

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1063 of 2016

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1. Sansariya Devi, W/o Sri Shiv Narayan Roy, resident of Mauza-Magardahi @ Karimabad, Ward No.15, Town+P.S. & Dist- Samastipur (Bihar)
.... Petitioner

Versus

1. Birendra Prasad Gupta S/o Late Nityanand Prasad R/o Mohalla- Gudari Bazar Ward No.20, Town + P.S. & Dist- Samastipur
2. Jugeshwar Rai S/o Shri Dorik Roy resident of Mauza-Magardahi @ Karimabad, Ward No.15, Town+P.S. & Dist- Samastipur.
3. Jawahar Prasad Gupta
4. Vijay Prasad Gupta
5. Shambhu Prasad Gupta All 3 to 5 sons of Late Nityanand Prasad R/o Mauza-Magardahi, Town+P.S. & Dist- Samastipur
.... Respondents

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Appearance :

For the Petitioner : M/S Abhimanyu Sharma & Prakritita Sharma, Adv.
For the Respondents : Mr. P.N. Shahi, Sr. Adv. with
Mr. Manoj Kumar No. 1, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 14-12-2017

Heard both sides.

2. The petitioner has filed this civil miscellaneous petition against the order, dated 06.06.2016, passed in Title Suit No. 167 of 2007.

3. The plaintiff filed suit for declaration of title and recovery of possession with regard to land detailed in Schedules 6 and 6A of the plaint. The case of the plaintiff is that Deoki Nandan Prasad died leaving behind three sons, namely, Gopal Prasad, Laxmi Prasad and Nityanand Prasad. The co-sharers sold CSP No. 466, area 6 katha and 8 dhur, falling in the joint share of all the three brothers, to different persons. The plaintiff is the son of Nitya Nandan Prasad. The defendant encroached upon 1 katha of plaintiff's suit property.



4. The case of the defendant is that the Deoki Nandan Prasad died leaving behind widow, Janki Kuer, who vide Hukumnama settled 2 katha and 8 decimals of CSP No. 466 in favour of Muson Roy, father of defendant no. 1 and put him in possession. The plaintiff disputed the signature of Janki Kuer on the deed of patta and filed Exhibit 2, admitted signature of defendant, Janki Kuer, on the registered deed of Bharna, Exhibit 2. the defendant filed petition that both the deeds be sent to expert for examination of hand writing in order to find out as to whether the signature of Janki Kuer is on both the deeds, but, the learned Sub Judge held that the signature on the registered deed of Bharna, Exhibit 2, and unregistered deed of patta Exhibit 'A' do not tally with each other and, therefore, it is unnecessary to send the same to hand writing expert and rejected the petition of the petitioner-defendant no. 1 on 06.06.2016. Being aggrieved the petitioner-defendant filed this civil miscellaneous petition.

5. The learned counsel for the petitioner submits that the plaintiff has admitted the signature of Janki Kuer on the registered deed of Bharna, Exhibit 2. The defendant also filed Exhibit 'A', the deed of patta by which Janki Kuer settled the land in favour of defendant no. 1. It is, further, submitted that the petitioner filed petition that both the deeds be sent to expert for examination, but, the learned Sub Judge had jumped to the conclusion and held that both the signatures do not tally with each



other before obtaining opinion of the expert.

6. On the other hand, Mr. P.N. Shahi, the learned senior counsel, appearing on behalf of the respondents-plaintiffs submits that according to Section 73 of the Evidence Act, the Court is not bound to send admitted signature or disputed signature of a person to expert. The Court may also compare the signature with his own eyes. The Court has recorded the finding that the admitted signature of Janki Kuer on Exhibit 2 does not tally with the dispute signature of Janki Kuer on Exhibit 'A'. The learned counsel placed his reliance on paragraphs 57 to 60 of the judgment reported in **2015(1) P.L.J.R., 543 (Raj Kumar Singh Vrs. Madhuri Kumari @ Madhubala & Ors.)** in which it has been held that Section 73 of the Evidence Act, it is the plain duty of the Court to compare the writing and come to it's own conclusion. This duty can not be avoided by the Courts to the statement that the Court is not expert. The learned single Judge has placed reliance on the judgments reported in A.I.R., 1979 S.C., 14, A.I.R. 1992 S.C., 2100 and A.I.R. 1980 S.C., 531.

7. It is, further, submitted that in similar case the Supreme Court in the case of **Ajit Savant Majagavi Vrs. State of Karnataka**, reported in **A.I.R. 1997 S.C., 3255** held that it is the discretion of the Court. The Court may send the hand-writings or the signature to expert under Sections 45 and 47 of the Evidence Act, but, this does not mean that the Court has no power to compare the disputed signature with the



admitted signature. The question arises for consideration whether the Court has rightly rejected the petition of the defendant for sending the admitted signature and disputed signature of Janaki Kuer to expert for opinion.

8. Section 73 of the Evidence Act is as follows ;

“73 : Comparison of signature, writing or seal with others admitted or proved – In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

9. The plaintiff has admitted the signature of Janki Kuer on Exhibit 2. The defendant also claimed that Janki Kuer settled the land in his favour vide unregistered patta deed, which is exhibited as Exhibit ‘A.



When the plaintiff disputed the signature of Janki Kuer on Exhibit 'A', the defendant filed petition that both the signatures, admitted one and disputed one, be sent to the expert for opinion. Of course, Section 73 of the Evidence Act gives discretion to the Court and there is no legal bar to compare the admitted and disputed signatures with his bare eyes, but, prudence demands that the Court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard. This view has been reiterated in the judgment State Vrs. Pali Ram (A.I.R. 1979 S.C., 12) and A.I.R. 1992 S.C., 2100 (State of Maharashtra Vrs. Sukhdeo Singh & Anr.) Even in the case of State Vrs. Pali Ram (A.I.R. 1979 S.C., 12) it has been held that the Court should be slow to himself comparing the signature and writing. Of Course, Section 73 of the Evidence Act empowers the Court to compare disputed writings with the specimen/admitted documents shown to be genuine, but, the Court should be extremely slow in venturing to compare the disputed signature with the admitted signature without taking recourse to the expert's opinion.

10. The Supreme Court in the case of Ajit Savant Majagavi Vrs. State of Karnataka reported in A.I.R. 1997 S.C., 3255 has held in paragraphs 37 and 38, which are as follows :

“37 : This Section consists of two parts. While the first part provides for comparison of signature, finger



impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or finger prints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The Section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself”.

“38 : As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the



Act.”

11. Having considered the facts, aforesaid, and the law laid by the Apex Court, I find that the learned Sub Judge has committed jurisdictional error and material illegality in comparing the admitted signature of Janki Kuer on Exhibit 2, with her disputed signature on Exhibit ‘A’ without seeking opinion of the expert and, therefore, in my opinion, the order is fit to be set aside.

12. Accordingly, the order, dated 06.06.2016, passed in Title Suit No. 167 of 2007, is set aside and the civil miscellaneous petition is allowed with the direction to the Court below to send the aforesaid records Exhibit 2 and Exhibit ‘A’ to expert for comparing the signatures of Janki Kuer and give opinion within four months.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.01.2018
Transmission Date	N/A

