

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.77 of 2016**

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Md. Shafiquddin & Anr

.... .... Appellant/s

Versus

Md. Harun Ansari @ Md. Harun Rashid & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Gautam Kumar Yadav

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO  
ORAL ORDER**

5      18-10-2016      Heard the learned counsel for the petitioner and the learned  
counsel for the respondent.

Perused the impugned orders dated 19.08.2015 and  
01.02.2016 passed by Sub Judge IV, Gaya in Partition Suit No.29  
of 2013.

The plaintiffs filed the suit for partition claiming 3 ana 9/10  
pie share in the property. The defendant disputed the case of the  
plaintiff and the share of the plaintiff on different ground  
including that some property has been gifted in favour of the  
defendants. Now, therefore, the defendants have not admitted the  
case of the plaintiff.

This Court in the case of *Md. Jahangir @ Jahagir Alam*  
*Vs. Sajda Khatoon 2007 (4) PLJR 100* has held that ‘when  
defendants have made no admission to the pleadings of the  
plaintiff and have instead disputed the factum, plaintiff has to

begin and not the defendant.’

Admittedly, the parties are Mohammadan and, therefore, there is no presumption that the family or the property is joint family property. Moreover the defendants are disputing the case of the plaintiff, therefore, the burden is on the plaintiffs to prove their case and their share. Reference may be made to the decision of this Court reported in *1991 (2) PLJR 666*. The Court below in the impugned order has not considered these settled principal of law.

In view of the above settled proposition of law, the impugned order is not sustainable in the eye of law.

In the result, this Civil Misc. application is allowed. The impugned order is set aside. The plaintiff is directed to adduce evidence in support of his case.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

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