

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.111

Case No. : C.R.No.5660 of 2023(O&M)

Date of Decision : November 22, 2023

Narinder Kumar Gulati Petitioner
vs.

Ramesh Rani Gulati and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Aayush Gupta, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this petition to the orders dated 01.08.2023 and 08.09.2023, passed by learned Additional Civil Judge (Senior Division), Ludhiana (hereinafter referred to as – the Trial Court).

2. Brief facts, as culled out from the paper book, are that plaintiffs/respondents no.1 and 2 (hereinafter called – the plaintiffs) filed a suit for declaration (Annexure P-3) against petitioner/defendant no.1 (hereinafter called – defendant no.1) and proforma respondents no.3 to 6/defendants no.2 to 5, that Kewal Krishan Gulati (husband of plaintiff no.1 and father of plaintiff no.2) died intestate leaving behind the plaintiffs as his only legal heirs and the Will dated 11.09.2001, alleged to have been registered on the same day, is a complete forgery as the said Will was never executed by the said Kewal Krishan Gulati. It was further prayed that the

plaintiffs are the exclusive owners of the properties left by late Kewal Krishan Gulati. Further declaration was sought that defendant no.1 was never adopted by Kewal Krishan Gulati. All the documents set up by him claiming himself to be son of late Kewal Krishan Gulati are illegal, null and void. Further relief of possession of the property in question and injunction, restraining defendant no.1 from alienating, disposing of or transferring the possession of immovable or immovable properties to anybody else was also sought.

3. Defendant no.1 appeared and contested the suit. He filed written statement (Annexure P-4), *inter alia* pleading that he was adopted son of Kewal Krishan Gulati and plaintiff no.1. He was born on 17.07.1962 and was adopted on 13.01.1963 by them. Kewal Krishan Gulati executed a Will dated 11.09.2001 in his favour.

4. From pleadings of the parties, following issues were framed :-

- “1. *Whether the plaintiff is entitled to declaration that Sh.Kewal Krishan died intestate as prayed for? OPP*
2. *Whether the plaintiff is entitled to declaration that the alleged will dated 11.09.2001 is forged & fabricated? OPP*
3. *Whether the plaintiffs are the exclusive owners of the suit properties? OPP*
4. *Whether the plaintiff is entitled to the declaration that the defendant no.1 was adopted by Kewal Krishan? OPP*
5. *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
6. *Whether the suit of the plaintiff is not*

maintainable? OPD

7. *Whether the suit is bad for misjoinder of party? OPD*
8. *Whether the plaintiff has not come to the Court with clean hands? OPD*
9. *Whether the plaintiff has not properly valued the suit for the purpose of court fee & jurisdiction? OPD*
10. *Relief."*

5. An additional issue was also framed in the case which reads as under :-

"6(a). Whether the present suit is barred by Order 2 Rule 2 CPC? OPD"

6. An application under Order 14 Rule 5 and Section 151 CPC for framing additional issues and further for directing the defendants to lead the evidence first was moved by plaintiffs on 27.07.2023. Defendant no.1 filed reply to the application. The Trial Court, vide order dated 01.08.2023, allowed the application and framed the following issues :-

"6(b) Whether the Will dated 11.09.2001 was executed by Kewal Krishan Gulati in favour of defendant No.1? OPD

6(c) Whether the defendant no.1 was adopted by Sh. Kewal Krishan Gulati and Smt. Ramesh Rani Gulati as alleged? OPD"

and defendants were directed to lead the evidence first.

7. Thereafter, defendant no.1 moved an application for review of order dated 01.08.2023 and to re-fix the case for evidence of the plaintiff. By passing detailed order dated 08.09.2023, the said application was dismissed by learned Trial Court.

