A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 754 of 2026
CNR No- ODHC010325472026

(In the matter of an application under Articles 227 of the Constitution of India, 1950).

Ajay Kumar Mohanty	....	*Petitioner (s)*
	-versus-	
Santanu Kumar Mohanty & Ors.	....	*Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s)	:	*Mr. Sailesh Das, Adv.*
For Opposite Party (s)	:	*Mr. Goutam Chandra Rout, Adv.*

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-27.08.2026
DATE OF JUDGMENT:-30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner has instituted the present Civil Miscellaneous Petition under Article 227 of the Constitution of India assailing the legality, propriety, and correctness of the order dated 07.04.2026 passed by the learned Civil Judge (Senior Division)-II, Cuttack, in C.S. No. 283 of 2018, whereby the learned Trial Court rejected the application filed by the Plaintiff under Order XVIII Rule 1 of the Code of Civil Procedure, 1908, seeking a direction that Defendant No. 5 (the present Opposite Party No. 1) be called upon to begin the suit first.

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2. The said application was filed on the ground that Defendant No. 5, in his pleadings, has specifically asserted that the Plaintiff is the adopted son of Late Sudam Charan Mohanty. Consequently, the burden of establishing the alleged adoption, which constitutes a material and foundational assertion made by Defendant No. 5, lies upon him, and therefore Defendant No. 5 ought to be directed to lead his evidence first. However, the learned Trial Court, without properly appreciating the pleadings of the parties and the principles governing the right to begin under Order XVIII Rule 1 of the Code of Civil Procedure, has rejected the said application. The Petitioner is, therefore, constrained to invoke the supervisory jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India for setting aside the impugned order and for issuance of appropriate directions in accordance with law.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The suit is one for partition, permanent injunction and consequential reliefs in respect of the suit properties claimed to be ancestral properties.

(ii) The parties belong to two branches descending from a common ancestor. The petitioner asserts that Late Sudam Charan Mohanty was his father and that Late Rabindranath Mohanty was the cousin brother of Sudam Charan Mohanty. The two branches had cordial relations and had been living jointly in food and mess.

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(iii) According to the petitioner, as his father Sudam Charan Mohanty was residing outside the village in connection with his service, the joint family affairs were managed by Rabindranath Mohanty.

(iv) The petitioner asserts that he was admitted in school as the son of Sudam Charan Mohanty, though at a later stage Rabindranath Mohanty admitted him to an upper class because of the absence of Sudam from the village. The petitioner specifically denies that he was ever adopted by Rabindranath Mohanty or his wife Binapani Mohanty.

(v) The contesting defendant, namely Opposite Party No.1/Defendant No.5, however, pleaded in his written statement that the petitioner is the adopted son of Rabindranath Mohanty and thereby sought to dispute the petitioner's status in the natural line of succession.

(vi) The petitioner consequently filed an application under Order XVIII Rule 1 CPC, seeking a direction that Defendant No.5 should begin the evidence, principally on the ground that the plea of adoption had been specifically raised by the said defendant. The learned Trial Court, by order dated 07.04.2026, rejected the petitioner's application under Order XVIII Rule 1 CPC.

(vii) The petitioner contends that the suit had reached the stage of hearing and that the application was made before commencement of evidence. The petitioner therefore challenges the Trial Court's approach regarding the stage at which an application under Order XVIII Rule 1 could be considered.

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(viii) During the pendency of the CMP, the High Court, by order dated 05.05.2026, heard the petitioner and Opposite Party No.1 and directed issuance/waiver of notice to the other opposite parties at the petitioner's risk. The Court also directed that, on an application for adjournment, the Trial Court should adjourn C.S. No.283 of 2018 for two weeks.

Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by way of the present Civil Miscellaneous Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The petitioners assert that the principal question arising for consideration is whether, having regard to the pleadings and the nature of the issues, Defendant No.5 ought to be directed to lead evidence before the plaintiff.

