

**08.04.2021**

Item No. 30

Crt. No. 07

b.r.

**C.O. 3492 of 2018**

***Shankari Chitrakar***

***-vs-***

***Tapan Chitrakar & Ors.***

Mr. G.C. Ghosh

..... for the petitioner.

Mr. Pratyush Kumar Ray

Mr. Soujanya Bandyopadhyay

Mr. Soumya Ray

..... For the Respondents.

The plaintiffs have filed the instant application under Article 227 of the Constitution of India challenging an order dated June 14, 2018 passed by the Learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Howrah in Title Suit No. 34 of 2013.

The petitioner herein filed a suit for declaration that the alleged deed of sale purported to have been executed by the plaintiffs is void, invalid and is not binding upon the plaintiffs and for partition and other consequential reliefs.

The defendant no.1/opposite party no.1 herein took out an application under Order 26 Rule 10A of the Code of Civil Procedure read with Section 73 of the Indian Evidence Act praying for appointment of finger print expert to identify the finger print of Doli Chitrakar appearing in the deed of conveyance dated 5.11.1986 as according to the defendant no.1 herein Dolly Chitrakar is now claiming herself as Shankari Chitrakar.

The petitioner herein contested the said application for appointment of finger print expert contending that the petitioner herein did not execute the alleged deed of sale and further contended that Doli Chitrakar and Shankari Chitrakar are different persons.

The learned Trial Judge by the order impugned directed the petitioner herein to be present in Court as and when directed to give her left thumb impression.

Being aggrieved by the said order, the petitioner filed the instant application.

Mr. Ghosh, learned advocate for the petitioner contends that the petitioner has challenged the execution of the deed of conveyance. He further contends that the suit has not yet reached the stage of evidence and the parties have not yet produced the documents including the purported deed of conveyance before the Court. Mr. Ghosh further contends that the stage has not yet arrived for the court to have an expert opinion on such questioned documents and signature as the documents which contains the purported signature of Doli Chitrakar is yet to be marked as exhibit. In support of his contention, Mr. Ghosh relied upon a judgement of a Co-ordinate Bench in the case of ***Swami Satyanand vs. Rajiv Ranjan Kumar Singh in C.O. No. 2358 of 2011.***

Mr. Roy, learned advocate for the opposite party seriously disputed the contentions of Mr. Ghosh. He contends that the instant application under Article 227 of

the Constitution of India is a pre-mature one inasmuch as the Court has not yet returned any finding with regard to the comparison of the thumb impression of the petitioner herein. He further submits that the Court has the power to call for the documents and as such the order directing the plaintiff to give her thumb impression does not suffer from any infirmity.

I have heard the learned advocate for the parties and considering the materials on record.

With regard to the objection raised by Mr. Roy, learned advocate for the opposite party as to the maintainability of the instant application on the ground that the same is pre-mature one, in my view, cannot be accepted as the Court below, by the order impugned called for a report from the Bureau of Questioned Documents as to the estimated cost of comparing the Left Thumb Impression and also directed the plaintiff to be present in Court as and when directed by the Court to give her thumb impression. Thus, the learned trial Judge has already arrived at a conclusion that such comparison by the finger print expert is necessary but the plaintiff was directed to give his thumb impression after the report is submitted by the Bureau of Questioned Documents as to the estimated cost thereof.

It is not in dispute that the suit has not yet reached the evidence stage, and also that the document which contains the disputed finger print impression of Dolly Chitrakar is not on record. Furthermore, the admissibility of

the document has also been questioned on the ground that the same is forged and fabricated one.

A Co-ordinate Bench of this Court in the case of *Swami Satyanand (Supra)* on identical facts held that the trial Court can exercise the power for examination of questioned document by an expert after the said document is produced in evidence.

Since the questioned document has not been tendered in evidence, this Court is of the considered view that stage has not yet arrived for the Court to have an expert opinion on the questioned finger print impression.

For the reasons aforesaid the impugned order suffers from infirmity and the same is accordingly set aside and quashed.

However, the opposite party herein will be at liberty to make an appropriate application for comparison of the questioned finger print impression by a finger print expert at the subsequent stage of the suit when such occasion will arise. If such application is made, the learned trial Judge will be free to decide the same in accordance with law after giving an opportunity of hearing to the parties.

C.O. 3492 of 2018 stands disposed of with the aforesaid observation.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

***(Hiranmay Bhattacharyya, J.)***