

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.184 of 2016

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1. Bittu Kumar @ Om Prakash Kumar son of Sri Satendra Kumar Singh
 2. Satendra Kumar Singh S/o Late Mashudan Singh, Both resident of village- Adhapa, P.S.- Phulwarisharif, Distt.- Patna, at present resident of village- Ranipur Ka Chak, P.O.- Begampur, P.S.- By Pass, District- Patna, Indian Citizens

.... Appellant/s

Versus

Raj Kumar son of Brijnandan Singh, resident of village- Nayagarh Sarmera, P.S.- Sarmera, Distt.- Nalanda, Presently resident of Sarmera Kothi, Park Road, Kadamkuan, P.S.-Kadamkuan, District- Patna, Indian Citizen

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rudal Prasad, Adv.

For the Respondent/s : Mr. Brajesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-03-2017

Heard learned counsel for the parties.

By the impugned order, the learned court below has rejected the petition filed by the defendants praying for examination of the endorsement and signature of the defendant no. 1 on the back of the first page of Ext. 1 and Ext. 1/A by handwriting expert by comparing the same with the admitted signature of the defendant no. 1.

The matrix of facts discloses that the suit has been filed for specific performance of contract against the defendant-petitioners. The plaintiff has placed reliance upon Ext. 1 and Ext. 1/A which are said to be the deeds of agreement for sale and has further



relied upon the endorsement relating to payment of money said to have been made by the defendant no. 1 on the back of page-1 of those exhibits. It has also been averred in the present application that objection with regard to the genuineness of such endorsement and signature of the defendant no. 1 has been raised in the written statement of the defendant-petitioners. The learned court below, however, has turned down the prayer of the defendant-petitioners only on the ground that the petition has been filed for delaying the proceeding of the suit and holding that there is apparently no tempering with the signature on Ext. 1 and 1/A.

After considering the submissions on behalf of the parties and the materials on record, it is transparent that the endorsement and signature of the defendant no. 1 appearing on the back of the first page of Exhibit-1 and 1/A are germane for determination of the issues arising between the parties to the suit. The well settled principle is that the parties to a proceeding normally should not be denied opportunity to lead evidence in accordance with law. Even after a document is marked as exhibit in a suit, the question of its admissibility can be raised at a later stage or even in appeal or revision as held by Apex Court in **Dayamathi Bai Vs. K.M. Shaffi, 2004 (7) SCC 107**. It has also been laid down in the case of **Thiruvengada Pillai Vs. Navaneethammal, A.I.R. 2008 SC 1541**



that a court should not normally venture to compare the handwriting or signature in question when it is not clear. The learned court below has thus erred in law in rejecting the prayer of the defendant-petitioners. However, as the petition has been filed by the defendant-petitioners after inordinate delay in the court below praying for examination of the disputed endorsement and signature by handwriting expert, this Court is inclined to allow the prayer of the petitioners after imposing cost to be paid by the defendant-petitioners to the plaintiff-respondent.

Accordingly, this application is allowed and the impugned order is quashed. The petition filed by the defendant-petitioners dated 21.11.2015 (Annexure-2) is allowed subject to the payment of cost of Rs. 5000/- to the plaintiff-respondent by the defendant-petitioner within a period of four weeks from today. The amount of cost must be deposited in the learned court below and the plaintiff-respondent shall be entitled to withdraw the said amount. The learned court below is directed accordingly to proceed further in accordance with law/rules.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.03.2017
Transmission Date	

