



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

**CR-6207-2026 (O&M)
Date of Decision: 27.08.2026**

Rajesh Kukkar

..... Petitioner

Versus

Shyam Sunder Vadhera Through His Special Power
of Attorney Holder Vijay Kumar Vadhera

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Manu Loona, Advocate
for the petitioner.

HARSH BUNGER J.

Prayer in the instant petition is for setting aside the order dated 11.05.2026 (Annexure P-8) as well as the order dated 05.12.2024 (Annexure P-5), both passed by the learned Additional Civil Judge (Senior Division), Fazilka, to the extent that the petitioner/defendant has been called upon to lead evidence first.

2. Briefly, the respondent/plaintiff (Shyam Sunder Vadhera) filed a civil suit seeking possession of a building bearing Property No.6/1625, comprising two shops, one with a fallen roof, a store, an entrance and a hall/store (as described in the plaint), situated at Wool Bazar/Raja Cinema Road, within the municipal limits of Fazilka. A further prayer was made for

grant of mesne profits at the rate of Rs.10,000/- per month, w.e.f. 15.11.2019 till delivery of actual possession of the said shop. Consequential relief of permanent injunction was also sought.

3. It is the case of the respondent/plaintiff that he became the owner of the shop in question vide judgment and decree dated 03.10.1966 passed by the learned Sub Judge, 2nd Class, Fazilka, and thereafter, came into possession thereof as its owner. Subsequently, the plaintiff shifted to Karnal. The defendant, who is stated to be the nephew of the plaintiff, requested the plaintiff that he wanted to shift to Fazilka and carry on his business from the building in question. Keeping in view their relationship, the plaintiff put the defendant in possession of the building in question. Plaintiff claimed that the possession of the defendant was permissive in nature, on the assurance by the present petitioner/defendant that he would surrender the same to the plaintiff in case one year's prior notice was given to him. It is further averred that about four years prior to the filing of the suit, the plaintiff asked the defendant to surrender possession of the building; however, the matter was deferred on one pretext or the other. It is alleged that the possession of the defendant has become illegal and that the plaintiff is entitled to vacant possession of the shop. It was averred that since the defendant did not pay heed to the request of the plaintiff, the respondent/plaintiff was constrained to institute the suit.

4. Upon issuance of notice in the suit, the petitioner/defendant appeared and contested the claim of the respondent/plaintiff, wherein, *inter alia*, a plea was taken that the petitioner/defendant had become the owner of the property in question by way of adverse possession.

5. From the pleadings of the parties, learned Additional Civil

Judge (Senior Division), Fazilka, framed the following issues:-

- (1) Whether plaintiff is entitled for suit for possession, as prayed? OPP*
- (2) Whether plaintiff is entitled to mesne profits at rate, as being claimed? OPP*
- (3) Whether plaintiff is entitled to consequential relief of permanent injunction as prayed for? OPP*
- (4) Whether suit is within limitation? OPP*
- (5) Whether suit is not maintainable? OPD*
- (6) Whether suit is not properly valued? OPD*
- (7) Whether Vijay Kumar Wadhera is not competent to pursue with the present case? OPD*
- (8) Whether after expiry of 12 years possession of defendant side became open, hostile and adverse to the knowledge of plaintiff and his father namely Mohri Lal, which has ripened to title by way of adverse possession? OPD*
- (9) Whether suit is false and frivolous one? OPD*
- (10) Relief.*

6. The learned Additional Civil Judge (Senior Division), Fazilka, vide order dated 05.12.2024 (Annexure P-5), directed the petitioner/defendant to lead evidence at the first instance. Relevant extract of the said order reads as under:-

“ Sh. Pardeep Kataria, Advocate learned counsel for plaintiff submitted that since defendant side has raised a plea of adverse possession, therefore, opportunity should be given first to defendant to open the evidence, as normally plaintiff is to begin evidence but due to special circumstances and specific pleadings evidence is to be begin by defendant.

A separate statement of learned counsel for plaintiff is also recorded and in view of aforementioned situation, now case is being adjourned to 20.01.2025 for defendant evidence for the issues on which onus lies on defendant and evidence is to be led in affirmative and it is defendant who is to begin with

the evidence first.

Let, a notice to witnesses be issued of defendant, subject to PF/DM, as the case may be. List of witnesses be filed.”

6.1 Thereafter, the petitioner is stated to have filed an application (Annexure P-6), seeking a direction that the suit be fixed for the plaintiff's evidence before the petitioner/defendant is called upon to lead his evidence.

6.2 The respondent/plaintiff opposed the aforesaid application by filing his reply (Annexure P-7).

6.3 The learned trial Court, vide order dated 11.05.2026 (Annexure P-8), dismissed the aforesaid application (Annexure P-6), observing as under:-

“ This Court is of the view that vide order dated 05.12.2024, learned Predecessor of this Court, on merit has already disposed of this matter observing that in view of the special circumstances of the case in hand, the defendant needs to lead the evidence first. The said order has attained finality. It was never challenged by the defendant before any competent authority either in appeal or revision. Now, the matter has become final. This Court cannot sit as Appellate Authority nor can review the said order and as such, the present application is not maintainable and accordingly stands dismissed.

Now the case stands adjourned to 29.07.2026 for evidence of defendant.”

7. In the aforementioned circumstances, petitioner has filed the present petition before this Court.

8. The only submission raised by learned counsel for the petitioner is that the learned trial Court has wrongly called upon the petitioner/defendant to lead evidence, which is liable to be set aside.

9. I have considered the aforesaid contention raised on behalf of the petitioner.

10. From a bare perusal of the provisions contained in Order XVIII Rule 1 of the Code of Civil Procedure, it is explicit that there is no mandate that only plaintiff has to lead evidence in all circumstances. Rather, the right to lead evidence first can be shifted to the defendant instead of plaintiff and the Court is not bound to ask the plaintiff to lead the evidence first.

11. 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.

xx xx xx xx

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.”

11.1 The Hon'ble Delhi High Court in **“Desh Bandhu v. Harish Bindal”**, 2000 (7) AD (Delhi) 1206; observed as under:

“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.

In the present case it is not the plaintiff who complains of his infringement of his right to begin the evidence under Order 18 of the Code. Strangely it is the defendant petitioner invoking plaintiff's right. The relevant order nowhere confers any right on him to lead the evidence last. It is also not understandable what prejudice was caused to him by the impugned order. If he claims that plaintiff had no cause of action because he had perfected the title on the suit land upon which first issue is framed by the court with onus on him why should he not prove it first to get rid of the suit. He seems to have generated an avoidable controversy over nothing to prolong the litigation...”

12. Keeping in view the aforesaid discussion, I am of the considered view that there is no bar upon the Court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case. All the rules of procedure are designed and directed to achieve and secure ends of justice.

13. Consequently, I see no merit in the instant revision petition and the same is, accordingly, dismissed.

14. All pending application(s), if any, shall also stand closed.

27.08.2026
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No