

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.523 of 2016

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Nilima Devi Wife of Sri Harendra Dubey, Resident of Village- Basantpur, P.O.-
Khujwa, P.s.-Raghunathpur, District-Siwan.

.... Appellant

Versus

1. Devenati Devi Wife of Hansnath Bhagat, Resident of Village-
Shekhpurwa, P.S.- Mahual Mahal, P.S.-Mazharul Haque Nagar, District-Siwan.
2. Most Shivjhariya Devi Wife of Late Ramjit Bhagat, Resident of Basantpur,
P.O.-Khujwa, P.s.-Raghunathpur, District-Siwan.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-04-2017

Heard learned counsel for the parties.

The legal acceptability of the impugned order by which the learned court below has turned down the prayer of the plaintiff-petitioner seeking permission for taking the photographs of the thumb impression of the vendor appearing on the first page of the disputed sale deed as well as the same on the back of the first page as affixed before the registration authority for the purpose of comparison, has been questioned before this Court by filing this application under Article 227 of the Constitution of India.

The matrix of facts discloses that the plaintiff has filed the suit for declaration of title on the basis of the sale deed claimed to have been executed by one Ramjit Bhagat on 23.12.1996.



The defendants contested the assertions of the plaintiff and denied the legal validity and genuineness of the said sale deed. The plaintiff's evidence was completed and thereafter the defendants filed a report of a private handwriting expert with regard to the thumb impression of Ramjit Bhagat appearing on the said sale deed. The plaintiffs, in response, has filed the petition on 08.01.2016 (Annexure-3) praying for permission of the court to take the photographs of the thumb impressions of the vendor on the disputed sale deed for the purpose of comparison.

Mr.Dubey, learned counsel for the plaintiff-petitioner has submitted that the occasion to file the petition at the stage of the suit with the prayer, as above, has arisen only due to the fact that the defendants brought on record the report of the private handwriting expert after the closure of the evidence of the plaintiff. It has further been contended that the issue of legality and validity of the sale deed executed in favour of the plaintiff by said Ramjit Bhagat is the spinal issue in the suit and therefore the learned court below ought to have allowed the prayer of the plaintiff as made for getting the thumb impressions of the vendor on the disputed sale deed examined by his expert and submit the report as evidence in the suit.

The learned counsel for the respondents , however, has supported the impugned order and has submitted that as



there has been no prayer on behalf of the plaintiff for reopening of the evidence, the learned court below has rightly rejected the prayer of the plaintiff as made. It has also been contended that as there is already a report of handwriting expert on record, the prayer of the plaintiff is clearly misconceived and intended to delay the disposal of the suit.

After considering the submissions, materials on records as well as the impugned order, this Court finds that the legality and validity of the sale deed on which the plaintiff has based his claim of title is the germane question in the suit. The prayer of the plaintiff for taking the photographs of the thumb impressions of the vendor on the disputed sale deed for the purpose of comparison by expert has apparently been made only after the report of a private handwriting expert has been brought in evidence by the defendant after the closure of the evidence on behalf of the plaintiff. In such a circumstance, the prayer of the plaintiff for taking photographs of the thumb impression on the disputed sale deed for examination by his own expert ought to have been allowed by the learned court below. In the adversarial system of litigation, a party is entitled to grant of adequate opportunity to lead evidence except for strong reasons for refusal of the same. This Court also does not find substance in the submission on behalf of the respondents that the petition has been filed for delaying the proceeding of the suit, as it is apparent that it is



the plaintiff who has filed the suit and he is not going to gain by delaying the proceeding of the suit.

Accordingly, this application stands allowed and the impugned order is quashed. The petition dated 08.01.2016 (Annexure-3) filed by the plaintiff is allowed and the plaintiff is permitted to get the photographs of the thumb impression of the vendor appearing on the front and back page of the disputed sale deed for the purpose of comparison by his private handwriting expert.

The learned counsel for the petitioner has submitted that the report of the private handwriting expert and his evidence if so directed would be produced in the court below within a period of six weeks from the date of receipt/production of a copy of this order in the court below. The learned court below is accordingly directed to proceed with the suit and endeavour for its early disposal.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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