

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.117 of 2016

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Awadhesh Prasad Srivastava S/o Late Tapeswar Lal R/o village - Paiga Sadar,
P.O. Paiga, P.S. Bheldi, District – Saran.

.... Appellant/s

Versus

Dinesh Upadhyay S/o Late Vyas Upadhyay R/o village - Paiga Sadar, P.O. Paiga,
P.S. Bheldi, District – Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhesh Kumar, Adv.

For the Respondent/s : Mr. Anant Kumar Bhaskar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-03-2017

Heard Mr. J.K. Verma, learned counsel for the petitioner
and also learned counsel for the respondent.

Earlier the notice was issued to the respondent at the stage
of admission and the further proceeding of the T.S. No. 300 of 2007
was stayed.

By the impugned order, the learned court below has
rejected the petition dated 08.07.2015 filed by the defendant in the
suit praying for permission to get the disputed thumb impression on
the deed compared with the admitted thumb impression by his private
expert and to submit the report of the expert in the suit.

Mr. Verma, learned counsel for the petitioner has mainly
submitted that the prayer made by the defendant-petitioner in the



petition dated 08.07.2015 has been entirely misconstrued by the learned court below while rejecting the said petition. It has been the categorical submission on behalf of the petitioner while placing the petition dated 08.07.2015 (Annexure-6 to the supplementary affidavit) that the petitioner never made a prayer for appointment of a handwriting expert by the court rather the prayer of the petitioner was confined to the permission by the court to the expert for examination of the documents in custody of the court i.e. sale deeds dated 15.10.1990 and dated 31.03.1994 executed by Most. Lalita Kunwar. It has been pointed out by the learned counsel for the petitioner that the sale deed dated 15.10.1990 which is in dispute in the suit is already in the custody of the court and the later two sale deeds dated 31.03.1994 executed by Most. Lalita Kunwar has also been filed by the present petitioner in the court and at present it is also in the custody of the court. Learned counsel for the petitioner, therefore, has emphasized that the prayer of the petitioner was confined only to the permission of the court for examination of those two sale deeds by the expert appointed by the petitioner.

Learned counsel for the plaintiff-respondent, however, has supported the impugned order.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is manifest that



earlier the suit for partition was filed by the plaintiff but later on the prayer for amendment was made adding the relief against the sale deed dated 15.10.1990. It is also evident from the records that the LTI of the vendor Most. Lalita Kunwar appearing on the sale deed dated 15.10.1990 has been examined by expert as appointed by the court on the prayer of the plaintiff-petitioner. Later on by filing the petition dated 08.07.2015, the defendant made the prayer for permission of the court to get the L.T.I. of the vendor on the sale deed dated 15.10.1990 and two sale deeds dated 31.03.1994 examined by his own private expert. By the impugned order, the learned court below has dismissed the petition dated 08.07.2015 filed by the defendant-petitioner only on the ground that the prayer has been made for appointment of another handwriting expert in the face of the fact that there had already been handwriting expert appointed by the court who has submitted his report with regard to the LTI of Most. Lalita Kunwar. It is, therefore, demonstrably clear that the learned court below has misconstrued the prayer of the defendant-petitioner as made in the petition dated 08.07.2015 by taking the same to be the prayer for appointment of another handwriting expert by the court. This Court, therefore, comes to the conclusion that there cannot be valid reason in law in refusing the permission to the defendant-petitioner to get the LTI of Most. Lalita Kunwar appearing on the sale deed dated 15.10.1990 and two



sale deeds dated 31.03.1994 which is in custody of the court examined by his own private expert. In adversarial system of litigation, a party to the proceeding is entitled to the grant of adequate opportunity in accordance with law to establish his claim on the basis of evidence. This Court, therefore, holds that the learned court below has committed illegality in passing the impugned order.

This application is, accordingly, allowed and the impugned order is set aside. The learned court below is directed to grant permission to the defendant-petitioner to get the L.T.I. of Most. Lalita Kunwar appearing on the sale deed dated 15.10.1990 and two sale deeds dated 31.03.1994 examined by his own private expert for the purpose of comparison, in accordance with law/rules.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.05.2017
Transmission Date	

