

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.210 of 1978

(Against the Judgment and Decree dated 18.01.1978 passed by 3rd Additional Subordinate Judge, Sasaram in Title Suit No.37 of 1967/28 of 1971).

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Most. Dhaneshari Kuer & Ors

.....Plaintiffs - Appellant/s

Versus

Most. Darbi Devi & Ors

.....Defendants-Respondent/s

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Appearance :

For the Appellant/s : Mr. Aaruni Singh, Advocate
For the Respondent/s : Mr. Chitragupt Prasad, Advocate
Mr. Subash Kumar, Advocate

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Dated : 16th day of May, 2017

P R E S E N T

CORAM : HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

1. The original plaintiff, Rami Choudhary since deceased and substituted had filed this First Appeal against the Judgment and Decree dated 18.01.1978 passed by the learned 3rd Additional Subordinate Judge Sasaram in Title Suit No.37 of 1967/28 of 1971 whereby the learned trial court dismissed the plaintiff's suit.

2. Rami Choudhary, the original plaintiff had filed the suit for setting aside the judgment and decree dated 08.10.1966 passed



by Subordinate Judge, Sasaram in Title Suit No.141 of 1966.

3. The plaintiff claimed the aforesaid relief alleging that one Balrup Mahto had two sons namely Bandhu Choudhary and Rami Choudhary. Balrup died after last cadastral survey. His son Bandhu Choudhary was paralytic and lame person and he died unmarried 27 years ago, as such, Rami Choudhary became the sole owner of the joint family property. Jhapasia was not the wife of Bandhu Choudhary nor Dulhin Darbi Devi, the defendant in the suit, is the daughter of Bandhu Choudhary as had been claimed in Title Suit No.141 of 1966. In fact, Dulhin Darbi Devi is daughter of one Parikha Choudhary and she was married to Ram Singhasan Choudhary. She had no concern with the present plaintiff. Jhapasiya was wife of one Nethali Choudhary of village Manjhauri who died on 08.08.1964 leaving behind two sons.

4. The further case is that there were 144 Cr.P.C. proceeding between the parties wherein the present plaintiff denied the parentage of Dulhin Darbi Devi. The S.D.O. dropped the proceeding and thereafter, the aforesaid suit was filed by Most. Darbi Devi alleging that she is the daughter of Jhapasiya and Bandhu Choudhary and claimed half share in the suit property. No summons was served on the present plaintiff. He never appeared nor filed



vakalatnama nor signed the compromise application. The defendant of this case, who was plaintiff of title suit No.141 of 1966, suppressed these facts and forged the signatures and fraudulently obtained a compromise decree. The present plaintiff came to know about this fraudulent decree from Keshav Choudhary and thereafter inspected the file and has filed the present suit.

5. The defendant No.1, Most. Darbi Devi filed contesting written statement. Defendant No.2 was added subsequently who also filed additional written statement. Their main defence is that Bandhu Choudhary was not a paralytic and lame person. He was married with Jhapasiya and the defendant No.1, Darbi Devi is the daughter of Bandhu Choudhary. On the death of Bandhu Choudhary, Jhapasiya came in possession of her husband's share in the joint family property and remained till her death in the year 1964. Parikha Choudhary is mama of Darbi Devi and brother of Jhapasiya, so, it is false to say that Darbi Devi is daughter of Parikha Choudhary. The plaintiff tried to grab the property of Most. Darbi Devi accordingly, she filed aforesaid Title Suit No.141 of 1966. In earlier proceeding, under Section 144, the plaintiff nowhere denied the parentage of Darbi Devi. After summons, the present plaintiff appeared and the present plaintiff voluntarily compromised and a compromise application was filed which was signed by the plaintiff. On the basis



of this compromise, a decree was passed. Therefore, it is incorrect to say that the compromise decree was obtained fraudulently.

6. On the basis of the aforesaid pleadings of the parties, the learned trial court framed the following issues:

- I. Has the plaintiff got valid cause of action for the suit?
- II. Whether defendant no.1 is the daughter of Bandhu as claimed by her and whether Jhapasia was the widow of Bandhu?
- III. Whether the decree of Title suit No.141 of 1966 of the court of Subordinate Judge, Sasaram is fraudulent as alleged by the plaintiff?
- IV. Is the plaintiff entitled to a decree for the reliefs claimed?

