

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1280 of 2014

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1. Dilip Kumar Son of Late Jai Mangal Prasad Resident of Tarkariya Bajar, Danapur, Police Station - Danapur, District – Patna.
2. Amarjeet Kumar Son of Late Jai Mangal Prasad, Resident of Tarkariya Bajar, Danapur, Police Station - Danapur, District – Patna.

.... Petitioners

Versus

1. Smt. Rajani Rani Wife of Rajesh Kumar, Resident of Tarkariya Bajar, Danapur, Police Station - Danapur, District – Patna.
2. Smt. Rekha Devi Wife of Sri Raj Kishore Kumar, Resident of Tarkariya Bajar, Danapur, Police Station - Danapur, District – Patna.
3. The Estate of Deceased Late Gauri Devi Wife of Late Jamuna Sao, Resident of Tarkariya Bajar, Danapur, Police Station - Danapur, District – Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Dwivedi, Advocate
For the Respondent/s : Mr. Arun Kumar, Advocate
Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 19-01-2018 This writ application has been filed to quash the order dated 10.09.2013 passed by learned Additional District Judge II, Danapur in Title Suit No.21 of 2006 arising out of Probate Case No.41 of 2004.

2. Heard learned counsel for the petitioners as well as the respondents.

3. The respondents filed a Probate Case No.41 of 2004 on the file of District Judge, Patna for grant of probate with respect to the property left by Late Gauri Devi. The petitioners



filed objection and the probate case converted into Title Suit No.21 of 2006. In course of trial, the Will in question has been marked as Ext.1. The thumb impressions of executor of Will have been marked as Ext.8 to Ext.8/6. The respondents filed a petition before the trial court praying therein to get the thumb impression of executor of Will with the thumb impression of executor given on registered deed of gift dated 10.09.2003 which is admitted document. The petitioners, who are objectors before the court below, filed a petition praying therein to get the thumb impression of deceased Gauri Devi impressed on Will, registered deed of gift to be compared with thumb impression which was given by her on a deed of agreement executed by her on 03.05.1963. The prayer of respondents was allowed, however, the prayer of the petitioners to get the disputed thumb impression compared also with the thumb impression given on deed of agreement dated 03.05.1963 was refused. The objectors being aggrieved by the said part of order have preferred this writ.

4. In course of argument, the learned counsel for the respondents concedes that he has no objection if all the three documents are sent for comparison and expert opinion from any government expert. In this regard, the learned counsel referred



Annexure 2 to the application which is order dated 25.02.2013 passed by this court in C.W.J.C. No.9517 of 2012. The said writ was filed by the present petitioners. This court while disposing of the said writ has observed as follows:-

“Learned counsel for the respondents object to this document as according to him it is not registered. In any event, since the L.T.I. of Gauri Devi has to be considered for the purposes of holding that the Will was a genuine one, it would be proper that all these documents are sent for examination to come to the actual truth of the matter. The order dated 17.02.2012 is modified accordingly.”

5. In view of above order, both the parties have agreed to get the thumb impression (admitted and disputed) of Gauri Devi examined by government expert of Forensic Science Laboratory, Government of Bihar, Patna.

6. In view of the submission of both the parties and also for the ends of justice, the impugned order rejecting the prayer of petitioners is set aside. The thumb impression given on Will which is subject matter of dispute, thumb impression given on the deed of gift dated 10.09.2003 and thumb impression given on deed of agreement dated 03.05.1963 said to be executed by Gauri Devi, her husband and one Mahavir Prasad be sent to the Forensic Science Laboratory, Government of Bihar for expert opinion as



prayed by both the parties at the cost of plaintiff of Title Suit
No.21 of 2006, as ordered by the court below.

7. This writ application is, accordingly, allowed.

Harish/-

(Sanjay Kumar, J)

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