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

CR-3076-2019 (O&M)

Date of Decision : 25.02.2025

Kanwaljit Singh & Ors

... Petitioner(s)

Versus

Kulwinderjit Kaur (deceased) through LRs & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Prateek Sodhi, Advocate for the petitioners.

Mr. Divanshu Jain, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 23.04.2019 whereby the Trial Court has directed the defendant-petitioners herein to lead their evidence at the first instance.

2. Learned counsel for the petitioners would contend that in the present case the suit is for declaration and for partition. In the said suit a Will dated 12.01.2002 was set up by the defendant-petitioners qua which issue No.9 was framed. The onus of issue Nos.1 to 6 was cast upon the plaintiff-respondent No.1 and that of issue Nos.7 to 10 was cast upon the defendant-petitioners. The learned counsel for the petitioners referring to the provisions of Order 18 Rule 1 of the Code of Civil Procedure, 1908 contends that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends 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. Hence the Trial Court erred in directing the defendant-petitioners to lead their evidence at the first instance. It is further

the contention that the plaintiff-respondent No.1 as per the Order 18 Rule 3A CPC should step into the witness-box prior to any other witness being examined and to circumvent the provisions of law, the present application has been filed. It is further contended that infact the application itself ought to have been dismissed since the same was filed under Section 100 of the Indian Evidence Act, 1872 which has absolutely no relevance to the application in hand.

3. *Per contra* the learned counsel for the plaintiff-respondent No.1 states that since there are number of issues involved in the present case and out of 10 issues, the onus of six issues has been cast upon the plaintiff-respondent No.1, the plaintiff-respondent No.1 would lead their evidence first in accordance with law.

4. In view of the statement made by the learned counsel for the plaintiff-respondent No.1, the present revision petition is allowed. The impugned order is set aside. The plaintiff-respondent No.1 shall lead their evidence at the first instance in accordance with law.

5. Disposed off accordingly. Pending applications, if any, also stand disposed off.

25.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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