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

**CR-2233-2023 (O&M)**

**Date of Decision : 22.04.2025**

Kuldip Singh Sumra ... Petitioner(s)

Versus

Avtar Singh Sumra & Ors ... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Ramesh Sharma, Advocate for respondent No.1.

**ALKA SARIN, J. (Oral)**

1. The present revision petition has been preferred by the plaintiff-petitioner challenging the impugned order dated 10.03.2023 (Annexure P-6) dismissing his application filed under Section 68 read with Sections 102 and 103 of Indian Evidence Act, 1872 and Section 151 of the Code of Civil Procedure, 1908 for directing the defendant-respondent No.1 to begin with the evidence.

2. The plaintiff-petitioner herein has filed a suit for declaration claiming inheritance of late Piara Singh on the basis of natural succession. In the written statement the defendant-respondent No.1 has set up a registered Will dated 16.03.2012 alleged to have been executed by Late Piara Singh in favour of the defendant-respondent Nos.1 to 3 herein. On 18.07.2022 the following issues were framed :

1. Whether the plaintiff is entitled for relief of declaration as prayed for ? OPP

2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has estopped to file present suit by his own act and conduct ? OPD
5. Whether suit of plaintiff is bad for non joinder of necessary parties ? OPD
6. Whether plaintiff has got no cause of action and locus standi to file the present suit ? OPD
7. Relief.

3. Subsequently, an application was filed by the plaintiff-petitioner under Section 68 read with Sections 102 and 103 of Indian Evidence Act, 1872 and Section 151 of CPC for directing the defendant-respondent No.1 to begin with the evidence. Reply was filed to the said application. Vide the impugned order dated 10.03.2023 the said application was dismissed. However, while dismissing the application the issues were reframed as follows :

1. Whether the plaintiff is entitled for relief of declaration as prayed for ? OPPD
- 1A. Whether the suit property was ancestral or coparcenary in the hands of Piara Singh ? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP

- 2A. Whether Piara Singh has executed a registered will dated 16.03.2012 in favor of defendant No.1 to 3 ? OPD
3. Whether the suit of plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has estopped to file present suit by his own act and conduct ? OPD
5. Whether suit of plaintiff is bad for non joinder of necessary parties ? OPD
6. Whether plaintiff has got no cause of action and locus standi to file the present suit ? OPD
7. Relief.

4. Learned counsel for the plaintiff-petitioner would contend that since the defendant-respondent No.1 has set up a Will of Piara Singh alleged to have been executed on 16.03.2012, hence the defendant-respondent No.1 should have been directed to lead his evidence at the first instance. It is further the contention that the entire case hinges on the question whether the Will has been validly executed and hence to save the time of the Court the defendant-respondent No.1 should be directed to lead the evidence first.

5. *Per contra*, the learned counsel for the defendant-respondent No.1 would contend that the suit has been filed by the plaintiff-petitioner claiming that the property was ancestral and that they have a right in the property and it was hence incumbent for the plaintiff-petitioner to have first led his evidence and proved the case in accordance with law.

6. I have heard learned counsel for the parties.

7. Order 18 Rule 1 of CPC reads as under :

*“1. Right to begin - The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”*

8. Hon’ble Supreme Court in the case of **Jami Venkata Suryaprabha & Anr. Vs. Tarini Prasad Nayak & Ors. [2024 INSC 1001]** while dealing with the provisions of Order 18 Rule 1 CPC and Section 102 of the Indian Evidence Act, 1872 has held as under :

*“16. Under Section 102 of the Evidence Act, the burden of proof rests on the party who would fail if no evidence at all were given on either side. Where the defendant admits the facts alleged by the plaintiff but contends that the plaintiff is not entitled to any part of the relief which he seeks, it is the defendant who gets the right to begin.*

*17. Order XVIII of the Code of Civil Procedure in terms speaks of the ‘hearing’ of a suit and not the trial of the suit. A court is concerned with the trial of a suit from the time when it is instituted. The hearing of a suit is only a part of the trial of the suit. The determination of the question as to which party has a right to begin is an integral part of the hearing itself.*

*18. Order XVIII Rule 1 indeed provides for plaintiff’s right to begin the evidence but not the court’s obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party*

*can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes of the root of the case, there would be no hitch in asking him/her to prove such plea first which can lead to disposal of the case. There can be no watertight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.*

9. In the present case it is not the Court which has opined that based on the pleadings and the issues framed, that the defendant should begin with the evidence. Rather it is the insistence of the plaintiff that the defendant should begin with the evidence. Hon'ble Supreme Court in the case of **Jami Venkata Suryaprabha** (supra) has clearly held that neither of the parties can insist that the other one should be asked to lead its evidence first and further that it would depend on the Court what it deems proper in the circumstances.

10. In view of the above, no fault can be found with the impugned order dated 10.03.2023 (Annexure P-6). The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

11. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

22.04.2025  
Yogesh Sharma

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO