

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 685 of 2017 (O&M)
DECIDED ON: FEBRUARY 02, 2017

PANKAJ

....PETITIONER

VERSUS

PARSANNATTA SHARMA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. O.P. Hoshiarpuri, Advocate
for the petitioner.

JASPAL SINGH, J

CM No. 2075-CII of 2017

Application is allowed, as prayed for.

CR No. 685 of 2017 (O&M)

Through this instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated January 11, 2017 passed by learned Civil Judge (Jr. Division), Jalandhar (Annexure P-8) whereby, an application filed by the respondent/plaintiff for fixing the case for the evidence of petitioner/defendant to prove his claim has been allowed and petitioner/defendant was directed to lead its evidence first.

The contention of learned counsel for the petitioner is that as per provisions of Order XVIII Rule 1 of the Code of Civil Procedure (for short

'CPC'), it is for the plaintiff to begin his/her case by leading evidence and fixing the case by the learned trial Court for the evidence of the petitioner/defendant is in violation of the afore-said provisions, especially, in the circumstances that the petitioner/defendant has denied the ownership and possession of the respondent/plaintiff and has pleaded the Will. So, firstly, it is for the respondent/plaintiff to prove her case, which is to be rebutted by the petitioner.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but find the same to be without any legal weight.

Concededly, respondent/plaintiff has filed the suit for possession on the basis of inheritance of House No. 163, Gali No. 4, Central Town, Jalandhar claiming herself to be the owner, which is being resisted by the petitioner/defendant on the ground that Labhu Ram, the original owner of the property in question executed a Will dated May 18, 2010 in her favour out of his love and affection and further that on the basis of the said Will, she has become the owner of the suit property. No doubt, as per provisions contained under Order XVIII Rule 1 of the CPC, it is for the respondent/plaintiff to start his evidence but in the instant case, there is/are peculiar circumstances which require that it is for the petitioner/defendant to prove her case first. The ownership of Labhu Ram over the suit property is an admitted fact. However, respondent/plaintiff claims ownership on the basis of natural succession whereas petitioner/defendant has put a Will alleged to have been executed by the said Labhu Ram. So, the learned trial Court has rightly observed that it is for the petitioner/defendant to lead its evidence first, especially, in the circumstances that in case the Will is not proved, the respondent/plaintiff would

be the natural successor.

Thus, this Court is of the considered view that there is no illegality or perversity in the impugned order. As such, instant petition is dismissed.

FEBRUARY 02, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*