

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1043 OF 2022

Bhaskar Chandra Pattanaik* *Petitioner

Mr. A. Mahanta, Advocate

-versus-

Bidut Prava Pattanaik and others* *Opp. Parties

Mr. Bhaskar Chandra Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 13th October, 2022 (Annexure-8) passed in Test Case No.26 of 2013 (arising out of O.S. No.5 of 2015), whereby learned Civil Judge (Senior Division), Salipur rejected an application filed by him with a prayer to call for the records of family pension from the Sub-Treasury, Mahanga (PRO No. 33985 TBS) and also to call for the original records in OJC No. 14883 of 1994 from the record room of the High Court of Odisha for the purpose of sending the same to the handwriting expert for comparison.
3. Mr. Mahanta, learned counsel for the Petitioner submits that the test case has been filed for probate of the Will executed by one Niramani Dei in favour of the Petitioner. During pendency of the proceeding, the Defendants-Opposite Parties filed an application to send the Will along with admitted signature of said Niramani Dei for comparison to the

handwriting expert. The said application was allowed vide order dated 10th July, 2018 directing to send the Will executed by Niramani Dei and RSD (relinquishment deed) of the year, 1979 to the handwriting expert for comparison. Being aggrieved, the Petitioner filed CMP No. 48 of 2019, which was disposed of vide order dated 17th May, 2022 confirming the order dated 10th July, 2018. It is his submission that as yet documents have not been sent to the handwriting expert for comparison. In order to facilitate proper examination of those documents, the Petitioner filed a petition on 17th September, 2022 (Annexure-6) to call for the aforesaid documents to be sent to the handwriting expert as those are documents in which contemporaneous signatures of the testatrix, namely, Niramani Dei Pattnaik, are available. Learned trial Court on a misconception of law that there is no law to send the contemporaneous documents for examination, rejected the said application. Hence, this CMP has been filed.

4. Mr. Panda, learned counsel for the Opposite Parties submits that in the application filed by the Defendants to send the RSD of 1979 along with the Will executed by Niramani Dei Pattnaik for comparison, the Petitioner had filed objection specifically stating that there is no contemporaneous documents containing signatures of Niramani Dei Pattnaik available to be examined. Considering such objection, the order dated 10th July, 2018 was passed, which has already been confirmed by this Court in CMP No. 48 of 2019. Hence, the present application to call for certain documents is nothing but to circumvent the order dated 10th July, 2018 passed earlier and to linger the proceeding.

As such, learned trial Court has committed no error in rejecting the application.

5. Considering the submissions made by learned counsel for the parties and on perusal of the record, this Court finds that the application filed by the Defendants for comparison of signature of Niramani Dei Pattnaik was allowed vide order dated 10th July, 2018, which was assailed before this Court in CMP No. 48 of 2019. The said CMP has already been disposed of vide order dated 17th May, 2022 without interfering with the impugned order. It is also submitted by Mr. Panda, learned counsel for the Opposite Parties that pursuant to the said order, the cost for sending the documents to the handwriting expert has already been deposited. The Petitioner although had an opportunity to raise the plea that the aforesaid documents containing contemporaneous signature of Niramani Dei Pattnaik are available on record, he for the reason best known to him did not raise such ground. On the other hand, he allegedly took a plea that no contemporaneous documents containing signature of said Niramani Dei Pattnaik is available as submitted by Mr. Panda, learned counsel for the Opposite Parties.

6. Since the Petitioner although had an opportunity did not raise such objection or plea to send documents containing contemporaneous signature of Niramani Dei Pattnaik for examination, such a plea at a belated stage is not available to him to be raised more particularly when the order dated 10th July, 2018 has already been confirmed.

7. In view of the above, I am not inclined to interfere with the impugned order.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

