

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1087 of 2017**

Sarada Devi, Wife of Rang Lal Chaudhary, Resident of Mohalla-Chak Anwarpur, @ Anwarpur Station Road, P.S. Hajipur Town, District-Vaishali

... .. Appellant/s

Versus

1. Rang Lal Chaudhary
2. Heera Lal Chaudhary
3. Sone Lal Chaudhary
4. Putul Devi
5. Poni Devi
- 1 to 5 are Sons and Daughter of Late Chhathi Lal Chaudhary null
6. Jinsi Devi W/o Late Chhathi Lal Chaudhary
7. Dinesh Chaudhary
8. Shiv Shankar Chaudhary
9. Ajit Chaudhary
- 6 to 9 are Son of late Laxmi Chaudhary
- All are Resident of Mohalla-Chak Anwarpur @ Anwarpur, Station Road, P.S. Hajipur Town, District-Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Chandan Kumar Verma
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 11-10-2017 This application, under article 227 of the Constitution of India, has been filed for setting aside the order, dated 13.04.2017, passed by learned Additional District Judge II, Vaishali, at Hajipur, in Probate Case No. 01 of 2008, whereby he has allowed taking photographs of the L.T.I. over a deed of Will and an L.T.I. upon a petition for grant of old age pension said to be of the testator, for comparison by a fingerprint expert.

The said probate case has been filed by the petitioner for grant of probate/letters of administration in respect of a Will,



executed by one Jawahar Lal Chaudhary, in favour of the petitioner. The petition for grant of probate/letters of administration has been objected to by the contesting respondents and apparently they have challenged the signature of the testator on the Will. The respondents appear to have pleaded before the court below that the alleged deed of Will is forged and fabricated. It appears from an order, dated 20.10.2011, passed by Learned District Judge, Vaishali, in the probate case that the contesting respondents had earlier filed a petition to call for certain documents from the Block Office, Hajipur, which bore the thumb impression of the said Jawahar Lal Chaudhary, for the purpose of comparison of the handwriting available on the alleged Will by a fingerprint expert. The said petition was allowed by the said order, dated 20.10.2011, and accordingly the contesting respondents were given two months' time to complete all the formalities of examination of thumb impression by an expert, indicating clearly that no opportunity would be given to them any further. The petitioner did not challenge the said order dated 20.10.2011.

It appears from the materials on records of the present case that on receipt of the records from the Block Office, the contesting respondents filed a petition for obtaining the



photograph of the signature of Jawahar Lal Chaudhary available on the petition filed by him for grant of old age pension. The said petition was contested by the petitioner asserting that the said Jawahar Lal Chaudhary had never applied for grant of old age pension. The petitioner also asserted that no old age pension was ever released in favour of Jawahar Lal Chaudhary nor any bank account was opened in his name for this purpose.

Taking into account the fact that similar objection, earlier raised by the petitioner, was already rejected by the court below by orders, dated 20.10.2011 and 14.07.2016, the court below allowed the petition for getting the photographs done in presence of *the Sherishtedar* for comparison by a fingerprint expert.

Assailing the impugned order, learned counsel appearing on behalf of the petitioner has vehemently argued that comparison of the handwriting available on the deed of Will presented by the petitioner for probate can be compared with an admitted handwriting only and since the petitioner has specifically disputed the handwriting in the alleged petition filed by Jawahar Lal Chaudhary for grant of old age pension, the impugned order is unsustainable in view of the provision under Section 73 of the Indian Evidence Act, 1872. He has placed



heavy reliance on a decision of Andhra Pradesh High Court, in case of **Nori Srirama Sastri v. Nori Lakshmiddevamma (AIR 1957 AP 60)** and Supreme Court's decision, in the case of **Murarilal v. State of M.P. (AIR 1980 SC 531)**.

I am not convinced with the submissions advanced on behalf of the petitioner for more than one reason. The first and foremost is that it is specifically mentioned in the order impugned that similar objection taken on behalf of the petitioner was rejected by the court below while passing order on 20.10.2011 and 14.07.2016. The petitioner having not chosen to assail the earlier order dated 20.10.2011 cannot now take a plea to nullify the effect of the said order. It appears from the impugned order that it is consequential to the order passed by the Court below on 20.10.2011. No ground has been taken nor any submission has been made at the time of hearing of the case that the observation made by the court below that similar objection raised on behalf of the petitioner was rejected is incorrect. Secondly, the High Court need not exercise its power of superintendence under article 227 of the Constitution of India on mere askance. The broad parameters of interference by the High Courts in exercise of supervisory jurisdiction under article 227 of the Constitution of India have been repeatedly addressed



by the Supreme Court and this court.

I, accordingly, do not find any merit in this case, which stands dismissed but without any costs.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

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