

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10541 of 2014

1. Shiyajee Singh Son of Late Sidheshwar Singh resident of Mohalla- Sital tola, Ara,P.S- Ara town, District- Bhojpur.

.... Defendant No. 2 Petitioner/s

Versus

1. Most. Kalawati Devi Wife of Late Krishna Prasad @ Munna resident of Mohalla- Sital tola, Ara,P.S- Ara town, District- Bhojpur.

.... Plaintiff Respondent 1st Set

2. Bharat Lal Tiwary son of Late Pyare Lal Tiwary at present residing at Mohalla- Bulanalla, House No. 61/95 Varansai, P.S- Kotwali, District- Varansi (U.P)

....Defendant No. 1 Respondent 2nd Set.

Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-06-2016

Heard Mr. Anish Chandra Sinha, learned counsel for the petitioner.

2. The intervening-defendant in suit for specific performance of contract has filed this application assailing the impugned order by which the learned court below has refused to examine the signature on the agreement for sale by handwriting expert. Mr. Sinha, learned counsel appearing for the petitioner has contended that the suit was filed by the plaintiff for specific



performance of contract against the defendant on the basis of agreement for sale on 08.12.2000. The present petitioner filed the petition for his impleadment as party-defendant in the suit on the ground that he had purchased the property on 28.06.2005 before filing of the suit. His prayer was allowed and he was impleaded as intervenor-defendant in the suit. The defendant-petitioner thereafter filed a petition for examination of the signature of the defendant no. 1 appearing on the agreement for sale on the ground that the agreement for sale was a forged and fabricated document and did not bear the genuine signature of the defendant no. 5. The prayer of the defendant-petitioner was allowed on 14.09.2010, whereby the court below directed the signature of the defendant no. 1 to be examined by a handwriting expert. Subsequently, however, the defendant no. 1 was examined as special witness on 26.03.2011 and in his deposition he has admitted to have executed the said deed of agreement for sale and has further admitted that the deed for agreement for sale bears his signature. In this background, the court below has come to the conclusion that the signature appearing on the agreement for sale now need no examination be by a handwriting expert as the same has been admitted by the defendant no. 1.

3. In view of the aforesaid fact and circumstances, when the defendant-petitioner has claimed to have purchased subsequent to the

execution of agreement for sale and when the genuineness of the said agreement for sale has been admitted by the defendant no. 1, this Court is not inclined to accept the submission on behalf of the petitioner that even in this changed circumstance also the learned court below should have directed the examination of the signature of the defendant no. 1 on the said agreement for sale. It has however been contended by Mr. Sinha, learned counsel for the petitioner that the suit is collusive between the plaintiff and the defendant no. 1. In view of the provision contained in Specific Relief Act the defendant-petitioner being subsequent purchaser have got their own specified rights to resist the decree for specific performance of contract. The present application therefore, has got no merit and is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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