

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18358 of 2010

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Smt. Kamla Devi, W/O Sri Raja Ram Prasad and D/O Late Ramchandra Sah , R/O Mohalla- Chhata Bazar, In front of Dwarkanath High School, P.O.- Head Office, Muzaffarpur, P.O.- Town Muzaffarpur, Munsifi, Muzaffarpur East, Distt.- Muzaffarpur .

.... Petitioner

Versus

1. Smt. Poonam Devi, W/O Sri Jaimangal Sah, R/O Vill.- Charhuya Tola Barkurwa, P.O. and P.S.- Kurhani, Sub-Division and Munsifi, Muzaffarpur West, Distt.- Muzaffarpur
2. Smt. Jasmati Devi, W/O Sri Shankar Sha, R/O Vill.- Charhuya Tola Barkurwa, P.O. and P.S.- Kurhani, Sub-Division and Munsifi, Muzaffarpur West, Distt.- Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. D.K. Tondon, Advocate
Mr. Vijay Kumar, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-04-2018

This writ application has been filed for setting aside the order dated 10.08.2010 passed by learned Subordinate Judge-VIII, Muzaffarpur in Title Suit No.457 of 2007 whereby whereunder the court below rejected the petition of the petitioner to take adverse inference against the defendants for not producing original deed of gift.

2. Heard learned counsel for the petitioner. Nobody appeared on behalf of the respondents.

3. From perusal of the impugned order, it appears that the



plaintiff-petitioner has filed the suit for declaration that the registered deed of gift bearing Deed No. 7900, 7901 and 7902 dated 10.12.1998 with respect to Schedule II of the plaint alleged to be executed by Ram Chandra Sah in favour of defendant 1st party as forged, fabricated and manufactured document and the same did not bear the thumb impression or signature of executant Ram Chandra Sah. The petitioner filed a petition for direction to the defendant to produce all original deeds of gift for getting the same compared with the admitted signature of Ram Chandra Sah. The defendant did not produce the document. In the rejoinder the defendant has stated that she is not in possession of those deeds of gift. The petitioner thereafter filed a petition before the court below to take adverse inference. During trial the court below called for the thumb impression/signature register from the concerned office. The said register was produced before the court below but nobody appeared for the plaintiff to take step and so the same was returned to the registration office. I find that the court below has refused to take adverse inference against the defendants at pre-stage trial. It is well settled that the person in possession of certain document is supposed to file the same in court and if it is not filed by the person concerned, an adverse inference has to be drawn.

4. In view of above facts the court below has not committed any error in refusing to take adverse inference at this stage.



This writ application is devoid of merit and is accordingly dismissed.

5. It is, however, observed that the petitioner is at liberty to raise the issue of admissibility of document and getting the disputed thumb impression/signature compared with the admitted signature of Ram Chandra Sah before the trial court as per law.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.04.2018
Transmission Date	