7. The learned trial court on the basis of the evidences on record, recorded finding that Dulhin Darbi Devi is the daughter of Bandhu Choudhary. The plaintiff failed to prove fraud played by the defendant. The trial court also found that plaintiff Rami Choudhary signed on the vakalatnama and compromise application and accordingly, dismissed the suit.

8. The learned counsel for the appellants submitted that in the earlier suit filed by Darbi Devi, no summons was ever served and in fact, the present plaintiff, Rami Choudhary had no knowledge about the suit. The process server was also not examined nor affidavit was filed in that suit to show that summons was validly served on the present plaintiff. The plaintiff has adduced reliable evidence to show that summons was never served and he never



appeared and signed compromise application. Since Bandhu Choudhary died unmarried, the defendant is not the daughter of Bandhu Choudhary. So, in such circumstances, there is no question of compromise arises. The plaintiff also examined expert to prove that the signature/L.T.I. on the compromise application is not of the plaintiff, Rami Choudhary and the expert submitted the report in favour of the plaintiff but the learned court below discarded the report and himself examined the signature and held that the signature on compromise application is that of the present plaintiff.

9. The learned counsel further submitted that the court is not the expert. Moreover, when both the parties had examined expert, the court could not have examined himself and could not have recorded the finding regarding the disputed signature. The duty of the court is to ascertain which of the report is correct. The plaintiff examined qualified expert but the court below on flimsy ground discarded the evidence. The learned counsel further submitted that the plaintiff also produced evidences to show that in fact, Darbi Devi is the daughter of Parikha Choudhary but the court below has also wrongly discarded the evidences produced by the plaintiff. On these grounds, the learned counsel submitted that the impugned judgment and decree be set aside and the appeal be allowed and plaintiff's suit be decreed after setting aside the decree passed in Title Suit No.141 of



1966.

10. On the other hand, the learned counsel for the respondents submitted that all the points raised by the plaintiff is immaterial because in the compromise the plaintiff admitted that Dulhin Darbi Devi is the daughter of Bandhu Choudhary and she has got half share. Once it is held that the compromise application is signed by the present plaintiff, Rami Choudhary then there is no question of investigation of other point arises. The simple case of the plaintiff is that he neither appeared nor signed the compromise application. The learned trial court considered the conduct of the present plaintiff how he tried to change his signature. On the other hand, the defendant also examined D.W.15, the expert who has clearly recorded a finding that writings on the vakalatnama and compromise application of title suit No.141 of 1966 are the signatures of the plaintiff.

11. The learned counsel further submitted that the court is also competent to look and examine the disputed signature and admitted signature. Therefore, the court also personally compared both and then came to the conclusion that the vakalatnama and compromise application is signed by Rami Choudhary. The other witnesses have also been examined by the defendant in support of the



signature on the compromise application. The plaintiff with a view to grab the property of Darbi Devi has filed this false and frivolous case with ulterior motive. According to the learned counsel, because Bandhu Choudhary died leaving behind only daughter, who is in her *sasural*, the plaintiff did not want that the property should go to a female heir which shows the mindset of the plaintiff. The learned counsel further submitted that there is no irregularity or illegality in the finding of the court below. The finding has been recorded on the basis of the materials available on record, therefore, this first appeal may be dismissed with exemplary cost because the plaintiff dragged the rightful owner upto the High Court and harassed her like anything causing mental and physical hardship.

12. In view of the above submissions of the learned counsels for the parties, the following points arise for consideration in this First Appeal:

a. Whether the compromise application and the vakalatnama filed in Title Suit No.141 of 1966 is signed by Rami Choudhary, the present plaintiff or not or whether the compromise decree is obtained by Dulhin Darbi Devi by playing fraud?

b. Whether Dulhin Darbi Devi is the daughter of Bandhu Choudhary or she is the daughter of Parikha Choudhary?

c. Whether there was valid service of summons in Title Suit No.141 of 1966?



Point No.(a)

13. This is the main issue and controversy between the parties. According to the plaintiff Rami Choudhary, he had neither appeared nor signed on vakalatnama or compromise application. On the contrary, according to the defendant, he had appeared and filed vakalatnama and also signed the compromise application on the basis of which, compromise decree was passed. The parties have examined witnesses in support of their respective cases. P.W. 17 is the plaintiff himself. P.W.18 is the photographer whereas P.W.19 is the expert. The report of the expert is marked as Ext. 8. According to this report, the signature on vakalatnama and compromise application and sample signature given by Rami Choudhary P.W.17 are of different persons.

