

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

**Civil Revision No.4700 of 2015**  
**Date of Decision: February 25, 2016**

**Manjit Kaur and others**

...Petitioners

Versus

**Swaran Kaur and others**

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present:** Mr.Mohit Jaggi, Advocate,  
for the petitioners.

Mr.Kanwal Goyal, Advocate,  
for respondent No.1.

Mr.S.S.Sarwara, Advocate,  
for respondent Nos.3 to 6 and 10 to 14.

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**AMIT RAWAL, J. (Oral)**

The petitioner-defendants are aggrieved of the part of the order dated 6.5.2015, whereby after framing the issues, defendant Nos.1 to 3 have been called upon to lead evidence, vis-a-vis issue Nos.1, 4, 5, 6 and 7 instead of calling upon the plaintiffs to lead evidence.

Mr.Mohit Jaggi, learned counsel appearing on behalf petitioner-defendant Nos.1 to 3 submits that the suit instituted at the instance of the respondent-plaintiff is for declaration claiming right in the estate of Bakhtawar Singh, father and the defendants are none else but the brothers and as well as challenge to mutations No.791 regarding the inheritance of Bakhtawar Singh and 782 regarding the inheritance of

Bhagwani. The trial Court has committed illegality and perversity in exercising the powers under Order 18 Rule 1 of the Civil Procedure Code by calling upon the defendants to lead evidence at the first instance, whereas it is the respondent-plaintiff, who has to prove whether as per the provisions of Hindu Succession Act, she has any right to succeed to the estate of Bakhtawar Singh or not and, thus, prays for modifying the order under challenge.

Mr.Kanwal Goyal, learned counsel appearing on behalf of plaintiff-respondent No.1, in support of his contentions, has relied upon the judgments rendered in Manjit Singh Lassi Versus Col.Gurcharan Singh and others, 2005(2) R.C.R. (Civil) 47 and Raghubir Singh Versus Raghuraj Singh, 1995 (2) CurCC 606 to contend that the provisions of Order 18 Rule 1 CPC are enabling provisions, which entitle the trial Court to adopt the procedure after going through the pleadings of the parties to the lis by calling either of the parties to lead evidence at the first instance and rightly so, the defendants have been called upon to lead evidence as they have set up oral Will of late Bakhtawar Singh. He further submits that where the parties set up a claim of natural succession and either party sets up a Will, it is for the party, which is setting up the Will to lead evidence in affirmative at the first instance and, thus, prays that the revision petition be dismissed as there is no illegality and perversity in the impugned order.

I have heard the learned counsel for the parties and appraised the paper book.

Before advertng to the submissions of the learned counsel for the parties, it would be apt to reproduce the prayer clause of the suit, which reads thus:-

*“It is therefore, respectfully prayed as under:-*

*A. A decree for declaration to the effect that the plaintiff, and performa defendant No.4 to 8 and defendant No.1 to 3 are owners in possession of equal share in the property of Bakhtawar Singh S/o Daula (now deceased) and the plaintiff, performa defendant No.4 to 20 and defendant No.1 to 3 are owners in possession of equal share of the property of Bhagwani wife of Daula (now deceased) shown at point X, and situated within the revenue estate of Village Salempur Khurd, Tehsil Kharar, Distt.S.A.S. Nagar (Mohali) fully detailed in the head note of the plaint, may kindly be passed in favour of plaintiff and against the defendants.*

*B. A decree for Permanent Injunction restraining the defendants No.1 to 3, his agents, servants and representatives from selling, alienating, mortgaging or in any manner transferring the aforesaid suit property and further restraining them from digging the earth from the suit property or changing the nature of the suit property by way of raising any type of construction may kindly be passed in favour of plaintiff and against the defendants.*

*C. Costs of suit may kindly be awarded to the plaintiff and against defendants.*

*D. In addition to this, any other appropriate relief which the Hon'ble Court deems fit and proper, be also granted in favour of plaintiff and against defendants.”*

The operative part of the impugned order, vide which the trial Court, after framing the issues, called upon the defendants to lead evidence is reproduced herein below:-

*“Heard. From the pleadings of the parties, following issues are framed for adjudication of present controversy:-*

- 1. Whether deceased Bakhtawar Singh executed a legal & valid will dated 29.04.1974 in favour of deceased Amrik Singh? OPD.*
- 2. Whether plaintiff is entitled to relief of declaration as*

*prayed for? OPP.*

3. *Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP.*

4. *Whether the suit of the plaintiff is not maintainable in its present form? OPD.*

5. *Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.*

6. *Whether plaintiff has not come to the court with clean hands? OPD*

7. *Whether the present suit of the plaintiff is time barred? OPD.*

8. *Relief.*

*No other issue arises or pressed for. To come up on 20.08.2015 for evidence of defendants no.1 to 3 on filing of PF/DM/list of witnesses within 15 days, failing which defendants no.1 to 3 shall not be entitled to assistance of this court in summoning its witnesses.”*

**Manjit Singh's case (supra)**, was a case pertaining to partition amongst co-sharers. In a suit for partition, whether all parties to the lis, de hors of the fact that they are plaintiffs or defendants, are entitled to receive share. This Court, after taking into consideration the per pleadings of the parties, accepted the plea of the plaintiff, whereby the defendants were called upon to lead evidence as per the provisions of Order 18 Rule 1 CPC. However, in the instant case, the respondent-plaintiff instead sought a declaration by claiming property by way of natural succession and as well as challenge to the mutations. In my view, the provisions of Order 18 Rule 3 instead of provisions of Order 18 Rule 1 CPC would apply. It is for the plaintiff to prove whether the mutations rightly or correctly entered or not and whether she is entitled to succeed to estate of Bakhtawar Singh. It is only then the defendants shall lead the evidence after the plaintiff

discharges the onus in support of the pleadings culled out in the written statement.

Keeping in view of the aforementioned facts and circumstances, the impugned order is hereby modified and the words “defendants Nos. 1 to 3, shall be construed as defendants, who shall be called upon to submit the list of witnesses on filing of the process fees and diet money.

Mr.Kanwal Goyal, during the course of arguments, has brought to the notice of the Court that in compliance of the order under challenge, the defendants have already filed their affidavits in examination-in-chief. In view of such situation, affidavits be not taken into consideration at this stage and the defendants shall be at liberty to file their affidavits after the respondent-plaintiff concludes her evidence after leading the evidence in affirmative.

With the aforementioned observations, the revision petition stands allowed.

**February 25, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**