



CR-5631-2025 (O&amp;M)

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

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**CR-5631-2025 (O&M)  
Decided on :-21.08.2025**

Harjit Kaur

....Petitioner

VERSUS

Kulwinder Singh @ Kala &amp; Others

....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Balbir Singh Jaswal, Advocate for the petitioner.

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**MANDEEP PANNU J.**

1. Present revision petition has been directed against the order dated 19.07.2025 passed by the learned Civil Judge (Junior Division), Amritsar whereby the application filed by the plaintiff/respondent under Section 101 of the Indian Evidence Act, 1872 (for short, 'the Act') for directing the defendant/petitioner to produce her evidence prior to the evidence of the plaintiff was allowed.

2. The brief facts necessary for disposal of the present petition are that the plaintiffs instituted a suit for declaration to the effect that they are entitled to one-fourth share each along with the defendants in the estate left behind by deceased Kuldeep Singh, and also for rendition of accounts and permanent injunction. The claim was based on natural inheritance. The defendants contested the suit by filing written statement denying the rights of the plaintiffs in the estate of Kuldeep Singh. It was the specific stand of the defendants that the plaintiffs have no concern with the estate as the plaintiffs are not legal heirs of Kuldeep Singh.



3. On the basis of rival pleadings, following issues were framed on 20.03.2023:-

- 1) Whether the plaintiffs are entitled for decree of declaration, as prayed for? OPP
- 2) Whether the plaintiffs are entitled for the relief of permanent injunction, as prayed for? OPP
- 3) Whether the present suit not maintainable for want of locus standi and cause of action? OPD
- 4) Whether the plaintiffs are guilty of concealment of material facts? OPD
- 5) Whether the suit is not properly valued for the purpose of court fee? OPD
- 6) Relief.

4. During the pendency of the suit, an application under Order XXXIX Rules 1 and 2 CPC was moved and decided. In those proceedings, the defendants made a submission that late Kuldeep Singh had executed a Will dated 20.06.2017 in their favour. The stay application filed by the plaintiffs was dismissed and appeal against that order also failed. Thereafter, the suit was fixed for evidence of the plaintiffs, when they moved an application under Section 101 of the Indian Evidence Act seeking a direction that the defendants should lead evidence first since they had set up the Will. The learned trial Court, after hearing learned counsel for the parties, allowed the said application on 19.07.2025 holding that as the defendants were setting up a Will dated 20.06.2017 in their favour, the onus to prove the same would be on them and, therefore, they should be called upon to lead evidence first.



5. The present revision has been filed challenging the said order.
6. I have heard learned counsel for the petitioner/defendant and carefully gone through the pleadings, record and the impugned order.
7. On perusal of the pleadings of the parties, i.e. the plaint, written statement and replication, it is clear that no categorical plea regarding execution of any Will by Kuldeep Singh was taken in the written statement. The defendants primarily denied the status of the plaintiffs as legal heirs and asserted that the plaintiffs had no concern with the estate. It is only during the arguments on the injunction application that a submission regarding Will was made. Neither there is any specific plea of Will incorporated in the written statement nor has any issue been framed in relation to its execution or validity. Issues are framed on the basis of pleadings of the parties as envisaged under Order XIV Rule 1 CPC. Unless a specific issue is framed, no party can be compelled to lead evidence on such matter.
8. Further, as per the settled procedure under the Code of Civil Procedure, it is always the plaintiff who is required to lead evidence first in support of the issues framed on which the onus lies upon him. Order XVIII Rule 1 CPC makes it clear that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that the plaintiff is not entitled to any relief. In the present case, the onus of proof on issues No.1 and 2 clearly lies upon the plaintiffs as they claim declaration of their rights in the estate of Kuldeep Singh on the basis of inheritance. Therefore, it is for the plaintiffs to enter the witness box first and discharge the onus. Only thereafter can the defendants be called upon to lead their evidence.



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9. The trial Court has fallen in error in allowing the application of the plaintiffs by misreading the pleadings. The mere fact that during arguments on interim injunction defendants made reference to a Will, cannot shift the burden or alter the procedure of evidence unless such plea forms part of the pleadings and a specific issue is framed. No application for framing additional issue was moved by either side and no such issue has been framed by the Court of its own. In the absence of an issue regarding Will, the question of directing the defendants to lead evidence first on the issue of Will, does not arise.

10. Consequently, the impugned order dated 19.07.2025 passed by the learned Civil Judge (Junior Division), Amritsar is patently illegal and unsustainable. The same is hereby set aside. The trial Court is requested to proceed with the matter in accordance with law by calling upon the plaintiffs to lead their evidence first, thereafter affording opportunity to the defendants to adduce their evidence, in terms of Order XVIII Rule 1 CPC.

11. Revision petition is accordingly allowed.

12. Pending application(s), if any, also stand disposed off.

August 21, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No