

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.714 of 2015

=====

1. Dharam Nath Singh Son of Late Suraj Singh
2. Vijay Singh Son of Late Suraj Singh
3. Most Saraswati Kunwar Wife of Late Dwarika Singh All are resident of
Village Mahdalichak, Gopalpur, Post Office Gopalpur, P.S. Naya Gaon,
District Saran (Chapra).

.... **Petitioners.**

Versus

1. Suresh Kumar Singh Son of Ram Prasad Singh
2. Mithilesh Kumar Singh Son of Ram Prasad Singh Both are resident of
Village Bhatoura, P.O. Govandri, P.S. Tariyan District Saran (Chapra).

.... **Respondents.**

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 28-04-2015

Heard the learned counsel for the parties.

Calling in question the order rejecting the prayer
for comparison of the thumb impression appearing on the disputed
Mahadanama by a handwriting expert, the defendant-petitioner has
filed this application under Article 227 of the Constitution of India.

The suit was filed by the plaintiff for specific
performance of contract for sale of the property described in
Schedule of the plaint on the basis of a Mahadanama dated
18.10.1990 said to have been executed by Janki Kuer (defendant
no.4) . The defendants, who are the donees of Janki Kuer by gift
deed of the suit property, appeared and filed their written
statement on 18.06.1994 denying the genuineness of the



Mahadnama. The suit, therefore, proceeded and it has not been disputed by the learned counsel for the petitioners that no such petition was filed by the defendant-petitioners till the closure of the evidence of the plaintiff, and even after the closure of the evidence of the defendants. It has also been submitted that no such petition was filed even after the recall of the order closing the evidence of the defendant-petitioners granting the time to the defendants to lead all their evidence within a month. Eventually the defendant-petitioners filed the petition on 12.09.2014 praying for comparison of the thumb impression of Janki Kuer appearing on the Mahadnama with her thumb impression appearing on the documents as mentioned in the petition. The learned court below has rejected the said petition mainly on two grounds, firstly, that the prayer has been made much belatedly and secondly, that no document with admitted thumb impression of Janki Kuer has been produced by the defendant- petitioners for comparison of the thumb impression. This order has been impugned in this application.

Mr Ranjan Kumar Dubey, the learned counsel for the petitioners has candidly accepted that there has been undue delay on behalf of the petitioners in making the prayer for comparison of thumb impression by handwriting expert. The

learned counsel, however, has emphasized that the core issue in the suit is the genuineness of Mahadanama and in order to settle the controversy comparison by handwriting expert of thumb impression of Janki Kuer appearing on Mahadnama should be allowed in the interest of justice.

The learned counsel for the respondents is present and has contested the prayer made in the writ application. It has also been submitted by the learned counsel for the respondents that the petitioners had also made a prayer before the learned District Judge for transfer of the suit to some other court but the same has been turned down. The learned counsel has further canvassed that the intention of the defendant-petitioners is only to prolong the litigation and not for speedy disposal of the suit which is pending since 1994.

After careful consideration of the matter and submissions on behalf of the parties, this Court finds that the issue of genuineness of Mahadnama is the germane issue in the suit. This Court is also of the opinion that the defendant-petitioners have made the prayer for comparison of thumb impression in question by handwriting expert after much delay and the intention to prolong the litigation cannot be ruled out. However, in the facts and circumstances of the case, the prayer of the petitioners for

examination on the thumb impression appearing on the Mahadanama by handwriting expert is allowed in the ends of justice, and in order to balance the equity, the petitioners are directed to pay the cost of Rs. 10,000/- to the plaintiff. The cost must be deposited by the petitioner within a period of three weeks from today in the court below, which shall allow the plaintiff to withdraw the amount of cost after appropriate prayer made in that regard. The learned court below is directed to appoint a handwriting expert in accordance with law/rules expeditiously and get the report submitted at the earliest by issuing appropriate direction in that regard. The learned court below is further directed to take all steps for early disposal of the suit.

Nitesh/-

(V. Nath, J)

U			
---	--	--	--