

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1019 of 2016**

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1. Jai Mangal Sao Son of Late Kapil Deo Sao resident of village -
Basantpur Patti, Police Station Paru at Present Police Station Saraiya,
District Muzaffarpur

.... Petitioner/s

Versus

1. Shivangini Devi Wife of Late Ram Krishna Shukla
...Applicant/Defendant No.1

2. Ravi Shanker Shukla Son of Late Ram Krishna Shukla resident of village
- Manikpur, Police Station Mozahidpur, District Bhagalpur at Present
Mohalla - Shivpuri, Police Station Shastri Nagar, District Patna

3. Hari Shanker Shukla Son of Late Ram Krishna Shukla resident of
Manikpur, Police Station Mozahidpur, District - Bhagalpur at Present
Mohalla - Sri Rampura (Tin Bazar), Police Station Dumka, District Dumka

4. Jai Shanker Shukla Son of Late Ram Krishna Shukla resident of village -
Manikpur, Police Station Mozahidpur, District Bhagalpur

5. Smt. Mamta Jha Wife of Prabhash Chandra Jha, Daughter of Late Ram
Krishna Shukla resident of village - Jawaripur Tilaka Maujhi, District
Bhagalpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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

ORAL ORDER

4 06-12-2017 Heard both sides.

The petitioner has filed this civil miscellaneous
petition passed by Civil Judge(Sr. Div.)III, Patna in Misc. Case
No.5 of 1999 on 05.07.2016 by which the learned Sub Judge
allowed the petition of the petitioner of Misc. Case No.5 of 1999
to send the admitted signature of Jai Mangal Sao for examination.

The petitioner was the plaintiff of Title Suit No.154 of
1987. The defendants appeared and filed written statement but



thereafter left taking steps and consequently Title Suit No.154 of 1987 was decreed on contest. One of the defendants, Shivangini Devi, the petitioner of Misc. Case No.5 of 1999 was defendant in Title Suit No.154 of 1987. She filed miscellaneous case under Order IX Rule 13 for setting aside the judgment and decree passed in Title Suit No.154 of 1987 in which she also filed petition that the signature of Jai Mangal Sao on the plaint does not tally with signature on his deposition on such, the learned Sub Judge directed for examination of disputed signature of Jai Mangal Sao with his admitted signature vide order dated 10.07.2012 but the case remained pending and the signature of Jai Mangal Sao, the petitioner could not be compared by any expert. Again, Shivangini Devi, the petitioner-defendant of Misc. Case No.5 of 1999 filed petition on 02.01.2016 and on 07.11.2015 for sending the signature of Jai Mangal Sao to expert for comparison and the learned Sub Judge allowed the petition vide order dated 05.07.2016. Being aggrieved, the petitioner-opposite party of Misc. Case No.5 of 1999 and the plaintiff of Title Suit No.154 of 1987 filed this civil miscellaneous.

The learned counsel for the petitioner submits that in a petition under Order IX Rule 13, the questions to be decided is whether the service of notice is served in accordance with law on



the defendants and the comparison of the signature of the plaintiff, Jai Mangal Sao on different papers is not at all in issue in a petition filed under Order IX Rule 13. The defendant-petitioner of Misc. Case No.5 of 1999 filed the petition only for causing delay in Execution Case No.6 of 2003 filed by the decree holder.

On the other hand, Mr. Shivesh Chandra Mishra, learned counsel for the respondents submits that with consent the court ordered for comparison of the disputed signature of Jai Mangal Sao with his admitted signature by order dated 10.07.2012 but the disputed signature of Jai Mangal Sao could not be examined by the expert even after lapse of many years. Thereafter, the petitioner-judgment debtor filed fresh petition on 07.11.2015 and 02.01.2016 and the court only directed that disputed signature and admitted signature of Jai Mangal Sao be sent to expert for comparison.

Having considered the facts, I am of the view that in a petition filed under Order IX Rule 13, the sole question is whether the service of notice was served on the defendant in accordance with law during the pendency of the suit and not the signature of the plaintiff. The defendant has appeared and filed written statement. The suit was not decided ex parte rather the same was decided on contest but the petition filed under Order IX Rule 13 is



pending for last 18 years, therefore, I find that the learned Sub Judge has committed illegality in again sending the disputed signature of Jai Mangal Sao for comparison with the admitted signature which has got no bearing for disposal of petition filed under Order IX Rule 13.

Thus, I find that the order of the learned Sub Judge is illegal. The order dated 05.07.2016 is set aside with a direction to the Sub Judge to dispose of Misc. Case No.5 of 1999 preferably within three months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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