

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.484 of 2019

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1. Ram Kishun Yadav son of Late Pokhan Yadav,
 2. Kesar Yadav son of Late Pokhan Yadav,
 3. Bhuneshwar Yadav son of Late Pokhan Yadav,

All are residents of village- Bhare, Tola- Barki Dhuba, Police Station
Fatehpur, District-Gaya.

... .. Plaintiffs-Petitioners

Versus

1. Ramswaroop Yadav son of Late Kameshar Yadav,
2. Ramroop Yadav, son of Late Kameshar Yadav,
Both are resident of village- Bhare Tola, Barki Dhuba, Police
Station- Fatehpur, District-Gaya.
3. Malo Devi, daughter of Late Kameshar Yadav, resident of village, Hamjo,
Police Station- Wazirganj, District- Gaya.
4. Sabuja Devi, daughter of Late Kameshar Yadav, resident of village-
Maniyara, Police Station- Muffasil, District- Gaya.
5. Krishna Yadav husband of Late Sabita Devi, resident of village- Ashrail,
Police Station -Tankuppa, District- Gaya.
6. Ramdeo Yadav, son of Late Latan Yadav,
7. Parmeshwar Yadav, son of Late Latan Yadav,
8. Nandu Yadav, son of Late Jageshwar Yadav,
9. Deonandan Yadav, son of Late Jageshwar Yadav,
10. Ramashish Yadav, son of Late Jageshwar Yadav,
11. Ranjeet Yadav, son of Late Jageshwar Yadav,
12. Inderdeo Yadav, son of Late Kishun Yadav,
13. Ram Roop Yadav, son of Late Kishun Yadav,
14. Nagia Devi, daughter of Late Kishun Yadav,
15. Sunaina Devi, daughter of Late Kishun Yadav
16. Nandu Yadav, husband of Kunti Devi, daughter of Late Kishun Yadav

Nos.6 to 16 are residents of village- Bhare Tola, Barki Dhuba, Police
Station- Fatehpur, District-Gaya.

.....Defendants- Respondents

17. Mahabir Yadav, son of Late Puna Yadav



18. Banbari Yadav, son of Late Puna Yadav,

.... Nos.17 and 18 are residents of village- Bhare Tola, Barki
Dhuba, Police Station- Fatehpur, District-Gaya.

... .. Plaintiffs- Proforma Respondents

Appearance :

For the Appellant/s : Mr.Khatim Reza, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-08-2019

Heard Mr.Khatim Reza, learned counsel for
the petitioner.

2. This application under Article 227 of the
Constitution of India has been filed by the petitioner
challenging the order dated 19.09.2018 passed in Title Suit
No.23 of 2015 by the learned Sub-Judge-VII, Gaya whereby the
application dated 24.03.2018 filed by the plaintiffs for taking
photograph of thumb impression of Soni Gopi over the disputed
sale deed and the admitted sale deed and send the same to the
Government Forensic Laboratory, Patna for its scientific
enquiry and report, has been rejected on the ground that the
registered sale deed dated 05.09.2017 is not an admitted
document.

3. The brief facts of the case are that Title Suit
No.301 of 2006 (Title Suit No.23 of 2015) was filed by the



plaintiffs for declaration of right, title and possession over the entire suit land mentioned in Schedule A, B and C of the plaint. The defendants filed their written statement contesting the case of the plaintiffs. The defendant no.9 Kishun Yadav claimed himself to be the purchaser from Soni Gope and Paran Gope vide registered sale deed dated 19.09.1949 of the disputed land. Thereafter, the plaintiffs filed an application dated 24.03.2018 for taking photograph of thumb impression of Soni Gopi over the disputed sale deed and the sale deed executed by Soni Gope on 05.09.1957 and sending them to the Government Forensic Lab., Patna for its scientific enquiry and report.

4. The defendant nos.4 to 4B (heirs of original defendant no.9) filed reply dated 09.05.2018 contesting the issue raised by the plaintiffs and opposing the prayer for sending photograph of thumb impression of the sale deeds containing thumb impression of Soni Gope for scientific examination.

5. Though the petitioners claim the sale deed dated 05.09.1957 to be correct and genuine, the defendants contended that the same is neither admitted nor genuine but a forged and fabricated document prepared by the plaintiffs and thus, the same should not be sent to the Forensic Science



Laboratory for scientific enquiry as the same would be a futile exercise.

6. Having considered the rival submissions, the trial court rejected the application dated 24.03.2018 filed by the plaintiffs. The main ground on which the application of the plaintiffs has been rejected is that the thumb impression of Soni Gope on the sale deed dated 05.09.1957 is not admitted by the defendants and cannot be relied to be genuine, bona fide, true and correct.

7. Having considered the totality of the circumstances, I find that the order impugned is neither without jurisdiction nor the same is perverse. The thumb impression of Soni Gope on the sale deed dated 05.09.1957 is not admitted by the defendants. The defendants have categorically stated in their written objection filed before the trial court that the sale deed dated 05.09.1957 brought by the plaintiffs is not genuine and bona fide rather the same is forged and fabricated. Since the sale deed dated 05.09.1957 is not an admitted document, the trial court held that no purpose would be served by sending the photograph of thumb impression on the sale deed dated 05.09.1957 for comparison with the thumb impression of Soni Gope on the sale deed dated 19.04. 1949.



8. Under Section 45 of the Evidence Act, the opinion of an expert is a relevant fact. Such opinion is not binding on the court.

9. Whenever a party disputes the signature on a document, under Section 73 of the Evidence Act, the discretion is available to the court itself to compare the signature or seek expert's opinion in this regard.

10. However, the expert's opinion is not conclusive and binding on the court. It has simply a persuasive value.

11. In that view of the matter, I see no reason to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India, which has been passed by the trial court in its discretionary jurisdiction.

12. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.08.2019
Transmission Date	

