

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.576 of 2023

Pradeep Kumar Pandey @ Dr. Pradeep Kumar Pandey Son of Late Narwadeshwar Pandey, Resident of Village- Chakhani, Police Station- Bagaha, District- West Champaran.

... .. Petitioner/s

Versus

1. Alok Kumar Pandey Son of Late Narwadeshwar Pandey, Resident of Village- Chakhani, Police Station- Bagaha, District- West Champaran.
2. Arsh Kumar Pandey Son of Dr. Pradeep Kumar Pandey, Resident of Village- Chakhani, Police Station- Bagaha, District- West Champaran.
3. Most. Prabha Pandey Widow of Late Narwadeshwar Pandey, Resident of Village- Chakhani, Police Station- Bagaha, District- West Champaran.
4. Ashwarya Kumar Pandey Son of Alok Kumar Pandey, Resident of Village- Chakhani, Police Station- Bagaha, District- West Champaran.
5. Archana Mishra @ Rita Mishra Wife of Bhartish Mishra, Resident of Village- Asharaya, 68 W-1, Saket Nagar, Kanpur-18 (U.P.)
6. Dwijendra Nath Tiwary Son of Late Vishwanath Tiwary, Resident of Mohalla Dumawalia Ward No. 9, Nagar Parishad Bagaha, Police Station- Bagaha, District West Champaran.
7. Digambar Nath Tiwary Son of Sri Dwijendra Nath Tiwary, Resident of Mohalla Dumawalia Ward No. 9, Nagar Parishad Bagaha, Police Station- Bagaha, District West Champaran.
8. Sawindha Pandey Wife of Sri Alok Pandey Residing at 101, Park Street, Plot No. 64, Shivaji Nagar, Nagpur, Maharastra-440010.
9. Swati Kumari Wife of Sri Piyush Pandey, Residing at B-35, Pantheon, Saptagiri Builders, Manish Nagar, Nagpur, Maharastra-440015.
10. Spriha Mishra Wife of Sri Shailesh Mishra, Residing at No. 2/206, Eros Sampoonam, Sector -I, Noida, Noida Extension -201301 (U.P.).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Purna Anand, Adv.
Mr. Uday Shankar Singh, Adv.
For the Respondent/s : Mr.Chandra Kant, Adv.

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT

Date : 08-05-2026

The instant Civil Miscellaneous Application has
been filed for setting aside the order dated 06.04.2023
passed in Partition Suit No. 156 of 2017, whereby and



whereunder the learned court below has allowed the petition filed by the plaintiff (Respondent No. 1) and directed defendant Nos. 1, 2 and 5 to produce their witnesses on the next date.

2. Heard learned counsel for both the parties.

3. Learned counsel for the petitioner submits that the plaintiffs have instituted Partition Suit No. 156 of 2017 in the court of the learned Sub Judge, Bagaha, seeking a declaration that there exists unity of title and unity of possession between the plaintiff and the defendants over the suit property, wherein the plaintiff claims 6/20 share, and for passing of a preliminary decree for partition, followed by carving out a separate *takhta* of his share. It is further submitted that after appearance, a joint Written Statement was filed on behalf of Defendant Nos. 1 and 2, and a separate Written Statement was filed on behalf of Defendant No. 5, wherein it has been stated that the suit is not maintainable for non-joinder of necessary parties. It has also been stated in the Written Statement that partition had already taken place with respect to certain properties in the



year 1988, and the allegation regarding subsistence of joint family and unity of title and possession has been specifically denied on the ground that the same ceased in the year 1988 itself. It is further submitted that the plaintiff filed a petition on 09.12.2022 in Partition Suit No. 156 of 2017 stating therein that, upon perusal of the Written Statements filed by Defendant Nos. 1, 2 and 5, it is evident that partition in the family of the petitioner's father and his sons had already taken place in the year 1988, and thus there is no unity of title and unity of possession between the parties. On this basis, the plaintiff prayed before the court for issuance of a direction to Defendant Nos. 1, 2 and 5 to adduce their evidence first, in view of the alleged admission in the Written Statements. The said petition has been allowed by the impugned order dated 06.04.2023, which is under challenge before this Court.

4. Learned counsel for the petitioner/defendant submits that under Order XVIII Rule 1 of the C.P.C., the right to begin is conferred upon the defendant, provided the



case falls within the ambit of the said provision. Order XVIII

Rule 1 of the C.P.C. reads as follows:-

“1. Right to begin – The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contents 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.”

5. He further submits that, ordinarily, the burden of proof lies upon the party who asserts a fact. In the present case, since the plaintiff has sought partition, the onus to begin the evidence lies upon the plaintiff and not upon the defendant. It is also submitted that the “right to begin” envisaged under Order XVIII Rule 1 cannot be construed as a “duty to begin.”

6. In order to buttress his submissions, learned counsel has placed reliance upon the judgment in the case of



Mohammad Janangir @ Mohammad Jahangir Alam vs. Sajda Khatoon, reported in 2007 (4) PLJR 100. Paragraph 5 of the said judgment is relevant and is reproduced hereinbelow:-:-

"5. The general rule as to plead and prove is that one who pleads must prove. The exception being where the pleading of one is admitted by the adversary. In such an event, the person pleading the fact is relieved of his obligation to prove the pleading as it is admitted. The rationale of Order XVIII Rule 1 is based on these two principles put together. It is to be seen that once the defendant admits the facts as pleaded by the plaintiff then the plaintiff is relieved of proving his case. The obligation would then normally travel to the defendant to plead his case first. The requirement of Order XVIII Rule 1 is first that there should be an admission of facts by the defendant as plead by the plaintiff which facts in spite of admission would not entitle the plaintiff to any relief or would disentitle the plaintiff to any relief on a separate set of facts pleaded by the defendant. Primarily, there has to be first admission of facts by the defendant. Secondly, it would be seen that this provision only gives a right to the defendant to begin whether he



exercises that right or not the option is his. If Order XVIII Rule 1 made it obligatory on part of the defendant to begin then the section would be worded otherwise. The section is only conferring a right on the defendant but does not make it obligatory, for if it was to operate as an obligatory responsibility then it can simply be drafted as "the defendant shall proceed" and not "that the defendant has the right to begin". The words would be "that the defendant had the duty to begin"."

7. In this context, the judgment in the case of Chandradeo Singh & Ors. vs. Moti Devi & Ors. reported in 1992 1 BLJR 280 is also relevant.

8. On the anvil of the aforesaid principle, and upon perusal of the entire factual matrix of the case, it appears that the "right to begin" cannot be construed as a "duty to begin," and the defendants cannot be compelled to adduce evidence first. Rather, it is the plaintiff who has asserted his claim and sought partition; therefore, the plaintiff is required to lead evidence in the first instance, followed by the defendants.



9. For the reasons stated hereinabove, the impugned order dated 06.04.2023 passed in Partition Suit No. 156 of 2017 is hereby set aside, and the plaintiff(s) are directed to lead their evidence first. However, he may exercise their option in terms of Order XVIII Rule 3 of C.P.C.

10. Accordingly, the instant Civil Misc. No. 576 of 2023 stands disposed of.

(S. B. Pd. Singh, J)

Nirajkr/-

AFR/NAFR	AFR
CAV DATE	28.11.2025
Uploading Date	08.05.2026
Transmission Date	NA