8. Learned counsel for defendant no.1 has argued that the order dated 01.08.2023 was passed on the basis statement of defendant no.1 but defendant no.1 did not make unconditional statement to allow the application but he had made the statement that he had no objection in case the issue regarding Will of Kewal Krishan Gulati and adoption of defendant no.1 are framed but formation of issue no.1 be changed. The plaintiffs are required to lead the evidence first. There are other issues, burden of which lies on the plaintiffs. The plaintiffs, without discharging the initial onus by way of evidence in affirmative, cannot discharge the same and put onus on defendant no.1. It is further submitted that Order 18 Rule 1 CPC is an enabling provision entitling the defendant to lead the evidence first, where a Court can permit or direct the defendant to enter witness-box before the plaintiff and lead evidence in support of his case. Reliance has been placed on a judgment of Bombay High Court in **Haran Bidi Suppliers and another vs. M/s V.M. and Co. – Law Finder Doc Id # 136907**, a judgment of Orissa High Court in **Mirza Niamat Baig and another vs. Sk. Abdul Sayeed and others – Law Finder Doc Id # 967027** and a judgment of Bombay High Court in **Bhagirath Shankar Somani and another vs. Rameshchandra Daulal and another – 2007(29) R.C.R.(Civil) 628**.

9. Learned counsel for the plaintiffs has submitted that the learned Trial Court, in its order dated 01.08.2023, has mentioned that counsel for defendant no.1 suffered a statement that he has no objection with regard to framing of additional issues. So, the Court framed additional issues and put the burden upon defendant no.1 to prove the same. Since plaintiffs are claiming inheritance on the basis of natural succession and defendant no.1 is

claiming succession that he is adopted son and is also claiming inheritance on the basis of Will executed by Kewal Krishan Gulati. So, if defendant no.1 becomes successful in proving the same, then he would definitely be entitled to inherit the property of the deceased. There cannot be negative burden on a party to prove a fact and the entire case revolves mainly around these issues. The Trial Court has rightly put the burden on defendant no.1 and ordered him to lead his evidence first, on the review application moved by defendant no.1. Detailed order has been passed by learned Trial Court, in which it is clearly held that burden is rightly put on the defendant and defendant has been rightly asked to lead the evidence first. In support of his contentions, learned counsel has placed reliance on judgments of this Court in **Damanpreet Singh and another vs. Jaspal Singh and others – 2023(1) R.C.R.(Civil) 880**, **Manjit Singh Lassi vs. Col. Gurcharan Singh and others – 2005(2) R.C.R.(Civil) 47**, a judgment of Delhi High Court in **Desh Bandhu vs. Harish Bindal – 2001 A I H C 712** and also on a judgment of Kerala High Court in **Chandralatha vs. Annamallai Finance Ltd. - 1996 (2) Civil Court Cases 30 (Kerala)**. It is further submitted that defendant no.1 is delaying the trial of the case. On 28.09.2015, application under Order 7 Rule 11 CPC for rejection of plaint was moved, which was decided only on 03.10.2022, against which revision bearing **CR-5886-2022** was filed, which has been dismissed by this Court on 16.01.2023 and immediately thereafter, the present application has been moved.

10. I have heard the submissions of learned counsel for the parties and have gone through the case file.

11. In the Civil Suit, plaintiffs are claiming inheritance on the basis

of natural succession, on the death of Kewal Krishan Gulati, whereas defendant no.1 is claiming succession on the basis of Will executed by Kewal Krishan Gulati and also being adopted son of Kewal Krishan Gulati and plaintiff no.1. In case, defendant no.1 succeeds in proving the Will in affirmative that the same was executed in accordance with the provisions of Indian Succession Act, 1925 and also in proving the same in accordance with Sections 68 and 69 of the Indian Evidence Act, then only the plaintiffs can be asked to lead evidence that the Will in question is result of fraud. No negative onus can be put on the plaintiffs. Since it is positive case of defendant no.1 that he was adopted by Kewal Krishan Gulati and plaintiff no.1, so defendant no.1 is required to lead evidence in affirmative to prove the same. In the event of defendant no.1 proving the Will in his favour, then definitely the suit of the plaintiffs would fail. The other issues framed in this case are of general nature. The entire case mainly revolves around the two issues. Order 18 Rule 1 CPC provides that right to lead evidence first can shift to the defendant instead of plaintiff and the Court is not bound to ask the plaintiff to lead the evidence first. There is no bar for the Court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and nature of the issues framed in the case. All the Rules and Procedures are designed and directed to achieve and secure the ends of justice.

