

GAHC010073652024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/128/2024

HIFJUR RAHMAN LASKAR AND ANR
S/O- LAT SAFIQR RAHMAN,
R/O- VILL- LAKHIRBAND PT-II,
P.O.- LAKHIRBAND,
DIST.- HAILAKANDI, ASSAM.

2: MINARA BRGUM LASKAR
W/O- ALA UDDIN

VILL.- BOWALIPAR PART-II

P.O.- BOWALIPAR

DIST.- HAILAKANDI- 7888152

VERSUS

SOROF UDDIN LASKAR AND 7 ORS
S/O- LT. SOFIQR RAHMAN LASKAR,
VILL- BHATISANJURAI,
P.O.- KALIBARI BAZAR,
DIST.- HAILAKANDI- 788150.

2:ANOWARA BEGUM BARBHUIYA
W/O- ALTAF HUSSAIN BARBHUIYA

VILL- SAHID BAND PART-IV

P.O.- KALIBARI BAZAR

DIST.- HAILAKANDI- 788150.

3:MOJMUN NESSA MAZUMDER
W/O- NAZRUL ISLAM MAZUMDER

VILL- CHANDIPUR PART-I

P.O- CHANDIPUR

DIST.- HAILAKANDI- 788150.

4:JAKIRA BEGUM MAZUMDER
W/O- JIABUR RAHMAN MAZUMDER

VILL- MOHANPUR

DIST.- HAILAKANDI- 788150.

5:LAILY BEGUM BARBHUIYA
D/O- ABDUL LATIF

VILL- BHATISANJURAI

P.O.- KALIBARI BAZAR

DIST.- HAILAKANDI- 788150.

6:ALI AHMED BARBHUIYA
S/O- ABDUL LATIF BARBHUIYA

VILL- BHATISANJURAI

P.O.- KALIBARI BAZAR

DIST.- HAILAKANDI- 788150.

7:SALEH AHMED BARBHUIYA
S/O- ABDUL LATIF BARBHUIYA

VILL- BHATISANJURAI

P.O.- KALIBARI BAZAR

DIST.- HAILAKANDI- 788150.

8:LUCKEY BEGUM BARBHUIYA
D/O- ABDUL LATIF BARBHUIYA

VILL- BHATISANJURAI

P.O.- KALIBARI BAZAR

DIST.- HAILAKANDI- 788150.
2 TO 8 ARE LEGAL HEIRS OF-
MISBA BEGUM BARBHUIYA

D/O- LATE SOFIQUR RAHMAN LASKAR

Advocate for the Petitioner : MR M J QUADIR, MR. A K HANNAN,MS S AHMED,MR S S ISLAM

Advocate for the Respondent : , MS A BEGUM (R-2,3),MS S R MAZARBHUIYA (R-2,3),MR. A M BARBHUIYA (R-2,3),S. M. ZINNA

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

22.10.2024

Heard Mr. M.J. Quadir, learned counsel for the petitioners and also heard Mr. A.M. Borbhuiya, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the order dated 03.11.2023, passed by the learned Munsiff No. II, Hailakandi arising out of Misc (J) Case No. 135/2023, in Title Suit(M) No.04/2017.

3. It is to be noted here that vide impugned order dated 03.11.2023, in Misc (J) Case No. 135/2023, arising out of Title Suit (M) No.04/2017, the learned Munsiff No. II, Hailakandi has dismissed the petition No. 459/10, filed by the present petitioners/defendants for sending Exhibit-8, a Kabinnama, allegedly executed by the petitioners' and the respondents' father, Late Sofiqur Rahman, and Exhibit-B, a document exhibited by the respondents/plaintiff for comparison of handwriting of the Late Sofiqur Rahman, so as to ascertain genuineness of Exhibit-8.

4. The background facts leading to filing of the present petition is adumbrated herein

below:-

"Md. Sarof Uddin Laskar, the respondent No.1 herein, as plaintiff has instituted a Title Suit, being Title Suit No. 04/2017 in the Court of learned Munsiff No.2, Hailakandi, for declaration of right, title, interest, partition and possession over Schedule-I, II and III plot of land. In the said proceeding both the parties had adduced evidence and also exhibited some document. The respondent No.1 as plaintiff had exhibited a Kabin Nama, allegedly executed by his late father, namely, Safiqur Rahman while marrying his mother Ayatun Nessa Chaudhury, as Exhibit-8., which is basis of his claim to right, title, interest, partition and possession over Schedule-I, II and III plot of land. The petitioners, as defendant had disputed the said document, i.e. Exhibit-8. The respondents herein as defendant had exhibited one document containing the signature of Late Sofiqur Rahman, as Exhibit-B. While the case was fixed for argument, the present petitioners had filed one petition, being the petition No. 459/10, upon which the learned trial court had registered a miscellaneous case being Misc (J) Case No. 135/2023, for sending Exhibit-8, the Kabin Nama, allegedly executed by the petitioners' and the respondents' father, Late Sofiqur Rahman, and Exhibit-B, a document exhibited by the respondent, containing the signature of Late Sofiqur Rahman. But, the learned trial court had, after hearing both sides, had dismissed the same on the ground that Sofiqur Rahman, the person concerned, had already died and as such comparison of handwriting is of no use."

