

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 328/2017

Saeed Ahmed Minhas
Versus
Muhammad Shehryar Khalid etc.

Petitioner by:	Mr. Talha Ilyas Sheikh, Advocate
Respondent No. 1 by:	Mr. Zulfiqar Ali Abbasi, Advocate
Respondent No. 2 by:	Mr. Abdur Rashid Awan, Advocate
Respondent No. 3 by:	Mr. Sajid Abbas Khan, Advocate
Date of Decision:	10.06.2019

MOHSIN AKHTAR KAYANI J. Through this Civil Revision, petitioner has assailed the order dated 22.04.2017, whereby application filed by Mst. Rakhshanda Begum/respondent No.2 was allowed by the learned Trial Court in terms of Order XVIII Rule 1 read with Section 151 CPC and the learned Trial Court has passed the direction to Ejaz Ahmed Malik and Saeed Ahmed Minhas to record their evidence at the first instance.

2. Learned counsel for the petitioner contends that respondent No. 2/Rakhsanda Begum has given the conceding statement in her written statement in the suit titled **“Muhammad Shehryar Khalid Vs. Saeed Ahmed Minhas”** and it is settled law that the evidence of the parties should have been recorded at the first instance, who have given their conceding statement.

3. Conversely, learned counsel for the respondents contends that Order XVIII Rule 1 & 2 CPC explains the concept of right to begin in the suit to produce his evidence and support of the issues and as such learned Trial Court has rightly passed the direction on the analogy that

the evidence of Ejaz Ahmed Malik and Saeed Ahmed Minhas have to be recorded at the first instance as their suits are earlier in time.

4. Arguments heard, record perused.

5. From the perusal of record, it has been observed that the controversy raised in the instant civil revision is regarding acceptance of the application filed by Mst. Rakhshanda Begum/respondent No. 2 in terms of Order XVIII Rule 1 & 2 CPC, whereby the said application was allowed and respondent No. 3 and petitioner were directed to record their evidence at the first instance in the consolidated suits.

6. Record further reveals that the consolidated issues were framed alongwith additional issues on 26.03.2015 in the following suits:-

S.No.	Suit Number	Suit title
1	1078/2002	Saeed Ahmed Minhas Vs. Rukhshanda Begum etc.
2	1086/2003	Ijaz Ahmed Malik Vs. Rukhshanda Begum.
3	87/1 of 2014	Muhammad Shehryar Khalid Vs. Saeed Ahmad Minhas etc.
4	87/2014	Muhammad Shehryar Khalid Vs. Saeed Ahmad Minhas etc.

7. While considering the above background, all the suits are inter-connected due to the same subject matter and the proposition raised in the matter relates to provisions under Order XVIII CPC as to whether the right to begin in the cases to produce the evidence in support of the issues at the first instance is upon the Saeed Ahmed Minhas and Ejaz Ahmed Malik or upon Muhammad Shehryar Khalid, whereas the learned Trial Court has passed the direction while considering the record on the following grounds vide order dated 26.03.2015:-

“Perusal of record shows that petitioner/defendant submitted the instant application on the ground that three connected suits between the same parties regarding same property is pending adjudication and the suits were already consolidated and consolidated issues have already been framed. The evidence of the plaintiff Shehryar Khalid has been recorded and concluded. Where

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the evidence of the other suits plaintiffs namely Ejaz Ahmed Malik and Saeed Ahmed Minhas has not been recorded. According to Civil Procedure, the plaintiff has first to lead evidence where the present petitioner/defendant No. 2 is defendant in all the three cases, therefore, application is allowed and Ejaz Ahmed Malik and Saeed Ahmed Minhas are directed to record the evidence first on 06.05.2017.”

8. In order to reach at a just and fair conclusion of the case, Order XVIII Rules 1, 2, 3 CPC have been reproduced hereunder:-

1. Right to begin

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, in which case the defendant has the right to begin.

2. Statement. and production of evidence

(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

9. Similarly, learned counsel for the petitioner has relied upon the case law reported as **1990 CLC 664 [Lahore] (Ghulam Nabi Vs. Brig. Muhammad Akram and others), PLD 1978 Lahore 431 (Faqir Muhammad Vs. Mst. Aziz Bibi and another), 2000 YLR 148 [Lahore] (Humayun Malik Vs. Taimoor Malik and 3 others).**

10. Keeping in view the above background and law cited supra, I have gone through the earlier order of consolidated issues, whereby learned Trial Court has declared Muhammad Shehryar Khalid as plaintiff in all

the cases whereas the said order has not been challenged further by any of the other parties.

11. At this stage, question relating to recording of evidence or right to begin evidence has to be considered in line with Order XVIII Rules 1, 2, 3 CPC as well as the case laws referred above, whereby the party, who conceded the claim of plaintiff in written statement in favour of Muhammad Shehryar Khalid has to record evidence at the first instance as if other parties have recorded their evidence, it will effect the rights of rebuttal of the other defendants, therefore, order dated 26.03.2015 requires rectification and while exercising the powers of Section 151 CPC, the illegality committed by the learned Trial Court has been rectified on the basis of suo moto exercise of jurisdiction in terms of Section 151 CPC while relying upon case law reported as **2019 YLR 43 [Lahore] (Muhammad Iqbal (deceased) through L.Rs. Vs. Additional District Judge and others) and PLD 2018 Lahore 697 (Khalid Meer and others Vs. Faqeerullah Minhaj and others).**

12. While considering the above case laws, the party, who has filed the earlier suits titled Saeed Ahmed Minhas in the year 2002 and Ejaz Ahmed Malik in the year 2003 have a right to proceed as per their claim in the matter due to earlier filing of the suit, therefore, the order passed by the learned Trial Court dated 22.04.2017 is in accordance with law, but Saeed Ahmed Minhas has to be considered as plaintiff in the consolidated issues due to filing of his suit in the year 2002, therefore, order dated 26.03.2015 is rectified and keeping in view the law and analogy settled above, the right to begin/submit the evidence being plaintiff is upon Saeed Ahmed Minhas at the first instance, whereafter the statement of conceding defendant i.e. Mst. Rakhshanda Begum be recorded and subsequently the statements of the rest of the defendants shall be recorded.

13. For what has been discussed above, instant civil revision stands **disposed of** in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Ramzan