12. In [Keshavlal Durlabhasinbhai's Firm and Another v. Shri Jalaram Pulse Mills](#) reported as [AIR 1995 GUJARAT 166](#), the Gujarat High Court observed as under :-

“7. *In view of the fact that the plaintiff's claim is substantially admitted and the plaintiff-firm is also prima facie shown to be a registered firm, the trial court has rightly directed the defendant to lead the evidence first. The trial Court is entitled even to record the statements of the parties before framing issues under Order XIV, Rule 1 read with Order X, Rule 2.*

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8. *These provisions enable the trial Court to narrow down the controversy and focus the attention of the parties to the barest minimum. In large number of cases, the matters would be expeditiously disposed of. This is a very salutary provision for expeditious disposal of suits and it should ordinarily be resorted to and followed, by all trial courts.*

9. *In the present case, though this procedure is not followed and though the stage of framing of issues has passed, the trial court has on correct appreciation the rival contentions of the parties come to a proper conclusion that the defendant should lead the evidence first. This order is perfectly legal and proper and no interference is called for on any of the grounds canvassed by the learned advocate for the petitioner. Though the defendant has chosen to deny the claim of the plaintiff in totality, that is a denial without any substance in view of the other admitted facts of receipt of goods, part payments, issuance of cheques and a claim of having made further payments and, therefore, onus lies on the*

defendant. The denial of registration of partnership is also prima facie frivolous. The plaintiff has given the registration number of the partnership firm of the plaintiff.”

13. In [Krishnakumar v. V. Seethalakshmi – 2013 SCC OnLine Mad 83](#), decided on 07.01.2013, the Madras High Court held as under :-

“7. In this case too, the burden of proof lies on the party, who asserts a particular fact. The particular fact, which is asserted is, whether the property belonged to Narayana Asari absolutely. That fact has been asserted by the plaintiffs and also admitted by the defendants. Therefore, there is no burden of proof on the plaintiffs to prove that fact. Insofar as the onus of proof is concerned, it is held in that judgment [referred to above](#), that onus of proof by a party would cease, the moment, the opposite party admits the transaction. In this case, the onus of proof is on the defendants to prove the execution of the Will, that has been denied by the plaintiffs. Once defendants are able to prove the Will to the satisfaction of the court, the suit filed by the plaintiffs will be dismissed and there is no necessity to go into the further aspects of the matter, by letting evidence by the plaintiffs. Considering all these aspects, the Court below initially directed the defendants to lead evidence first and that was properly appreciated, while considering the Review Application. Further, I do not find any infirmity in the order passed by the Court below in the Review Application and there is no error apparent on the face of record to interfere with the same. In the result, the Civil Revision Petition fails and it is

dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.”

14. In the case of **Desh Bandhu (supra)**, Delhi High Court has held as follows :-

“7. Petitioner's case is no better on the other issue and suffers from a fallacy on the face of it. Order 18 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 water tight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.”

15. The case law cited by learned counsel for the petitioner is of no help.

16. In view of the above discussion, this Court is of the view that the position of law that emerges now is that if the defendants set up a case and prove the Will in question, then the suit can be decided properly. Therefore, it is directed that the defendants can lead evidence first in view of Order 18 Rule 1 CPC.

17. In view of what has been discussed above, the present revision

petition is without any merit and the same is accordingly dismissed.

18. Pending applications, if any, shall stand disposed of along with this judgment.

November 22, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.