

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.172 of 2019

Paro Devi aged about 59 years, (Female) W/o Shivanand Uraon Resident of
Village- Kajhi Hridaynagar, P.S.- Banmankhi, District- Purnia

... .. Defendant/Petitioner

Versus

1. Kalo Devi W/o Sri Ramchandra Uraon, D/o Late Sanichar Uraon and Late Bhagiya Devi @ Jhangi Devi Resident of Village- Suraity, P.S.- Bhawanipur, District- Purnia
2. Mahavir Uraon S/o Late Sanichar Uraon and Late Bhagiya Devi @ Jhangi Devi Resident of Village and P.O.- Bishanpur Deorhi, P.S.- Dhamdaha, District- Purnia
3. Dhania Devi @ Dhansaria Devi W/o Late Sukru Uraon, D/o Late Sanichar Uraon and Late Bhagiya Devi @ Jhangi Devi Resident of Village- Madhonagar, P.S.- Dhamdaha, District- Purnia
4. Shushila Devi W/o Late Doma Oraon, D/o Late Sanichar Uraon and Late Bhagiya Devi @ Jhangi Devi Resident of Village- Aaloo Bathan, P.O.- Orahi, P.S.- Barhara Kothi, District- Purnia
5. Sumo Devi W/o Dilip Oraon, D/o Late Sanichar Uraon and Late Bhagiya Devi and Jhangi Devi Resident of Village- Radha Nagar, P.O. and P.S.- Banmankhi, District- Purnia
6. Sohan Orawn H/o Late Koshalya Devi and Son-in-Law of Late Sanichar Orawn Residents of Village and P.O.- Madonagar, P.S.- Dhamdaha, District- Purnia
7. Binod Uraon S/o Sohan Orawn and grand son of Late Sanichar Orawn Residents of Village and P.O.- Madonagar, P.S.- Dhamdaha, District- Purnia
8. Rani Kumari D/o Sohan Uraon and maternal grand daughter of Late Sanichar Orawn Residents of Village and P.O.- Madonagar, P.S.- Dhamdaha, District- Purnia
9. Most. Parwati Devi W/o Late Rubbi Uraon Residents of Village- Adibasi Tola Bishariya, P.O.- Agarthappa, P.S.- Bhargama, District- Araria
10. Mahendra Uraon Son of Late Harh Uraon Residents of Village- Adibasi Tola Bishariya, P.O.- Agarthappa, P.S.- Bhargama, District- Araria
11. Gajendra Uraon Son of Late Harh Uraon Residents of Village- Adibasi Tola



- Bishariya, P.O.- Agarthappa, P.S.- Bhargama, District- Araria
12. Rajendra Uraon Son of Late Harh Uraon Residents of Village- Adibasi Tola
Bishariya, P.O.- Agarthappa, P.S.- Bhargama, District- Araria

... ..Plaintiffs/Respondents

Appearance :

For the Appellant/s : Mr.Arbind Kumar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-03-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside order dated 17.12.2018 passed in Title Suit No. 112 of 2008 by the learned Sub Judge, Banmankhi whereby he has rejected the petition dated 16.11.2018 filed by the petitioner in a suit wherein a compromise decree was challenged for examination of thumb impression by third expert in view of two conflicting finger print expert reports.

2. Learned counsel appearing for the petitioner has submitted that the order impugned dated 17.12.2018 is erroneous both on facts and in law, as the same has been passed merely on the ground that the suit is of the year 2008. He has contended that since there were two conflicting reports on the record of the case with regard to admitted and disputed thumb



impressions, in the interest of justice, it was expedient to get the thumb impressions examined through another expert for fair adjudication of the case. He has pleaded that the court below has committed jurisdictional error in not referring the admitted and disputed thumb impressions to third expert when the petitioner was ready to deposit the cost.

3. The respondents have filed Title Suit No. 112 of 2008 seeking the following reliefs:-

“(A) That let it be declared and adjudicated by the court that Decree of Title Suit No. 394/96 is fraudulent, collusive and against law as the plaintiffs never negotiated to sale the suit land to the defendants and never received Rs.32,00/- (thirty two thousand) and never filed any compromise petition in Title Suit No. 394 of 1996 and never filed any miscellaneous case no.16/97 nor filed withdrawal petition.

