

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1543 of 2016**

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1. Md. Aslam

2. Md. Akram, Both sons of Md. Mobinuddin, Both Residents of Village-
Marar, P.S.- Morkahi, District- Khagaria.

.... Petitioner/s

Versus

1. Bibi Rahana W/o- Md. Afroj Alam

2. Md. Afroj Alam S/o- Late Md. Muslim Both are residents of Village-
Marar, P.S.- Morkahi, District- Khagaria.

3. Md. Alauddin

4. Md. Salauddin, Both sons of Md. Daboruddin

5. Md. Alauddin

6. Md. Salauddin, Both sons of Md. Daboruddin

7. Md. Kallimuddin, S/o- Late Maanish

8. Md. Mokhabir, S/o- Late Maanish All 3 to 8 are residents of Village-
Rasonk, P.S.- Morkahi, District- Khagaria.

9. Bibi Nasima Khatoon, W/o- Md. Zabbar and daughter of Md. Kalim and
Late Bibi Sahina Khatoon, resident of Village- Sarsaba, P.O.- Sahurba, P.S.-
Chautham, District- Khagaria.

10. Bibi Rehana Khatoon, W/o- Md. Anishuddin

11. Bibi Sahara Khatoon, W/o- Abdul Bahaw, All are residents of Village-
Rassonk, P.S.- Morkahi, District- Khagaria.

12. Surendra Poddar, S/o- Late Doman Poddar, Resident of Village- Marar,
P.S.- Morkahi, District- Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Chandra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 13-09-2018 Heard Mr. Rakesh Chandra, learned counsel appearing on
behalf of the petitioners and Mr. Dronacharya, learned counsel
appearing on behalf of respondent Nos.1 and 2.

The petitioners are defendants 1st set in Title Suit No.69 of
1998. The petitioners have filed this civil miscellaneous petition
against the order dated 01.10.2016 passed in Title Suit No.69 of



1998 by Sub Judge IV, Khagaria by which learned Sub Judge IV, Khagaria rejected the petition of the petitioners for sending the sale deed dated 30.05.1960(Ext. 2) and sale deed dated 01.03.1962 executed by Bibi Sahidan in favour of Md. Mobin, the father of defendants 2nd set to the expert for examination of the signature/thumb impression of Bibi Sahidan.

The plaintiffs filed the suit for declaration of title and recovery of possession over the disputed land. The defendants 1st set filed written statement stating the facts that Bibi Sahidan did not execute any sale deed in favour of Fakrunisha on 30.05.1960(Ext.2). The legal heirs of Bibi Sahidan later on executed sale deed in favour of defendants 1st set in the year 1997. During the pendency of the suit, defendants 1st set firstly filed a petition on 16.07.2003 for issuance of summon to Md. Mobin for producing original copy of the sale deed dated 01.03.1962 executed by Bibi Sahidan in favour of Md. Mobin, wald-Sheikh Anisuddin so that the thumb impression/signature of the executant bearing on both the sale deeds be sent to the expert for examination. The prayer of the defendants 1st set was allowed on 23.07.2003 with a direction to the defendants 1st set to file the certified copy of the sale deed dated 01.03.1962 in favour of Md. Mobin so that when the evidence of the defendants 1st set shall begin, Md. Mobin can be summoned for producing the original



copy of the sale deed dated 01.03.1962. It is submitted that in pursuance of the aforesaid order, the petitioners filed petition for sending both the sale deeds to the expert for examination of the finger prints of the executant of the sale deed but the learned Sub Judge has rejected that petition.

