

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14625 of 2015**

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1. Prem Prakash Gupta S/o Late Sri Chand Gupta
  2. Amar Prakash Gupta S/o Late Sri Chand Gupta
  3. Shanti Prakash Gupta S/o Late Sri Chand Gupta All R/o Pethiya Bazar Phulwari Sarif, P.S. Phulwari Sarif, Distt. - Patna

.... .... Petitioner/s

Versus

1. Smt. Sulochana Gupta W/o Vinay Prakash Gupta
2. Smt. Dauki Gupta W/o Bhanu Prakash Gupta
3. Smt. Anita Gupta W/o Anand Prakash Gupta All Resident of Mohalla - Pethiya Bazar Phulwari Sarif, P.S. Phulwari Sarif, Distt. - Patna

.... .... Respondent/s

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**Appearance :**

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|----------------------|---|--------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Satish Chandra Mishra, Advocate<br>Mr. Md. Nurul Hoda, Advocate                        |
| For the Respondent/s | : | Mrs. Namita Nisha, Advocate<br>Mrs. Anamika Kumari, Advocate<br>Mrs. Archana Jha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**  
**ORAL JUDGMENT**  
**Date: 11-09-2018**

This application has been filed for quashing the order dated 29.06.2015 passed by Adhoc Additional District Judge-VI, Patna in Title Suit No.20 of 2005.

2. Heard learned counsel for the petitioner and the respondents.

3. It appears that the respondents filed Probate Case No.150 of 2004 on the file of District Judge, Patna which on contest was converted into Title Suit and it was registered as Title Suit No.20 of 2005. After framing of issues, the respondents filed a petition on 15.06.2015 under Order XVIII Rule 1 of CPC which was allowed and the petitioners were directed to adduce evidence before the evidence



of plaintiff. The respondents have filed the case for grant of probate on the basis of will purported to be executed by Sri Chand Prasad on 30.03.2004. The petitioners in their objection have denied the genuineness of said will and so the onus to prove the genuineness of will is on plaintiff. According to order XVIII Rule 1, it is the plaintiff who has 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.

4. On going through the provision of Order XVIII, I find that 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 pleaded 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 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 “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. In the case at hand, I find that the defendants have denied the claim of plaintiff, they have asserted that the will propounded by the plaintiff is not genuine and has prayed to non suit the plaintiff. In such circumstance, the plaintiff is required to begin the evidence.

5. In view of above discussions, the order of learned court below directing the petitioners to adduce evidence is therefore not sustainable and is set aside. This writ application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

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