

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18193 of 2013

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Krishnawati kuer & Ors

.... Petitioner/s

Versus

Ram Nagina Dubey & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arabind Nath Pandey

For the Respondent/s : Mr. Anshu Raj Singh

Mr. Shambhavi Shankar

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

4 04-10-2017 Heard the learned counsel, Mr. Arabind Nath Pandey
for the petitioners and Mr. Parth Gaurav for the respondents.

This writ application has been filed by the petitioners for setting aside the order dated 30.07.2013 passed by learned Sub Judge I, Bhabhua in Misc. Case No.20 of 2010 whereby the learned Sub Judge has rejected the application filed by the petitioners for comparison of the signature of the original petitioner No.1, Sitaram Dubey on the affidavit and the signature on compromise petition by any expert.

The learned counsel for the petitioners submitted that the miscellaneous case has been filed for setting aside the compromise decree on the ground that the compromise decree has been obtained by impersonating the original petitioner No.1, Sitaram Dubey. Sitaram Dubey had never signed the affidavit nor



signed the compromise application. In such circumstances, the comparison of the signature of Sitaram Dubey on the affidavit filed along with the compromise application and the signature on the compromise application with admitted signature of Sitaram Dubey is must and without comparison this controversies between the parties cannot be resolved. However, the court below rejected the said application only on the ground that it is premature because evidence is going on. The learned counsel submitted that at that time when the impugned order was passed evidence was going on but today the evidence of both the parties have been closed. Therefore, the order be set aside and the court below be directed to get the disputed signature compared with admitted signature.

On the other side, the learned counsel appearing on behalf of the respondents did not dispute this fact that now the evidence of both the parties have already been closed but after closure of the evidence, the similar application praying for comparison of the admitted signature with the disputed signature of Sitaram Dubey has already been filed by the petitioners in the court below. In such circumstances, the court below may apply his judicial mind and pass a fresh order because the earlier application has not been decided on merit and it has been rejected only on the ground that it is premature.



In view of the submission of the learned counsels for the parties, it appears that now the evidence of both the parties has already been closed. From perusal of the impugned order, it appears that the court below has not rejected the application on merit. It has been rejected only on the ground that it is premature.

In such circumstances, the court below shall pass a fresh order on the application which has been filed by the petitioner for praying the same relief and if not filed, the petitioner may file within one week after holidays, after hearing both the parties without being influenced by the impugned order dated 30.07.2013.

With this direction, this writ application is disposed of.

(Mungeshwar Sahoo, J)

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