(B) That after adjudicating the above relief let it be further declared that Decree in Title Suit No.394/96 is not binding on the plaintiffs.”

4. The petitioner, who has been made defendant in the suit, filed her appearance on receipt of notice. She has also filed her written statement raising question regarding maintainability



of the suit.

5. Initially, the petitioner had filed a petition for examination of disputed thumb impression by a finger print expert and, with consent of the parties, one Shivendra Nath Mishra was appointed as expert to examine the admitted and disputed thumb impressions by order dated 08.01.2016. After examination, he submitted his report with opinion that the disputed thumb impressions said to be of Parvati Devi, which are affixed on compromise petition filed in Title Suit No.394 of 1996 dated 03.12.1996 and Misc. Case No. 16 of 1997 and original specimen, thumb impression of Parvati Devi have been affixed by the same finger of the same hand and the same person. Subsequently, at the request of the respondent, the court below directed for examination of admitted and disputed thumb impressions once again. The admitted and disputed thumb impressions were sent to the Director Finger Print Bureau, CID, Bihar for expert report. The report submitted by Director Finger Print Bureau, CID, Bihar is in conflict with the report submitted earlier by the private expert.

6. Being aggrieved, the petitioner filed an application on 16.11.2018 praying therein that the admitted and disputed thumb impressions of Parvati Devi be sent to a third expert at



her cost in view of two conflicting reports on the record. The said prayer of the petitioner has been rejected by the learned Sub Judge, Bankankhi vide impugned order dated 17.12.2018.

7. The grievance of the petitioner is that in absence of any conclusive report, it was incumbent upon the court below to have allowed the application filed for sending the admitted and disputed thumb impressions to a third expert. By not allowing the same, the court below has made a jurisdictional error.

8. Section 67 of the Evidence Act casts a duty upon the person who produces a document, which he alleges is signed or written by a certain person to prove that fact. Section 45 of the Evidence Act provides that when the court has to form opinion as to identify of handwriting or finger-impressions, the opinions upon the point of persons specially skilled in question as to identity of handwriting or finger-impressions are relevant facts. Section 47 of the Evidence Act provides that when the court has to form an opinion as to person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of that person by whom it is supposed to be written or signed that it was not written or signed by that person is a relevant fact. Section 73 of the Evidence Act enables the court to compare the signature, writing or seal with



other admitted facts. Thus, when the opinion of experts have been taken, which are conflicting the court may verify the opinion and test their reliability under Section 73 of the Evidence Act.

9. In case of doubt about the genuineness of handwriting, signature, finger impression, etc., the court can compare the disputed hand writing, signature or finger impression with admitted signature and finger impression.

10. The court has also the discretion to send the disputed and admitted thumb impressions for comparison by an expert. However, the opinion given by the expert still remains an opinion and cannot be treated as conclusive.

11. In **Pandit Ishwari Prasad Misra v. Mohd. Isa**, [AIR 1963 SC 1728], the Supreme Court observed : “*Evidence given by experts of handwriting can never be conclusive, because it is, after all, opinion evidence*”.

12. Section 45 the Evidence Act does not mandatorily require the court to send a disputed thumb impression for expert opinions as a matter of course. Only when the court forms an opinion that having regard to the facts of a particular case, it is necessary for asking the opinion of the expert, it can send hand writing, finger impression or thumb impression for an



expert opinion. If the court below, having regard to the facts of the case, after obtaining the two conflicting reports decided not to send the admitted and disputed thumb impression to third expert for opinion, the petitioner has no right to insist that admitted and disputed thumb impression be sent for the opinion of the third expert. No hard and fast rule can be laid down in this regard and the court has to exercise its discretion in a sound and rational manner having regard to the facts involved in the case brought before it.

13. In the instant case, as the court below has formed an opinion not to send the admitted and disputed thumb impression to a third expert for opinion, it cannot be said that the discretion exercised by the court below is either unsound or irrational. No interference of this Court, in exercise of its supervisory jurisdiction, under Article 227 of the Constitution of India, is warranted.

14. The application is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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