

GAHC010255442024



2024:GAU-AS:12412

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

Case No. : CRP(IO)/500/2024

MAHENDRA SAIKIA AND ANR
S/O- LATE BOGIRAM SAIKIA,
RESIDENT OF VILLAGE- BARUA CHUBURI,
MOUZA- HALESWAR,
P.O.- TEZPUR, DIST.- SONITPUR,
ASSAM, PIN- 784001.

2: BIPUL SAIKIA
S/O- LATE BOGIRAM SAIKIA

RESIDENT OF VILLAGE- BARUA CHUBURI

MOUZA- HALESWAR

P.O.- TEZPUR
DIST.- SONITPUR

ASSAM
PIN- 784001

VERSUS

BIREN SAIKIA
S/O- LATE BOGIRAM SAIKIA,
RESIDENT OF VILLAGE- PUTHIKHATI,
MOUZA- HALESWAR,
P.O.- TEZPUR, DIST.- SONITPUR,
ASSAM, PIN- 784001.

Advocate for the Petitioner : MR. A GANGULY, MR. A DHANUKA

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 06.12.2024

Heard Mr. Dhanuka, learned counsel for the petitioners.

2. This application has been preferred under Article 227 of Constitution of India, against the order dated 08.07.2024 passed in Misc (J) Case No. 257/2023 under Section 45 and 73 of Indian Evidence Act r/w Section 151 CPC filed by the present petitioners in Title Suit No. 76/2015 passed by the learned Civil Judge (Jr. Division) No. 2, Tezpur, Sonitpur by which the learned trial court has directed to send the exhibited documents marked as exhibit- Ka to Ext- Gha to the forensic expert at the Forensic Science Laboratory, Kahilipara, Guwahati.

3. The respondent as plaintiff filed a title suit vide T.S. No. 76/2015 in the court of Munsiff, Tezpur against the present petitioners as defendants, praying for decree for declaration of right, title over the suit land described in Schedule-C of the plaint.

4. The present petitioners being the defendants appeared and contested the case by filing their written statements. The petitioners denied any amicable partition took place between the parties in the year 2001 and also denied that as per amicable partition, 1/3 portion of the land was given to the plaintiff/ respondent and further that the Schedule-C land became the absolute property of the plaintiff/respondent.

5. Along with written statement, the petitioners also filed Exhibit- Ka which is the kutchra sale deed dated 14.10.2002, Exhibit- Kha which is kutchra deed dated 21.06.1985, Exhibit- Ga which is hand note dated 03.02.1998 and Exhibit- Gha which is the minutes of a village public meeting dated 23.03.1997 recording the partition between the parties. But the respondent/plaintiff during his cross-examination denied his signatures on Exhibit- Ka, Kha, Ga and Gha, which are all in the Assamese language. After closure of the plaintiff's evidence, the petitioners/defendants filed Misc.(j) Case No. 257/2023 under Section 45 and 73 of the Evidence of Act for sending the said documents to the forensic science laboratory for comparison with the admitted signatures or fresh signature of the plaintiffs.

6. By the order dated 08.07.2024, the learned trial court observed that the documents exhibited as Exhibit- Ka to Exhibit Gha are required to be sent to the forensic expert for ascertaining their genuineness and to determine whether the plaintiff has actually executed those documents.

7. On receiving the copy of the order dated 08.07.2024, the petitioners found that there is no direction to compare the questioned documents with any admitted signatures of the plaintiff. Further, the signatures of the plaintiff in the questioned documents are all in Assamese and there is no documents on record containing the signatures of the plaintiff in Assamese. Thereafter, the petitioners on 16.08.2024 fled another petition with a prayer to direct the plaintiff to personally appear before the court and put his signatures in Assamese as per the format of the FSL. However, the said petition was rejected by the learned trial court.

8. According to learned counsel for the petitioners, the order dated

08.07.2024 has been challenged in the instant petition as the said order ignores the basic provision of section 39(1) of BSA, 2023(Section 45 of Indian Evidence Act). The said Section along with the illustrations when read together make it clear that the comparison of the handwriting or the signature has to be made the questioned documents with the admitted documents, in order to arrive at a conclusion as to whether a certain document has been executed by the person who is alleged to have executed the same.

9. It is further submitted that in the instant case, the learned trial court has simply directed to send the questioned documents to the FSL to determine whether the respondent/plaintiff is the person who has executed the said documents without any direction to compare the signatures of the plaintiff on the said documents with any other admitted signature of the plaintiff on record and also without any direction to the plaintiff to offer his admitted signatures for comparison by furnishing his specimen signature in the open court. Therefore, the learned counsel has prayed to set aside the order dated 08.07.2024.

10. I have considered the submission of the learned counsel for the petitioner and perused the order of the trial court. Before going to discuss the issue in question, the relevant provisions are reproduced as follows-

“S. 45 Evidence Act (S.39 BSA, 2023)- 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 such foreign law, science or art, (or in questions as to identity of handwriting) (or finger impressions) are

relevant facts. Such persons are called expert.”