(ii) The petitioner submits that Order XVIII Rule 1 CPC does not create an inflexible rule that the plaintiff must invariably commence evidence. The provision itself contains an exception where the defendant admits the facts alleged by the plaintiff but sets up a legal contention or an additional fact on the basis of which the plaintiff is alleged to be disentitled to relief.

(iii) It is argued that the plea of adoption raised by Defendant No.5 is not a mere denial of the plaintiff's case, but an affirmative and

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material plea which directly affects the plaintiff's status and succession.

(iv) According to the petitioner, the plea of adoption strikes at the root of the plaintiff's claim, because, if established, it would displace the plaintiff from the natural line of succession.

(v) The petitioner relies upon Section 102 of the Evidence Act, contending that the burden lies upon the party who would fail if no evidence were adduced by either side.

(vi) The petitioner submits that Order XVIII Rule 2 CPC must be read along with Order XVIII Rule 1. The party having the right to begin is required to state its case and adduce evidence in support of the issues which that party is bound to prove. The petitioner further submits that the expression "right to begin" is not merely a procedural privilege but is connected with the obligation to establish the material proposition upon which a party relies.

(vii) The petitioner submits that the pleadings, documents and admissions of the parties must be examined collectively to determine upon whom the legal burden rests. It is further submitted that compelling the plaintiff to lead evidence first, without requiring Defendant No.5 to establish the affirmative plea of adoption, would prejudice the plaintiff's right to effectively rebut the said plea.

(viii) The petitioner disputes the Trial Court's view regarding the stage of the proceeding and contends that the application under Order XVIII Rule 1 was filed before the actual commencement of

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evidence. And on these grounds, the petitioner seeks interference under Article 227 of the Constitution and setting aside of the impugned order.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

5. *Per contra*, the learned counsel for the Opp. Party earnestly made the submission that the present CMP deserves to be rejected in limine.

(i) The Opp. Party contended that the petitioner has no valid cause of action for invoking the supervisory jurisdiction of this Court on the basis of the grounds urged in the CMP. The Opp. Party disputes the petitioner's factual assertions and alleges that the petitioner has relied upon false and manufactured documents.

(ii) According to the Opp. Party, the issues in the suit had not yet been framed, and therefore the question as to which party should commence evidence ought to be considered by the Trial Court after framing of the issues.

(iii) The Opp. Party points out that the impugned order dated 07.04.2026 merely rejected the petitioner's prayer seeking a direction that Defendant No.5 should adduce evidence first.

(iv) The Opp. Party disputes the petitioner's interpretation of the pleadings and contends that the circumstances relied upon by the petitioner do not justify an order requiring Defendant No.5 to begin the evidence. It is specifically contended that the plaintiff, having instituted the suit, must ordinarily stand on his own legs and prove his case.

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(v) The Opp. Party submits that the mere assertion that Defendant Nos.1 to 3 support the plaintiff's case does not automatically transfer the burden of proof or confer upon the plaintiff a right to insist that Defendant No.5 should lead evidence first.

(vi) The Opp. Party relies upon the general principle governing Order XVIII Rule 1 CPC that the plaintiff ordinarily has the right to begin and that the statutory exception must be strictly attracted by the pleadings and circumstances of the particular case.

(vii) Reliance is also placed upon judicial authorities concerning the distinction between the right to begin and the burden of proving particular issues. The Opp. Party contends that the existence of an issue carrying the burden upon the defendant does not, by itself, necessarily mean that the defendant must commence the entire trial.

IV. COURT'S REASONING AND ANALYSIS:

6. Heard learned counsel for the parties and perused the materials placed on record.

7. The question which falls for determination is whether the learned Trial Court was justified in declining the prayer of the petitioner under Order XVIII Rule 1 of the Code of Civil Procedure, 1908, seeking a direction upon Defendant No.5 to begin the evidence.

