

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.517 of 2021**

1. Jeevan Sharma son of late Shyam Sundar Sharma resident of 337 Chuna Kankar Hali Darwaja, Mathura (UP), P.S. and District Mathura U.P., at present residing at Mohalla Shaheed Road- Gaya, P.S. Kotwali, District- Gaya, Bihar.
2. Diwakar Sharma son of late Shyam Sundar Sharma resident of 337 Chuna Kankar Hali Darwaja, Mathura (UP), P.S. and District Mathura U.P., at present residing at Mohalla Shaheed Road- Gaya, P.S. Kotwali, District- Gaya, Bihar.

... .. Petitioners

Versus

1. Sri Ramjee Prasad Bhup son of late Ban Bihari Prasad Bhup residing at Durga Kothi, Gaurakshani, P.S. Mofassil, District Gaya.
2. Sri Lakshman Prasad Bhup son of late Ban Bihari Prasad Bhup residing at Durga Kothi, Gaurakshani, P.S. Mofassil, District Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Amarendra Narayan
For the Respondent/s	:	Mr.Gajendra Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 17-05-2022 Learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

Vide impugned order dated 23.11.2021, the learned court below rejected the petition filed on behalf of the petitioners-plaintiffs with a prayer to direct the defendants-respondents to adduce evidence first.

The plaintiff has brought the suit on the basis of an agreement, which is forged according to the defendants. Petition dated 29.10.2021 has been filed, stating therein that the party who



alleges a document to be forged one, is under burden to prove it, as such, the defendants should be directed to adduce the evidence first. The law to begin the evidence has been provided under Order XVIII Rule 1 of the Code of Civil Procedure, hereinafter to be referred to as 'the Code', which is being quoted hereinbelow:-

“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.”

From bare perusal of the provisions of the Order XVIII, Rule 1 of the Code it is clear that the plaintiff has the right to begin unless the defendants admits the fact alleged by the plaintiff and contends that either in the point of law or on some additional fact alleged by the defendant, the plaintiff is not entitled to any part of relief which he seeks.

In the present case the defendants, did not admit the fact alleged in the plaint nor any additional facts have been set forth in the pleadings of the defendants, which shows that plaintiffs are not entitled to any part of the relief which they seek, as such, bare perusal of this provision shows that the right to begin the evidence is laid upon the shoulders of the plaintiffs and not upon the defendants.

I do not see any reason to interfere with the impugned



order. Accordingly, the civil miscellaneous petition is dismissed.

Office shall ensure that all defects are removed by the petitioner within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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