

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.863 of 2017 (O&M)

Date of decision: February 06, 2017

Amit Kumar

...Petitioner

Versus

Naresh Kumar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Ms. Neeti Gupta, Advocate for the petitioner.

Rajan Gupta, J.

Present revision petition is directed against the order dated 17.12.2016, passed by the trial court, whereby application filed by respondent No.1/defendant, for directing Amit Kumar (defendant of suit titled as Naresh Kumar vs. Amit Kumar) to lead evidence before his evidence, has been allowed.

Learned counsel for the petitioner has assailed the order. She submits that approach of the trial court is erroneous and against law. According to him, defendant cannot be permitted to lead his evidence prior to evidence of plaintiff. Petitioner was not a party in the previous suit titled as Shiv Kumar Vs. Naresh.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears, respondent No.2, who is father of petitioner, filed

Civil Suit No.960 of 2013 on 18.7.2013 titled as 'Shiv Kumar vs. Naresh Kumar' against respondent No.1, seeking a decree for permanent injunction in respect of plot No.41 adjacent to shop of respondent No.1 bearing MCK No.940/3. Later on, respondent No.1 filed Civil Suit No.538 of 2013 for permanent injunction against the petitioner and respondent No.2 titled as "Naresh Kumar Vs. Amit Kumar and another" regarding plot No.42, which was earlier owned by respondent No.2 and subsequently transferred in favour of petitioner by way of a release deed. Issues in both the suits were framed. Thereafter, respondent No.1 filed an application for consolidation of both the suits, which was allowed by the trial court on 20.02.2015 and both the suits were consolidated. After evidence of respondent No.2/plaintiff was concluded, when case was fixed for defendant's evidence, instant application was moved by respondent No.1 seeking direction to the petitioner/defendant to lead his evidence before evidence of the plaintiff. The trial court allowed the application directing the petitioner/defendant to lead his evidence first. I find no infirmity with the order. It reveals that in both the suits, controversy regarding plot Nos.40, 41 and 42 is involved. Naresh Kumar is plaintiff in case titled as Naresh Kumar Vs. Amit Kumar and Shiv Kumar, thus, he was legally bound to lead his evidence before evidence of Amit Kumar, who is defendant in case. Amit Kumar and Shiv Kumar have same interest, therefore, Naresh Kumar cannot be compelled to lead his evidence before Amit Kumar. Thus, the court below has not committed any error while directing Amit Kumar to lead evidence before

evidence of respondent No.1 Naresh Kumar. I find no infirmity with the order. Revision petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

February 06, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No