

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.141 of 2019

1. Bindeshwari Yadav Son of Late Kailu Yadav Resident of Village- Dharhara, Tola Dhatta, P.S.- Raghapur, District- Supaul
 2. Shaligram Yadav Son of Late Kailu Yadav Resident of Village- Dharahara, Tola Dhatta, P.S.- Rghopur, District- Supaul
- Defendant no.1(b)&(c)/Petitioners
Versus
1. Dukhalal Yadav Son of Basudeo Yadav Resident of Mauza Ganpatganj, Dharahra, P.S.- Raghapur, District- Supaul
- Plaintiff/Respondent
2. Chandan Poddar Son of Late Santosh Poddar Resident of at, P.S. and District- Katihar
 3. Sanjiv Kumar Madho Garhia Son of Ghanshyam Madho Garhia Resident of Village- Simrahi, P.S.- Raghapur, District- Supaul
 4. Sachin Madho Garhia Son of Ghanshyam Madho Garhia Resident of Village- Simrahi, P.S.- Raghapur, District- Supaul
- Defendant 3rd set/Respondents
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Appearance :

For the Petitioners	:	Mr. Dronacharya, Adv.
For the Respondents	:	Mr. Subodh Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the Defendant nos. 1(b) & (c)- petitioners and learned counsel for the plaintiff-respondent.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners challenging the order dated 10.12.2018 passed by the learned Munsif, Birpur (Supaul) in Title Suit No. 09 of 1989 by which the trial court has directed for appearance of D.W.6, namely, Kapileshwar Yadav for obtaining his signature for sending the same to the Forensic Science



Laboratory for verification with his admitted signature of Ext.-C/2, i.e., deed of partition.

3. Learned counsel appearing for the petitioner submitted that the impugned order dated 10.12.2018 passed by the learned Munsif is totally illegal and without jurisdiction. He contended that for one reason or the other, the trial court is again and again insisting for examination of signature of the defence witness Kapileshwar Yadav. Earlier also, the signature of Kapileshwar Yadav was sent by the trial court to the Forensic Science Laboratory on 20.09.2017. However, after receipt of the signature of Kapileshwar Yadav, the Director, Forensic Science Laboratory, vide his letter no. 340 dated 26.09.2017, intimated the learned Munsif, Sub-Divisional court, Birpur (Supaul) to submit contemporary signature of the witness. But once again the trial court has directed to obtain signature of Kapileshwar Yadav for scientific verification even without obtaining his contemporary signature. According to him, the order impugned passed by the trial court is wholly illegal, arbitrary and not sustainable in law.

4. Per contra, learned counsel appearing for the respondent no.1 submitted that the order impugned dated 10.12.2018 has been passed in continuation of the order dated 03.03.2017 by the learned trial court after realizing marked



difference between the signature of Kapileshwar Yadav on the panchnama (Ext.-C/2) and his deposition as well as cross-examination. Hence, it decided to refer the same to the Forensic Science Laboratory for expert opinion to discover the truth and, therefore, directed the defendants-petitioners to produce D.W.6 Kapileshwar Yadav before the court on 08.03.2017. He submitted that the order dated 03.03.2017 has attained finality as no appeal or revision against the order was filed by the petitioner within the statutory period prescribed under the Code of Civil Procedure. He submitted that since the order impugned does not suffer from any illegality, it requires no interference by this Court.

5. Having heard learned counsel for the parties and perused the record, I find that by the impugned order dated 10.12.2018, the trial court has summoned D.W.6 Kapileshwar Yadav for obtaining his signature for the purpose of sending the same to the Forensic Science Laboratory for scientific verification. The said order is apparently in continuation of the order dated 03.03.2017 whereby the trial court decided to refer the signature of said Kapileshwar Yadav to the Forensic Science Laboratory for expert examination to discover the truth and directed him to be present before the court on 08.03.2017. The said order dated 03.03.2017 was never challenged before this Court prior to



06.02.2019 when the petitioners filed Civil Miscellaneous No. 151 of 2019.

6. I further find from the letter dated 26.09.2017 issued under the signature of the Director, Forensic Science Laboratory, Patna, as contained in Annexure-6 to this application, that the signature of Kapileshwar Yadav, which was earlier sent on 20.09.2017 for verification and comparison was returned only because the signature, which was sent to the Forensic Science Laboratory, contained endorsement that the signature was of Kameshwar Yadav and not of Kapileshwar Yadav. Hence, the petitioners are not right in their submission that earlier the Forensic Science Laboratory had returned the signature of Kapileshwar Yadav sent earlier as the signature taken during the contemporary period was not available.

7. Having regard to the facts and circumstances of the case, since the order is not without jurisdiction and the same does not suffer from any procedural illegality, in the opinion of this Court, no interference with the order impugned is warranted. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.07.2019
Transmission Date	