5. Being aggrieved the petitioners have approached this Court by filing the present petition.

6. Mr. Quadir, learned counsel for the petitioner submits that the learned trial court had committed manifest illegality in dismissing the petition. Mr. Quadir further submits that the case of the respondent/plaintiff is mainly based upon Exhibit-8, the Kabin Nama and the present petitioners have denied execution of said Kabin Nama which according to the petitioners is a forged document. And since Exhibit-B contains the signature of late

Sofiqur Rahman, the same along with Exhibit-8, the Kabin Nama, has to be sent to the Handwriting Expert for opinion and the same will help the learned trial court in deciding the Suit. Mr. Quadir, therefore, contended to allow the petition. Mr. Quadir has also referred a decision of this court in **Jayanti Gogoi vs. Pranati Duara and Others** reported in **(2003) GauLR 620** in support of his submission.

7. On the other hand, Mr. A.M. Borbhuiya, learned counsel for the respondent has vehemently opposed the petition. Mr. Borbhuiya submits that the respondent has not admitted the signature of Sofiqur Rahman over the Exhibit-B and the same bears no official seal and that the original copy of the same is not available and in such condition the Expert would not be able to determine the signature and that the entire exercise would be an exercise in futility. Therefore, Mr. Borbhuiya has contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 03.11.2023. Also I have gone through the decision referred by Mr. Quadir, learned counsel for the petitioners. In the said case, a co-ordinate bench of this court held that under section 45 of the Evidence Act opinion of an expert on the question of identity of handwriting or signature is relevant, but such opinion, itself, may not be sufficient proof of the fact that the signature and/or handwriting is of the person by whom it is claimed to have been written or signed.

9. In the case in hand, it appears that the learned trial court had dismissed the petition primarily on the ground that the person concerned, whose signature is sought to be compared, had already passed away and as such his genuine signature is not available for sending it to the Expert.

10. Further, it appears that the very basis of the case of the respondent/plaintiff is the Exhibit-8, a Kabin Nama executed by his alleged father late Sofiqur Rahman while marrying his mother, namely, Ayatun Nessa Chaudhury. So, Exhibit-8 is a vital piece of document. This document, however, is seriously disputed by the present petitioners, who

claimed that the same is a forged document and prepared only to claim the properties of the petitioners. It also appears that Exhibit-B, is a copy of corrected Voter List, prepared by Enumerator appointed by Election Commission. It contains the signature of Late Sofiqur Rahman. However, the same is disputed by the respondent.

11. It is however not in dispute that Sofiqur Rahman is no longer alive so as to give his signature for sending the same to the Expert for comparison. In such situation, it would be appropriate to send his signatures, if available, put by him prior to his death.

12. Since his signature is available in Exhibit-B, and since it was prepared by an enumerator appointed by Election Commission, some sort of credibility can be attached to it and that being so, the same may be sent to the Hand Writing Expert for comparison, so as to ascertain whether the signature of Late Sofiqur Rahman contained in Exhibit-8, is genuine or not.

13. Section 45 of the Evidence Act deals with opinions of experts. It provides that when the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [or finger impressions] the opinions upon that point of persons specially skilled in questions as to identity of handwriting, are relevant facts.

14. This court is not oblivious of the evidentiary value of the opinion of Hand Writing Expert. Yet, a fair opportunity is required to be given to the petitioners to prove their case. It is to be noted here that fair opportunity is the part of right to fair trial of both the parties. Denial of fair opportunity is denial of right to fair trial. As such a fair opportunity is required to be given to the petitioners herein this case to prove their case.

15. Thus, having examined the impugned order dated 03.11.2023 from this stand point, this court is of the considered view that the same failed to withstand the legal scrutiny and on such count it requires interference of this court.

16. Accordingly, the petition stands allowed. The impugned order dated 03.11.2023 stands set aside and quashed. The learned trial court shall send the Exhibit-8 and Exhibit-B to the Hand Writing Expert for comparison and opinion. The petitioner is directed to

furnish the original copy of Exhibit-B before the learned trial court within a week from today.

17. In terms of above, this petition stands disposed of. Interim order passed earlier stands vacated. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant