

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1250 of 2016

=====

Pramod Kumar Upadhaya & Ors

.... Petitioner/s

Versus

Shanty Devi & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 02-02-2017 **1.** Heard the learned counsel, Mr. Chandrakant, for the petitioner and the learned counsel, Mr. Indrajit Bhushan, for the respondent No.1 to 5.
- 2.** Perused the impugned order dated 24.07.2015 passed by the learned Sub Judge VIIth, Gopalganj in Title Suit No.165 of 1995 whereby the learned Court below accepted the second written statement holding that the earlier written statement filed by them in the year 1999 was not filed by them.
- 3.** The learned counsel, Mr. Chandrakant, for the petitioner submitted that the defendant No.1 to 5 were contesting the suit which was filed by the plaintiff in the year 1995. The contesting defendants had also filed written statement. When the defendant No.6 to 11 did not appear in the suit, the case was fixed for ex.-parte hearing. Thereafter, the defendant No.6 to 11 appeared



in the year 1999 and prayed for setting aside the order fixing the case for proceeding ex.-parte and sought permission to file written statement. The Court below allowed the same and thereafter, the said defendant had filed the written statement. After 20 years now, they have filed an application alleging that they had neither appeared nor filed Vakalatnama and written statement in the suit. The written statement has been filed by the plaintiff by forging the signature of the defendants No. 7 to 11. Objection was raised by the plaintiff-petitioner but the Court below without any evidence wrongly recorded finding that it appears that the signature are not of the defendants and written statement had also been filed on behalf of the minors and accordingly permitted the defendants No.7 to 11 to file written statement which is contrary to law. According to the learned counsel, the Court below could not have recorded the finding regarding forgery of signature of the defendants. The Court below also not considered regarding recall of the order fixing the suit for ex.-parte hearing at the instance of the defendants.

4. On the other hand, the learned counsel for the defendant No.7 to 11 submitted that in fact the order for ex.-parte hearing was also recalled at the instance of the plaintiff and the Vakalatnama was also filed by the plaintiff signing the



Vakalatnama in the name of defendant No.7 to 11 and the written statement was also filed by the plaintiff. Therefore, the learned Court below has rightly recorded the finding that the signatures are forged signature.

5. From perusal of the application filed by the defendant No.7 to 11 who are respondent No.1 to 5 in this Civil Misc. application, it appears that they have only stated regarding forged signature on the Vakalatnama and written statement. So far the order dated 09.12.1999 whereby the ex.-parte order was recalled on the application filed by the defendant No.6 to 11 is concerned, the defendants nowhere stated a single word as to whether at their instance, the ex.-parte order was recalled or not. It appears from the said order which has been annexed as Annexure '4' the Court below directed the defendant No.6 to 11 to file written statement within 15.12.1999 after recalling the ex.-parte order dated 12.01.1999. The written statement was filed on 31.01.2000 by the defendant No.7 to 11. It is not the case of the defendant No.7 to 11 that this order was recalled at the instance of the plaintiff and not by them. From perusal of the order, it appears that the plaintiff contested the application filed by the defendants. Now, if the case of the defendant is believed then who filed the application for recall of the ex-parte order. If they had not filed Vakalatnama



then who had filed the Vakalatnama. These matters have been raised for the first time after 20 years and the Court below without any evidence has recorded this finding merely looking to the difference of the signature without considering the fact that these subsequent signatures are put by the defendants after 20 years. In my opinion, therefore, the Court below exceeded its jurisdiction by recording such finding without there being any evidence, therefore, the findings are perverse, based on no evidence or inadmissible evidence. The Court below not at all considered this aspect that at the instance of these defendants, the ex-parte order was recalled and they were directed to file written statement in the year 1999. If this type of attitude is allowed to continue then in each and every case, written statement will be filed and after 20-25 years, another written statement will be filed saying that earlier written statement was never filed by the defendants. It appears that the intention of the defendants are mala fide. They are adopting this type of tactics only to harass the plaintiff and to delay the disposal of the suit. If at all they are serious that the earlier Vakalatnama and the written statement was never filed by them or at their instance, the earlier order passed by the Court below was not recalled then they are at liberty to initiate the separate appropriate proceeding against the plaintiffs. But for that



purpose, the further proceeding of the suit shall not be stayed. The defendant No.7 to 11 cannot be permitted to file another written statement by mere saying that they had not filed Vakalatnama and not filed the written statement earlier. Fraud has to be approved by them by adducing evidence and as stated, if so serious they may proceed according to law by initiating separate proceeding.

6. Thus, in my opinion, the Court below has exceeded his jurisdiction by allowing the defendant No.7 to 11 to file second written statement.

7. Thus, this writ application is allowed. The impugned order is set aside and the application filed by the defendant No.7 to 11 in the Court below seeking permission to file second written statement is hereby rejected.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--

