

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.399 of 2016**

=====

Devender Kumar Ray & Ors

.... Appellant/s

Versus

Dinanath Singh Yadav @ Dina Nath Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 22-08-2016

Heard learned counsel, Mr. J.S. Arora, appearing for
the petitioners.

2. Perused the impugned order dated 30.04.2016 passed
by the Additional District Judge-VI, Patna City, in T.S. No. 05 of
2009, whereby the learned court below rejected the application
filed by the petitioner for sending the disputed L.T.I. and signature
for comparison to any other Forensic Science Laboratory.

3. It appears that there is already a report of F.S.L, Patna
on the record. The petitioner has filed the objection to the said
report. The expert has not been examined as witness in the case
and the report has also not been marked as exhibit in the case.
Therefore, at this stage, there is no question of obtaining another
report from the F.S.L. arises at the instance of the defendant,
particularly, when it is the burden of plaintiff to prove the
genuineness of *Will* in question.

4. So far the submission of learned counsel for the petitioner that earlier liberty was granted to the petitioner to file application at appropriate stage is concerned, according to this observation the petitioner had filed the application and by the impugned order, the court below rejected the same assigning good reasons. However, in my opinion, if any observation has been made by the court below on merit, the same shall not prejudice any of the parties at the time of final hearing of the suit arising out of the probate case. Thus, this civil miscellaneous application is dismissed.

5. Learned counsel for the petitioner submitted that if in future such occasion arises, he may be granted liberty to file a fresh application. So far this relief as claimed by the petitioner is concerned, it is an absurd relief. Therefore, it cannot be granted at this stage and, accordingly, it is rejected.

brajesh/-

--	--	--	--

(Mungeshwar Sahoo, J)