

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1308 of 2018

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Manshi Sharma @ Munshi Lohar, Son of Late Kapil Dev Sharma, Resident of Village - Bhalua Makund @ Makundpur, Pargana - Prachalak, P.O. - Bhalsha Khal, P.S. - Jiradei, District - Siwan.

... .. Petitioner/s

Versus

1. Manoj Sharma
2. Ramayan
3. Jitendra
4. Anirudh, All 1 to 4 are sons of Ram Ashish Sharma Resident of Village - Bhalua Mukund, Pargana - Prachalak, P.O. - Bhaishakhal, P.S. - Jiradei, District - Siwan.
5. Rukmaniya Kunwar, wife of Late Kapildev Sharma
6. Shivdayal Sharma
7. Nandlal Sharma
8. Janak Sharma
9. Hemwanti Devi
10. Indramati Devi
11. Asarfi Devi
12. Lilawati Devi, All 6 to 12 are sons/daughter of Late Kapildev Sharma, All 5 to 12 are resident of Village - Bhalua Makund @ Makundpur, Pargana - Prachalak, P.O. - Bhaisha Khal, P.S. - Jiradei, District - Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 19-05-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 23.06.2018 passed by learned Munsif- 1st, Siwan in Title Suit No. 132 of 2000 whereby the learned Court below has



rejected the petitioner's application dated 24.05.2012 to obtain expert opinion of the signature of Kapildev Sharma.

3. The original plaintiff namely Kaushali instituted Title Suit No. 132 of 2000 for redemption of mortgage deed dated 10.09.1984 executed by Late Kapildev Sharma. The original plaintiff Kaushali executed sale deed on 10.09.1984 in favour of Kapil Dev Sharma and on the same day Kapil Dev Sharma executed mortgage deed in favour of Kaushali stating therein that if the entire amount of consideration is returned within 7 years, the land shall be return back to Kaushali. The plaintiff did not pay the amount within the period prescribed but on request, Kapil Dev Sharma executed one Sada Agreement dated 03.03.1992 wherein the period stated in agreement dated 10.09.1984 was extended for another 7 years. After demise of Kapil Dev Sharma and after completion of period prescribed, the plaintiff approached the defendants and requested them to return back the documents which the defendant declined. Hence, the aforesaid suit filed for redemption of agreements dated 10.09.1984 and 03.03.1992 and thereafter for recovery of possession. The defendants in their written statement denied the existence of any Sada Agreement dated 03.03.1992.

4. During course of trial of the suit the plaintiff was



allowed vide order dated 16.04.2012 to get comparison of signature of Kapil Dev Sharma upon 4 documents executed by Kapil Dev Sharma available on record which have been exhibited i.e., agreement dated 10.09.1984, 27.11.1984, 15.11.1989 and 03.03.1992 which was consented by the defendants. The expert took photograph of all signatures mentioned in the all four deeds and submitted his report in the Court and thereafter expert was examined and cross-examined by the parties. The report of expert and photographs were made exhibits.

5. Learned counsel for the petitioner has submitted that the registered agreement/mortgage deed executed by Kapil Dev Sharma is an admitted document whereas the *Sada* agreement dated 03.03.1992 executed by Kapil Dev Sharma is disputed document and, therefore, comparison of signature of Kapil Dev Sharma made upon admitted document and disputed document is necessary in the interest of justice. Further, he has submitted that the petitioner has a legal right to get report from the expert and the learned trial Court failed to exercise its jurisdiction.

6. On the other hand, learned counsel for the respondents has submitted that the petitioner at subsequent stage



sought for relief to get compare signature of Kapil Dev Sharma only on two document which can not be allowed in the facts and circumstances of the case. Further, it is submitted that the suit is pending since year 2000 and in view to protract the litigation, such application has been moved by the defendant/petitioner which is liable to be rejected.

7. Under Order 26 Rule 10 A of the CPC, the Court has to decide as to whether the scientific investigation is necessary for the purpose of deciding the case. Only if the Court considers it necessary or expedient in the interest of justice to do so, it would issue a commission to such person as it think fit, directing him to inquire into such question and report thereon to the Court.

8. In Padam Sen and another Vs. The State of UP (AIR 1961 SC 218), the three Judge Bench of the Hon'ble Supreme Court has held that it is not the business of the Court to collect evidence in favour of one party.

9. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusion so as to enable the judge to form his independent judgment by the application of this



criteria to the facts proved by the evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

10. Expert opinions could give much more clarity for arriving at a decision upon the truth and genuineness of a disputed document. The expert is expected to give reasons in support of his opinion. The party concerned, at their discretion, can cross-examine the expert.

11. When the defendant denies the signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps for examination of a disputed signature by sending the document to a handwriting expert. The party who propounds the document will have to prove it and not the defendant to prove the negative.

12. Evidence of identity of handwriting has been dealt with three Sections i.e. 45, 47 and 73 of the Indian Evidence Act, 1872. The signature of a person will change or vary with the passage of time.

13. The question of appointment of commission does not depend upon merely whether any prejudice will be caused or not. In stead, there should be sufficient basis and justification as



also an effective need.

14. The scope of jurisdiction under Article 227 of the Constitution is restricted. It has to be exercised sparingly and in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority.

15. Since the impugned order is neither without any jurisdiction nor it suffers from any error, no ground is made out for interference by this Court under supervisory jurisdiction. The Civil Miscellaneous Application is devoid of merit and liable to be rejected.

16. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	17.03.2023
Uploading Date	19.05.2023
Transmission Date	

