

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.596 of 2016**

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1. Kiran Devi wife of Sri Ashok Kumar Thakur, resident of village-
Ghorangra, P.O.- Janardanpur, P.S.- Kalyanpur, District- Samastipur.

.... Petitioner/s

Versus

1. Dharamvir Kumar @ Ganesh Kumar, son of Sri Baidyanath Roy,
resident of Village- Dadhiya, P.S.- Chakmehshi, District- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Praveen Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

4 27-11-2017 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the order dated 08.06.2016 passed by 2nd Additional District Judge, Samastipur in Probate Case No.2 of 2006 wherein the learned Additional District Judge II, Samastipur rejected the petition of the petitioner on the ground that the compromise petition filed by the respondent is not forged and fabricated.

The learned counsel for the petitioner while assailing the order aforesaid submits that Raghavendra Prasad Dwivedi and Rajeshwar Prasad Dwivedi were two brothers. Sons and daughters of Late Raghvendra Dwivedi filed Partition Suit No.33 of 2005 against Rajeshwar Prasad Dwivedi and his descendants. During the pendency of the partition suit, Rajeshwar Prasad Dwivedi died.



Dharamvir Kumar @ Ganesh Kumar, son of eldest daughter of Rajeshwar Prasad Dwivedi filed Probate Case No.2 of 2006 in which he filed a compromise petition. The petitioner filed petition that on the compromise petition, Dharamvir Kumar fraudulently obtained her signature and she did not accept the compromise and she filed petition for rejecting the compromise petition.

The learned counsel for the respondent submitted that from perusal of the compromise petition, it would appear that the petitioner voluntarily put her signature on the compromise petition and, therefore, she could not go back from the compromise.

Admittedly, Dharamvir Kumar, son of eldest sister of the petitioner filed the probate case after the death of father of the petitioner. In the probate case, the genuineness of the Will is the subject matter. The petitioner categorically stated that the son of his sister, the respondent fraudulently obtained her signature on plain papers with a view to file petition in the partition suit but the respondent turned the same petition into a compromise petition and filed the same in the probate case.

It has been held in a Full Bench decision of this court reported in 1992(1) PLJR 495 (Sushila Devi v. Bishwanath Ram & others) that the judgment in the probate case is judgment in rem and in the probate case, the genuineness of the signature or thumb



impression of the propounder of the Will is to be tested by the Court and any compromise is of no consequence.

Therefore, the learned Additional District Judge II, Samastipur appears to have committed jurisdictional error in rejecting the petition of the petitioner. Accordingly, the order dated 08.06.2016 is set aside and the civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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