8. At the outset, it is necessary to bear in mind that the ordinary rule under ***Order XVIII Rule 1 CPC*** is that *the plaintiff has the right to begin*. However, the rule itself engrafts an exception where the defendant admits the facts alleged by the plaintiff and contends either on a

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question of law or on the basis of an additional fact that the plaintiff is not entitled to any part of the relief claimed. Thus, the question cannot be decided merely by applying the general proposition that the plaintiff instituted the suit and, therefore, must necessarily lead evidence first.

9. The determination must depend upon the nature of the pleadings, the material propositions in controversy and, more particularly, the party upon whom the burden lies to establish the additional fact constituting the foundation of the defence.

10. In the present case, the plaintiff's specific case is that he is the natural son of Late Sudam Charan Mohanty. The contesting Defendant No.5, on the other hand, has taken a specific plea that the plaintiff is the adopted son of Late Rabindranath Mohanty. The said plea is not a mere traverse of the plaintiff's case. It constitutes an affirmative plea which, if established, would materially affect the plaintiff's status and his claim founded upon natural succession.

11. The legal consequence of such a plea is significant. A person who seeks to displace the natural course of succession by asserting adoption cannot merely plead the fact of adoption and leave the opposing party to disprove it. The burden of establishing the factum and validity of adoption lies upon the person who asserts it.

12. The principle embodied in ***Section 102 of the Evidence Act*** is also relevant. The burden of proof lies upon the party who would fail if no evidence were adduced by either side. Therefore, insofar as the affirmative plea of adoption is concerned, the evidentiary burden

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cannot be shifted upon the plaintiff merely because he is the plaintiff in the suit.

13. At the same time, ***Order XVIII Rule 1 CPC*** does not contemplate a mechanical determination of the sequence of evidence divorced from the pleadings and issues. The Supreme Court in ***Jami Venkata Suryaprabha v. Tarini Prasad Nayak***[1], wherein it was held that

> *"10. Order XVIII Rule 1 of the CPC reads thus:-*
> *"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.*
> *11. As a general rule, according to the procedural law, no doubt it is, the plaintiff who has to prove his claim by positive proof, for the court has to see whether there is a proof to claim before it needs to enquire, as to the truth or otherwise of the defence. It is open to the plaintiff to say that although he has the right to begin, yet he may rest content with relying upon the averments made in the written statement. Yet evidence need not always be led by the party who has the right to begin and on whom lies the burden of proof; it is open to him t sustain the onus by facts which he may elicit in cross examination of the other party or his witness. In order to come to the conclusion, concerning on whom the legal burden of proof rests, in addition to the substantive law, the pleadings of the parties coupled with documents that they produced & the admissions, if any concerning such documents have to be taken into account."*

14. The said principle, however, does not mean that every affirmative plea taken in a written statement automatically confers upon the plaintiff a

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right to compel the defendant to commence the entire evidence. The statutory exception under Order XVIII Rule 1 must be applied with reference to the actual issues arising for adjudication.

15. The record further indicates that the petitioner relied upon the plea of adoption specifically taken by Defendant No.5 as the principal ground for seeking that the defendant should begin. The said plea concerns a material fact which is specifically attributable to Defendant No.5. If Defendant No.5 seeks to defeat the plaintiff's claim by establishing adoption, the burden of proving that affirmative plea necessarily rests upon him.

16. The distinction between the burden of proof and the sequence of evidence is nevertheless required to be maintained. The fact that the burden of proving a particular issue lies upon the defendant does not invariably mean that the defendant must lead evidence on every issue in the suit. The Court has to determine the sequence with reference to the issues as a whole.

17. The decision in ***Jami Venkata Suryaprabha*** (supra) is particularly instructive in this regard. The Supreme Court has held that ***Order XVIII Rule 1*** *does not impose an absolute obligation upon the Court to call upon the plaintiff to lead evidence first in every case*. The Court possesses procedural discretion to determine the appropriate sequence having regard to the facts and circumstances and the nature of the issues. The guiding consideration is the advancement of justice and not a rigid compartmentalisation of procedural rules.

