

**IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No. 4929 of 2026**

In the matter of an application under Article 226 & 227
of the Constitution of India.

Koino Kimbaka

....

Petitioner

-versus-

1. Subash Majhi

....

Opposite Parties

2. Election officer - cum - Block

Development Officer,
Chandrapur, Rayagada

3. District Collector cum District
Election Officer, Rayagada

For Petitioner

: Mr. S.K. Dash, Advocate

For Opposite Parties

: Mr. M.R. Mohanty, AGA
Mr. S.S. Mohapatra, Advocate
(O.P.1)

CORAM:

JUSTICE V. NARASINGH

DATE OF FINAL HEARING : 25.02.2026

DATE OF JUDGMENT : 24.06.2026

V. Narasingh, J.

Heard Mr. Dash, learned
counsel for the Petitioner, Mr. Mohanty, learned
AGA for the State and Mr. Mohapatra, learned
counsel for the Opposite Party No.1.



2. The order dated 24.12.2025 passed by the learned Additional District Judge, Bissamcuttack in Election Appeal No.03 of 2024 is assailed in this writ petition at the behest of the Petitioner-Appellant whereby the prayer of the Petitioner who is an elected member of the Panchayat Samiti of Sarikima Gram Panchayat under Chandrapur Block under Order 41 Rule 27¹ of Civil Procedure Code, 1908 for adducing additional evidence was rejected.

3. The brief facts germane for just adjudication run thus:-

Challenging the election of the Petitioner as member of the Panchayat Samiti, Opposite Party No.1 filed the Election Petition No.01 of 2022 in the Court of the learned Senior Civil Judge, Bissamcuttack.

3-A. On going through the materials and evidence on record, by judgment dated

¹ **27. Production of additional evidence in Appellate Court.**— (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.



31.07.2024, the election of the present Petitioner was set aside and one of the primary grounds for setting aside the election of the Petitioner was that the Petitioner has two wives and four children and, as such, he was not eligible to even contest the election.

3-B. During the pendency of the appeal, the Petitioner filed an application under Order 41 Rule 27¹ of the CPC to adduce additional evidence inter alia on the ground that merely because the name of the Petitioner finds place in the ration card of one Para Kimbaka, it cannot be said that she is his second wife notwithstanding the status of the said Para Kimbaka having been reflected as "Soutan".

3-C. In his petition to adduce the additional evidence, the present Appellant-Petitioner sought to examine the said Para Kimbaka.

3-D. The objection was filed to such Petition seeking to adduce the additional evidence and by order dated 09.04.2025, the same was rejected by the learned Appellate Court. Challenging the same, the Petitioner preferred C.M.P. No. 711 of 2025 and by order dated 13.10.2025, this Court set aside the order dated 09.04.2025, as adverted to hereinabove and directed the



due diligence, be produced by him at the time when the judgment appealed to was passed.

Further, the proposed additional evidence is not, in the opinion of the appellate Court, required for deciding the rights of the parties which are the subject matter of the lis and to do substantial justice to the parties enabling it to pronounce judgment.

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XXX"

7. It is the admitted case of the parties that there was no attempt to adduce the additional evidence before the learned Trial Court. Hence, the first ground, namely that the learned Trial Court had refused to admit the proposed additional evidence, being a condition precedent for maintaining an application under Order 41 Rule 27¹ of the CPC, is untenable in the factual matrix of the case at hand.

8. The learned Trial Court, taking into account the evidence of the appellant as OPW-1 (Paras 16 and 17 as quoted in the impugned order) and relying on the ration card of one Para Kimbaka, arrived at the finding that the said Para Kimbaka is the wife of the present Petitioner.

9. Learned counsel for the Petitioner, the elected member of the Panchayat Samiti, during



the course of his submission, stated that the said Para Kimbaka could not be examined before the learned Trial Court due to her illness and, hence, since the entire allegation which the Petitioner is called upon to address and which is the basis for setting aside his election, revolves around whether the said Para Kimbaka is the wife of the present Petitioner or not, her examination is of seminal significance for just adjudication.

10. Learned counsel for Opposite Party No. 1- Election Petitioner submits that, admittedly, such grounds have not been taken in the petition before the Appellate Court and, therefore, the same ought not to be allowed to be pleaded before this Court, since such stand fails the test of due diligence, which is one of the hallmarks of the exercise of jurisdiction under Order 41 Rule 27¹ of the CPC.

11. So far as the other ground, namely that the proposed additional evidence is not required for doing substantial justice, is concerned, the same is also called in question by the learned counsel for the Appellant, inter alia, on the ground that it reflects non-application of mind by the learned Appellate Court.



12. True it is that, in so many words, it has not been stated as to why said Para Kimbaka was not examined as a witness in the petition seeking to adduce the additional evidence satisfying the test of due diligence.

13. It is trite that such requirement is a procedure to be followed, more as a matter of prudence and that cannot and ought not to deter this Court from arriving at independent finding as to whether allowing such evidence sought to be adduced would sub serve the ends of justice.

It is apt note that the entire defence of the Petitioner in the election dispute now seems to revolve around his relationship with Para Kimbaka and therefore it is imperative for the Court to consider the same for proper and effective adjudication of the lis.

14. In this context, this Court can do no better than quote the law laid down by Justice V.R. Krishna Iyer (as His Lordship then was, as a Judge of the Kerala High Court), which has also been referred to in the judgment of the Apex Court in the case of ***Union of India v. K.V. Lakshman***², on which the Petitioner heavily relies and which has also been referred to by the

² *Union of India v. K.V. Lakshman*, 2016 (13) SCC 124



not be relied upon pedantically to fetter substantive rights.

In this regard respectful reference can be made to the judgment of the Apex Court in the case of ***Sk. Salim Haji Abdul Khayumsab v. Kumar***³, wherein it was observed thus;

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

XXX XXX XXX"
(Emphasized)

³ *Sk. Salim Haji Abdul Khayumsab v. Kumar*, (2006) 1 SCC 46



18. In the backdrop of an elected representative's claim to office being declared void by the judgment of the Trial Court, which is the subject matter of challenge before the learned Appellate Court, and on consideration of the materials and evidence on record on the touchstone of the law laid down, this Court is of the considered view that the impugned order rejecting the prayer for adducing additional evidence is liable to be interfered with.

Hence, the impugned order dated 24.12.2025 passed by the learned Additional District Judge, Bissamcuttack in Election Appeal No.03 of 2024 rejecting the prayer for adducing additional evidence is set aside.

19. To cut short any delay, the Appellant-Petitioner is directed to appear before the learned Trial Court on 29.06.2026 along with certified copy of this order for fixation of a date not later than a week, for examination of Para Kimbaka and her cross-examination if sought for by Opposite Party No.1-Election Petitioner.

19-A. Opportunity shall be provided to the Opposite Party-Election Petitioner to adduce rebuttal evidence, if so advised, relating to the evidence brought on record on examination of



Para Kimbaka. And, the evidence so adduced, along with rebuttal evidence, if any, shall be submitted to the Appellate Court by 29.07.2026. Till 29.07.2026 the proceeding before the Appellate Court in Election Appeal No.3 of 2024 shall remain stayed.

20. It is needless to say that in the event the Appellant-Petitioner is not able to adduce the evidence within the time frame as stipulated, the Appellate Court shall be at liberty to proceed with the hearing of the Appeal in accordance with law post 29.07.2026.

The Learned Appellate Court shall make an endeavour to conclude the appeal, preferably by the end of August 2026.

21. The writ petition stands disposed of. Costs made easy.

(V. Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 24th June, 2026/Ayesha*