

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.936 of 2018**

1. Savitri Devi, W/o- Vishwanath Prasad Singh, Resident of Village and P.O. and P.S.- Barahia, District- Lakhisarai.
2. Mina Devi, W/o Anil Kumar Singh, Resident of Mohalla- Kadamkuan, Dorra Kothi Tin Muhani, P.S.- Kadamkuan, District- Patna.
3. Gayatri Devi, W/o Late Arun Kumar Singh, Resident of Mohalla- Salimpur Danara Kothi, P.S.- Gandhi Maidan, District- Patna.
4. Vishwanath Prasad Singh, S/o Late Ram Padarath Singh, Resident of Village- P.O. and P.S.- Barahia, District- Lakhisarai.
5. Ashok Prasad Singh, S/o Late Krishna Kumar Prasad Singh, Resident of Village- Daudnagar, Shekhpura Niwas Afim Kothi, Ward No. 26, Near Cinema Hall, Daudnagar, District- Aurangabad.

... .. Petitioner/s

Versus

Janeshwar Singh @ Janeshwar Yadav, S/o Late Banbari Yadav, Resident of Village- Tarar Tola Misir Bigha, P.S. Daudnagar, District- Aurangabad.

.. ... Respondent/s

Appearance :

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

For the Respondent/s : Mr. Purushotam Sharma, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 08-02-2023

This application has been filed against the order dated 05.03.2018, passed by learned Sub-Judge VIII, Aurangabad in Title Suit No. 349 of 2012 (248 of 2016), whereby and whereunder the learned Court below rejected the petition dated



15.12.2017 filed by petitioner for issuance of direction for investigation of age and ink of documents exhibited in the suit.

As per the plaintiff, suit land alongwith other land had been settled by ex-landlord in favour of his grand-father and subsequently name of plaintiff has been entered into the demand register as he is making payment of the rent and getting receipt. The plaintiff has also filed two more title suit against decendants of ex-landlord. Petitioners are also decendants of ex-landlord. The case of the petitioners/defendants is that ex-landlord had never settled the suit land to the grand-father of plaintiff and the settlement paper, if any, is forged and fabricated paper and ex-landlord had never issued rent receipt.

The petitioner filed a petition before the learned court below praying therein that the Zamindari return (Exhibit-2), the Zamindari rent receipt (Exhibit-5) and settlement paper (Exhibit-10) are forged and fabricated documents, thus their age, ink and hand writing may be examined by the Forensic Science Laboratory (C.I.D.), Patna at the cost of the petitioners, which has been dismissed by the Court below.

Heard learned counsel for the parties.

Learned counsel for the petitioners submits that the documents of which genuineness is under challenge are



necessary to be examined by an expert at Forensic Science Laboratory for proper adjudication of the suit and rejection of the petition of petitioner is illegal and the impugned order has been passed without assigning any reason and is liable to be set aside.

On the other hand learned counsel for the respondent by filing counter affidavit has submitted that original record of compensation case was brought by the concern clerk from the office of Additional Collector, Aurangabad in the Court of Sub-Judge VIII, Aurangabad who was examined on oath and there is no chance that documents exhibited by the Court is false and fake. It is further submitted that from the same return plaintiff had got 3.62 acres land but the title suit has been filed by plaintiffs only on 65 decimals land and thus on one side the plaintiff accepted the return to be genuine and on the other hand he denied the existence of return which cannot be allowed in law. Further, he has submitted that on relying the same return and similar settlement paper Title Suit Bearing No. 123 of 2009 (05 of 2011) was also declared by learned Sub-Judge, Aurangabad in which respondent was plaintiff and decendants/coparceners of the petitioners were defendants.

If in the opinion of the Civil Court the evidence of



forensic expert is very much necessary for deciding the dispute between the parties, the Civil Court can invoke the provisions of Order 26, Rule 10 A of C.P.C. An application filed under Order 26, Rule 10 A of CPC will have to be filed at the earliest opportunity in the normal circumstances but the same cannot be dismissed merely on the question of delay alone, unless the same is willful and deliberate.

Having heard the learned counsel for the parties and on perusal of impugned order it appears that the record is at the final stage of trial and the learned trial court observed that all the documents in question have been exhibited by due process of law during the course of evidence and the defendant has not raised any substantial ground to create doubt about the genuineness of the document to show that any document is forged and fabricated and needs investigation.

The learned trial court has taken into consideration the facts and circumstances of the case and has dismissed the application for investigation of documents in question by expert at Forensic Science Laboratory. In my opinion, there is no illegality in the finding recording by the trial court so as to warrant interference by this Court in this jurisdiction.

Accordingly, this Miscellaneous Application is



dismissed.

(Sunil Dutta Mishra, J)

Khushbu/-

AFR/NAFR	NAFR
CAV DATE	23.01.2023
Uploading Date	08.02.2023
Transmission Date	

