

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9891 of 2015

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1. Menka Devi Widow of late Ramchandra Singh
 2. Jagat Prasad Singh
 3. Deo Prasad Singh
 4. Nawal Kishore Singh
 5. Sunil Kumar
 6. Raj Kumar
 7. Keshav Ranjan All sons of late Ramchandra Singh All resident of Village- Rukunpura, P.O. B.V College P.S Danapur Now Rupaspur District Patna.

.... Petitioner/s

Versus

1. Most. Brahmadei Devi wife of late Gajendra Rai and daughter of Late Bimal sharan Singh resident of Village Gopalpur, P.s Maner, district Patna at present residing at Village- Rupaspur , P.S Danapur, Now Rupaspur .P.O. Shahainagar, District Patna.
2. Mahesh Kumar Singh son of Sri Rajdeo Narayan Singh resident of Mohalla- Purandarpur, P.O. Jakkanpur, P.s Jakkanpur, District & Town- Patna.
3. Nirmala Devi w/o Arbind kumar Singh resident of Village and P.O. Baluwa, P.S Maner, District Patna.
4. Sunita Devi W/o Sunil kumar Resident of Village Chilibili, P.O. Nisarpura, p.s Phulwari, District Patna.
5. Binay kumar Singh
6. Annu kumar Singh
7. Abhimanyu Kumar Singh All 5 to 7 are son of late Ramanand singh @ Rama Singh All resident of Village- Rukunpura, B.V. college, P.S Danapur, Now Rupaspur , District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. R.K.P.Singh, Advocate
		Mr. Bal Bhushan Chaudhary, Advocate
For the Respondent/s	:	Mr. Rajendra Narain, Senior Advocate
		Mr. Amar Nath Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-09-2018

Petitioners are plaintiffs in Title Suit No.04 of 2005 pending in the Court of Munsif, Danapur. They have filed this application for quashing the order dated 18.06.2015 whereby and whereunder the prayer of the petitioners to send two *Wazidawa* deeds dated 01.07.1972 and original sale deed dated 24.09.1959 executed by



Bimla Sharan Singh to the Finger Print Bureau State of Bihar for comparison and report was rejected.

2. Heard learned counsel for the petitioners and the respondents.

3. It appears that the petitioners filed the aforesaid suit for adjudication of their title, degree for permanent and perpetual injunction in favour of the plaintiffs against the defendants restraining them from interfering with the title and possession of the plaintiffs over the land described in schedule-1 and 2 of the plaint. The original plaintiff died during the pendency of the suit and in his place, the petitioners being heirs and legal representatives were substituted. The defendant no.1 appeared and filed written statement denying the case of the plaintiffs. The other defendants no.4, 5 and 7 supported with the case of plaintiffs in their written statement. In course of trial, the petitioners filed a petition for examination and comparison of signature, endorsement and thumb impression of Bimla Sharan Singh on two *Wazidaba* with the admitted writing, signature and thumb impression of sale deed dated 24.09.1959. The learned counsel for the petitioners submitted that the learned court below refused to send the documents for comparison and expert report on the ground that it has been filed at belated stage. The court below further observed that allowing this application shall amount to giving right to the plaintiff for the purpose for which he is not entitled as per Section 4 of the



Benami Transaction Act, 1988. The plaintiffs in order to collect evidence have filed this application and with this observation, the learned court below rejected the petition.

4. Learned counsel for the respondents on the other hand submitted that the defendants in paras-11, 12 and 13 of their written statement have specifically denied the case of plaintiffs as regards execution of deeds of *Wazidawa*. In spite of objection raised earlier, the plaintiffs did not take step for comparison and expert report. The petitioners want to prolong to disposal of the suit and so the court below has rightly dismissed the petition.

5. On going through the submission of both the parties and documents on record, I find that in course of cross examination of PW-1 (plaintiff no.2) a suggestion was given by contesting defendants as regards signature of Bimla Sharan Singh whereafter the petitioners filed petition for scientific examination and comparison of disputed signature with the admitted writing and signature of Bimla Sharan Singh by an expert. It appears that the provision of Benami Act has influenced the mind of the court below. It was not the stage of considering the applicability of Section 4 of Benami Transaction Act. The respondents had raised objection as regards maintainability of the suit in view of provision of Benami Transaction Act which was rejected by the learned court below as per order dated 20.10.2005. The defendants filed C.R.No.2260 of 2005 before this Court and the



same was dismissed as per order dated 04.08.2006. Similar plea was again taken by the defendants which was also dismissed by the court below and also by this Court. The matter relating to maintainability of suit in view of provision of Benami Transaction Act has to be decided during trial. The order rejecting the petition of the petitioners has prejudiced the petitioners as they are entitled to prove their case by adducing oral and documentary evidence.

6. In view of above discussions, the impugned order refusing to send the *Wazidawa* deeds and admitted sale deed for comparison and expert report to the Finger Print Bureau, State of Bihar, is set aside and this application is allowed. The court below is directed to give an opportunity to the petitioners to get the disputed writing signature/thumb impression examined and compared by the expert.

B.Kr./-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.09.2018
Transmission Date	N/A

