

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.192 of 2016**

=====

Sheo Kali Devi & Ors

.... Appellant/s

Versus

Shambhu Prasad & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy

For the Respondent/s : Mr.

=====

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

2 09-08-2016 Heard the learned counsel, Mr. Shiv Kumar Dwivedi, for the petitioner and the learned counsel, Mr. Sanjeev Kumar, for the plaintiff respondent.

Perused the impugned order dated 08.03.2016 passed by Sub Judge V, Bettiah, West Champarn in Partition Suit No.50 of 2012 whereby the Court below has directed the defendants to begin first in exercise of jurisdiction under Order 18 Rule 1 CPC.

The learned counsel for the petitioner relied upon a decision of this Court in the case of *Chandradeo Singh Vs. Malti Devi 1991 (2) PLJR 666* and submitted that in view of the decision, the plaintiff is to begin first.

On the other hand, the learned counsel for the respondent submitted that this decision is not applicable in the present facts and circumstances of the case.

Perused the decision relied upon by the learned counsel for

the petitioner.

It appears that in that case the defendant's case itself was that the plaintiff is a stranger to the family and has got no title. In the present case, simple suit for partition has been filed by the plaintiff whereas the defendant's defence is that there had already been prior partition.

In such view of the matter, in my opinion, the decision, relied upon by learned counsel for the petitioner, is not applicable in the case and, therefore, the learned Court below by the impugned order has rightly directed the petitioner to begin first.

Thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--