“S.73 Comparison of signature, writing or seal with others admitted or proved- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

11. In the case of ***Jogamaya Panda v. Sailendra Nath Panda***, reported in ***2010 (8) SCC 452***, the Hon’ble Supreme Court held that where an expert opinion has been received, the trial Judge ought to have deferred the recording of evidence of the plaintiff in the suit till the handwriting expert is examined with regard to his report. In the said case, on an application filed by the defendant, the disputed signature of the defendant appearing in the agreement for sale was referred to an handwriting expert for comparing the same with the admitted signature of the said defendant and for his opinion.

12. In another case, ***Tarak Nath Sha v. Bhutoria Brothers Private Ltd.***, reported in ***2004(1) SHN 142***, it was held that once a document is

properly admitted the contents of that document are also admitted in evidence though those contents may not be conclusive evidence. The Division Bench was also considering the power of the Court to compare signatures in exercise of power under Section 73 of the Evidence Act and held that the Court is not an handwriting expert. The Court does it only through its visual experience. The comparison of signatures by expert is a piece of evidence. The opinion of the expert is not binding on the Court. Ordinarily, the Court should not take upon itself the responsibility of comparing signatures when disputed. Those are matters of intrinsic technicalities requiring some amount of technical expertise. A signature apparently may look alike but when examined by experts, various flaws may be detected. But without such expert examination, the Court cannot for sure accept the signature of the author denying it.

13. The principles that the Court should apply before exercising any power under Sections 45, 47 and 73 of the Evidence Act have been succinctly explained in *Barindra Kumar Ghose & Ors. v. The Emperor* reported in XIV CWN 1114 at page 1117, the relevant portions whereof are reproduced herein below:-

"A document may be used in evidence for the purpose of affecting someone with knowledge of its contents regardless of whether the contents are true or false, or for the purpose of proving the truth of that which it contains. But from the fact that a document may be relevant for the first purpose it by no means follows that it is relevant also for the second.

Excluding exceptional cases, a statement made in a private document

is not by itself proof of its truth or any more admissible to prove the truth of the matter stated than an oral statement by the same person would be. But at the same time a statement whether oral or written can be used against a person to prove the truth of the matter stated, if, as against him, it can be regarded as an admission. But the facts must be proved by virtue of which it can be regarded as an admission.

If the admission was actually written by him and it is on this ground that it is sought to be used, then the fact that it was so written must be proved by those methods which the law allows.

The ordinary methods of proving handwriting are: (1) by the admission of the person against whom the document is tendered; (2) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the handwriting by virtue of Section 47 of the Evidence Act; (3) by a comparison of handwriting as provided by Section 73 of the Evidence Act.

Section 73 of the Evidence Act does not sanction the comparison of any two documents but requires that the writing with which the comparison is to be made shall be admitted or proved to have been written by the person to whom it is attributed, and next the writing to be compared with the standard must purport to have been written by the same person, that is to say the writing itself must state or indicate that it was written by that person.

A comparison of handwriting as a mode of proof is at all times hazardous and inconclusive, and specially when it is made by one not

conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.

Opinions of experts on handwriting are useful in so far as the appearances on which they rely are disclosed and can thus be supported or criticised, whereas an opinion formed by the Judge in the privacy of his own room is subject to no such check."

14. The same principle was reiterated in ***Suresh Chandra Sanyal v. The King-Emperor***, reported in ***XVI CWN 812*** in which it was held that the one thing required for the admission of the evidence of an expert witness as to handwriting is that the writing with which the comparison is made should be proved beyond question or doubt to be that of the person alleged. The evidence of an expert in handwriting is inadmissible if there is no comparison with proved or admitted handwriting in open Court in the presence of the party affected.

15. There may be a situation where the Court may direct an accused to give his specimen handwriting in order to enable the same to be compared by the handwriting expert. This aspect of the matter was considered in *State (Delhi Administration) v. Pali Ram* reported in AIR 1979 SC 14 in which the Hon'ble Supreme Court held that a sample writing taken by the Court under the second paragraph of Section 73, is, in substance and reality, the same thing as 'admitted writing' within the purview of the first paragraph of Section 73, also. The first paragraph of the section provides for comparison of signature, writing, etc. purporting to have been written by a person with others admitted or proved to the satisfaction of the Court to have been written by the same person. But it does not specifically say by

whom such comparison may be made. Construed in the light of the English Law on the subject, which is the legislative source of this provision, it is clear that such comparison may be made by a handwriting expert (Sec.45) or by one familiar with the handwriting of the person concerned (Sec.47) or by the Court. The two paragraphs of the section are not mutually exclusive. They are complementary to each other. Section 73 is, therefore, to be read as a whole in the light of Section 45.

16. In view of the aforesaid legal proposition and under the facts and circumstances of the case, the learned trial court is directed to take specimen signature of the respondent/plaintiff in open court in presence of the learned counsel for the parties and then send the exhibits to forensic expert for examination. Accordingly, the order dated 08.07.2024 in Misc.(J) Case No. 257/2023, passed by the learned trial court is hereby set aside.

17. In view of the above, the civil revision petition stands disposed of.

JUDGE

Comparing Assistant