Mr. Rakesh Chandra, learned counsel for the petitioners submits that the Court vide order dated 23.07.2003 allowed the prayer of the defendants 1st set for sending both the sale deeds to expert for examination of the signature/thumb impression of the executant, Bibi Sahidan but by the impugned order without looking into the order dated 23.07.2003, the petition of the petitioners has been rejected on the ground that the defendants 1st set disputed the genuineness of sale deed executed by Bibi Sahidan in favour of Fakrunisha on 30.05.1960 and the plaintiff also doubted the genuineness of the sale deed said to be executed by Bibi Sahidan in favour of Md. Mobin, father of defendants 1st set on 01.03.1962 and, therefore, both the sale deeds cannot be sent to expert for examination of the signature or thumb impression of Bibi Sahidan as no admitted document containing the thumb impression/signature of Bibi Sahidan is on record. It is submitted that evidentiary value of the expert's report may be looked at the time of hearing of the case but at this stage, the learned Sub Judge has committed jurisdictional error by rejecting



the petition of the petitioners whereas the same Court allowed the petition of the petitioners on 23.07.2003. It is further submitted that order dated 09.05.2014 dismissing the petition of the petitioners filed on 10.09.2013 is error of record and it shall not come in the way to decide the petition of the petitioners on merit.

On the other hand, Mr. Dronacharya, learned counsel appearing on behalf of the respondents submits that defendant 1st set-petitioner disputed the signature of Bibi Sahidan on the sale deed executed by her on 30.05.1960 in favour of Fakrunisha. The plaintiff also disputed the genuineness of the sale deed executed by Bibi Sahidan in favour of Md. Mobin, father of defendants 1st set on 01.03.1962 and, therefore, if the signature/thumb impression of Bibi Sahidan are disputed by the respective parties on the sale deeds, the same cannot be sent to the expert for comparison and examination as the signature of Bibi Sahidan is not admitted. The defendant has not produced any documents on which the signature/thumb impression of Bibi Sahidan is admitted, therefore, the order does not require any interference.

It appears from the facts and the submissions of both sides that the plaintiff filed the suit for declaration of title on the land purchased by the plaintiff from one Poddar. Poddar purchased the land from one Fakrunisha. Fakrunisha also purchased the land by virtue of sale deed dated 30.05.1960 from Bibi Sahidan.



Defendants 1st set claimed that Bibi Sahidan did not execute any sale deed on 30.05.1960 in favour of Fakrunisha and the defendants 1st set disputed the genuineness of thumb impression/signature of Bibi Sahidan on the sale deed on 30.05.1960 executed in favour of Fakrunisha and Bibi Sahidan executed a sale deed in favour of Md. Mobin, father of defendants 1st set on 01.03.1962 but the genuineness of that sale deed is disputed by the plaintiff. Defendants 1st set filed petition on 16.07.2003 praying therein that since the sale deed filed on behalf of the plaintiff executed by Bibi Sahidan(Ext.2) is forged and fabricated and Bibi Sahidan executed one sale deed on 01.03.1962 in favour of Md. Mobin, wald-Sheikh Anisuddin, Sakin-Maur, P.S. & District- Khagaria and the sale deed is with Md. Mobin, therefore, Md. Mobin may be summoned to produce the original sale deed so that the deed may be sent to the expert for examination of the finger prints. The court vide order dated 23.07.2013 allowed the petition to the extent that defendant 1st set was directed to produce the certified copy of the sale deed dated 01.03.1962 executed in favour of Md. Mobin so that when the evidence of the defendants 1st set begin, Md. Mobin may be summoned to produce the original copy of the aforesaid sale deed but it appears from perusal of the order dated 23.07.2003 that the Court never directed or allowed the petition of the defendants 1st



set that on production of such original deed by Md. Mobin both the sale deeds shall be sent to the expert for examination and comparison of thumb impression/signature bearing on the sale deeds. Therefore, I do not find any substance in the submission of the learned counsel for the petitioners that vide order dated 23.07.2003, the Court allowed the petition for sending both the sale deeds to the expert for comparison of the signature of Bibi Sahidan bearing on the two sale deeds. By the present order impugned, the Court has rejected the petition of the petitioners on the ground that the signature of the executant of the sale deeds on both the sale deeds are not admitted by both sides, therefore, both the sale deeds cannot be sent to expert for comparison of the signature of the executant of the sale deeds in absence of a deed on which the signature of Bibi Sahidan is admitted, therefore, I find no error apparent on the record.

Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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