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18. In the present case, therefore, the plea of adoption cannot be treated as an ordinary denial. It is an affirmative plea which has a direct bearing upon the plaintiff's alleged status and succession. The person who has specifically raised such plea must necessarily discharge the evidentiary burden attached thereto.

19. The objection of the respondent that the plaintiff must invariably prove his case first cannot, in such absolute form, be accepted. The general rule under ***Order XVIII Rule 1*** is subject to the statutory exception, and the Court is required to examine whether the particular defence attracts that exception.

20. The respondent's further contention that the issues had not been framed also requires consideration. The determination of the right to begin is closely connected with the issues which the Court is required to adjudicate. Order XIV CPC contemplates framing of issues upon material propositions of fact or law affirmed by one party and denied by the other. Consequently, the sequence of evidence should ordinarily be determined with due regard to the issues actually arising between the parties.

21. Nevertheless, the mere fact that issues are to be framed or have not yet been finally crystallised cannot, by itself, render an application under Order XVIII Rule 1 wholly incompetent. The Court is entitled to examine the pleadings and determine the appropriate course so that the evidence is led in an orderly and effective manner.

22. The petitioner's reliance upon the principle that he must be afforded a meaningful opportunity to rebut the plea of adoption is also well

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founded in principle. If Defendant No.5 is permitted to establish adoption, the plaintiff would necessarily be entitled to meet and rebut that evidence. The sequencing of evidence should not result in depriving either party of an effective opportunity to establish the case which it is legally bound to prove.

23. This Court is, however, exercising jurisdiction under Article 227 of the Constitution. Such jurisdiction is supervisory and is not to be exercised as if this Court were sitting in appeal over every interlocutory procedural order. Interference is warranted where the subordinate Court has acted without jurisdiction, failed to exercise jurisdiction vested in it, or has adopted an approach resulting in manifest injustice or a patent error of law.

24. On the material placed before this Court, the decisive consideration is that Defendant No.5 has taken the specific plea of adoption and seeks to rely upon that affirmative plea to defeat or materially affect the plaintiff's claim. The evidentiary burden relating to that plea cannot be placed upon the plaintiff.

25. Accordingly, the Trial Court, while determining the sequence of evidence, ought to consider the specific burden attached to the plea of adoption and the principles governing Order XVIII Rules 1 and 2 CPC. The Court must ensure that the party upon whom the burden of proving an affirmative plea lies is not permitted to shift that burden upon the opposite party merely because the latter happens to be the plaintiff.

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26. For the aforesaid reasons, the impugned order dated 07.04.2026 requires reconsideration to the limited extent of the sequencing of evidence under Order XVIII Rule 1 CPC. The Trial Court shall determine the question afresh in the light of the pleadings, the issues framed in the suit and the statutory burden of proof, particularly in relation to the specific plea of adoption raised by Defendant No.5.

27. It is clarified that this Court is not adjudicating, at this stage, the truth or validity of the alleged adoption, the ultimate entitlement of the plaintiff to partition, or any other substantive issue arising in the suit. Those questions are matters for determination by the learned Trial Court upon appreciation of the evidence.

V. CONCLUSION:

28. In view of the foregoing analysis and upon an anxious and careful consideration of the material facts and circumstances of the case, this Court finds no jurisdictional infirmity or patent illegality in the order dated 07.04.2026 passed by the learned Civil Judge (Senior Division), 2nd Court, Cuttack in C.S. No.283 of 2018 warranting interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

29. The petition deserves to be considered within the limited scope of Order XVIII Rule 1 CPC and the supervisory jurisdiction under Article 227 of the Constitution. The learned Trial Court shall proceed in accordance with law, keeping in view the distinction between the ordinary right of the plaintiff to begin and the evidentiary burden resting upon the party who asserts an affirmative plea of adoption.

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30. Accordingly, the C.M.P stands **dismissed.**

31. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th Oct, 2026.

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