14. It appears that the trial court observed that P.W.17, the plaintiff while giving specimen signature in the court tried to distinguish his writing. From perusal of the said signatures, it also appears to be so. His specimen signature is in Devnagri script whereas on compromise application, Ext. 10, the writing is in Kaithi. P.W.17, the plaintiff claimed himself to be an illiterate person but in his evidence he admitted that he writes in Devnagri script and in the cross-examination, he admitted the fact that the signature on the vakalatnama and compromise application Ext. 10 are in Devnagri or



in Kaithi script. However, he also admitted that he knows Kaithi to some extent. In other words, this plaintiff knows Devnagri script and also Kaithi script but to conceal this fact, earlier he claimed to be illiterate and again he said that he cannot say whether the signature on compromise application is in Kaithi or in Devnagri script. This conduct of the plaintiff speaks a volume against him. Because of this conduct, it appears that the defendant filed the original exchange deed signed by Rami Choudhary which has been marked as Ext. E and prayed for comparison with this admitted signature. The expert, D.W.15 examined the disputed signatures on vakalatnama and compromise petition with Ext. E. The plaintiff also filed another exchange deed which is Ext. 17 wherein also there are five signatures of Rami Choudhary. It appears that in all these deeds, Rami Choudhary signed in Kaithi script and also in some Devnagri script. Examining all these signatures, D.W.15 submitted the report that these are the signature of same person.

15. From perusal of these signatures on the aforesaid Exhibit E and on compromise application and vakalatnama, it is apparent that the signatures are of same person.

16. The learned counsel for the appellants submitted that when experts have been examined the court should refrain from



examining himself. So far this submission is concerned, the Hon'ble Supreme Court in the case of **Murarilal v. State of M.P., AIR 1980 Supreme Court 531** at paragraph 12 has held that

“12. The argument that the Court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and the voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the Court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative textbook and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence.”

This view has also been expressed by this court in the case of **Rajkumar Singh v. Madhuri Kumari, 2015(1) PLJR 543.**

17. In view of the above settled proposition of law and the facts, I find that the signature on the vakalatnama and the compromise application is of the plaintiff, Rami Choudhary. Thus,



point no.(a) is answered against the appellants. The finding of the trial court on this point is hereby confirmed.

Point no.(b)

18. In view of the finding above recorded by me, in the earlier suit the plaintiff-appellant, Rami Choudhary admitted Dulhin Darbi Devi as the daughter of Bandhu Choudhary and compromise was arrived at. Here, the case is made out that fraudulently the compromise decree was obtained and he neither signed vakalatnama nor compromise application but this case is found to be untrue. In such circumstances, when once he admitted that respondent is daughter of Bandhu Choudhary, now he cannot be allowed to resile from the admission. Admission is the best evidence. One cannot be allowed to approbate and reprobate for taking benefit. In this matter, reference may be made to the decision of the Supreme Court **AIR 1993 Supreme Court 352(R. N. Gosain v. Yashpal Dhir)**.

19. In view of the above facts, when in the compromise application which has been found to be true and it has been signed by the plaintiff himself it is clear proof of the fact that Dulhin Darbi Devi is the daughter of Bandhu Choudhary. Moreover, this point is now not relevant for decision because by a decree passed in Title Suit No.141



of 1966 Darbi Devi has been granted share by final decree. This Court is not sitting in appeal against the said compromise decree. The compromise decree was challenged on the ground of fraud which has been negatived by the trial court and by this court also. Therefore, this point is also answered against the appellants and in favour of the respondents. The finding of the trial court on this point is confirmed.

Point no.(c)

20. In view of the findings recorded by me in the above both points, this point is irrelevant because even if there was no valid service then also the plaintiff appeared and filed vakalatnama and signed the compromise application. Thus, this point is also answered in favour of the respondents and against the appellants.

21. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. No order as to cost.

(Mungeshwar Sahoo, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	21.03.2017
Uploading Date	16.05.2017
Transmission Date	16.05.2017

