from the year 2001, cannot be made applicable in a suit, which was filed prior to the amended proviso to Order 6 Rule 17 Code of Civil Prosedure. Moreover, learned Counsel for the Defendants - Petitioners states that no further evidence is

required to be placed on the record on the amended portion of the pleading. He states that evidence, which has already been produced, is sufficient for the purpose of adjudication of this case.

5. Learned Counsel for the Respondents - Plaintiffs states that amendment application was moved at a very late stage and in view of the statement made by the Defendants that they will not produce any evidence on the amended written statement, amendment may be allowed subject to payment of heavy costs.

6. In the opinion of this Court, amendment sought is neither changing the defence nor Defendants are withdrawing any admission made in the original written statement. Rather, amendment sought seems to be just for the fair adjudication of this case.

7. In view of the above, present petition is allowed. Amendment application stands allowed. Defendants - Petitioners shall not be permitted to lead any additional evidence as stated by the learned Counsel for the Petitioners on the amended pleadings. Petitioners ♦ Defendants shall pay Rs. 10,000/- as costs to the Plaintiff within 10 days from today.