

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.731 of 2016

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Shashi Shekhar Prasad, S/o Late Naresh Mohan Prasad resident of fort Muger,
P.S. Kotwali, P.O. and District - Munger

... .. Petitioner/s

Versus

- 1.1. Most. Sumitra Devi, W/o Late Premchand Sah, resident of Mohalla-Chowk Bazar, P.S.- Kotwali, P.O. and District-Munger.
- 1.2. Manoj Sah, S/o Late Premchand Sah, resident of Mohalla-Chowk Bazar, P.S.- Kotwali, P.O. and District-Munger.
- 1.3. Kanchan Kumari, D/o Premchand Sah, resident of Mohalla-Chowk Bazar, P.S.- Kotwali, P.O. and District-Munger.
- 1.4. Kiran Devi, D/o Late Premchand Sah, resident of Mohalla-Chowk Bazar, P.S.- Kotwali, P.O. and District-Munger.
2. Onkar Nath Sah, S/o Late Gaya Prasad, Both resident of Mohalla - Chowk Bazar, P.S. - Kotwali, P.O. and District - Munger
3. Kishore Sah, S/o Late Bishwanath Prasad
4. Arun Kumar, S/o Late Prakash Jee Both resident of M/s Padal Car Cyce Store, Mohall Chowk Bazar, P.S.- Kotwali, P.O. and District Munger
5. Kunj Bihari Prasad, S/o Late Naresh Mohan Prasad
6. Shiv Shankar Prasad, S/o Late Naresh Mohan Prasad All resident of Fort Muger, P.S. - Kotwali, P.O. and District Munger
7. Smt. Asha Rani, W/o - Late Upendra Prasad Gupta Resident of Mohalla - Chunihari Tola, P.S. - Kotwali, District Bhagalpur
8. Smt. Kiran Rani, Prasad W/o - Sri Sadashiv Prasad Gupta Resident of Mohalla - Mohaddi Nagar, P.S. - Kotwali, District - Bhagalpur
9. Smt. Raj Lakshmi Saha, W/o - Dr. Ravindra Saha, Resident of Datun, District - Midnapur, West Bengal

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Ashish Anand, Advocate Mr. Kumar Gaurav, Advocate
For the Respondent/s	:	Mr. Kumar Laliteshwar Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 31-07-2023



Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India for quashing the order dated 22.06.2016 passed by the learned Munsif 2nd, Munger by which he allowed the petition dated 16.06.2016 filed by the defendants for appointment of handwriting expert and also to quash the subsequent order dated 27.06.2016 passed by the same court rejected the recall application dated 27.06.2016 filed on behalf of the plaintiff/petitioner.

3. The brief facts of the case are that the plaintiff filed Eviction Suit No. 24 of 1993 against the defendants praying for a decree for eviction of the suit premises in favour of the plaintiff with a direction to the defendants to vacate the suit premises. It is claimed that suit premises belongs to late Naresh Mohan Prasad (father of plaintiff-petitioner) who inducted father of defendant 1st set on monthly rent of Rs. 30/-. He paid the rent till 1981 and sub-let the disputed premises to defendant 2nd Set. Legal notice send by him was not replied. Ultimately, eviction suit was filed.

4. On appearance, the written statement filed on behalf of the defendant No. 4 who denied the landlord-tenant



relationship and taken plea that late Naresh Mohan Prasad has executed an unregistered sale deed dated 30.12.1977. After completion of pleading, issues were framed, trial of Suit has commenced. During the plaintiff's evidence, a prayer was made on behalf of the plaintiff for scientific examination of the signature of Late Naresh Mohan Prasad with the admitted document with disputed one for which the defendant has given his consent and document was sent to State Examination Department for comparison of the said signature who sought more documents for which the party showed difficulty and with the consent of defendant the Court allowed the plaintiff to get the comparison of his signature by the private signature expert. The report of the expert has been sent to the Court in a sealed pack which was opened in the court in presence of both the parties. No objection has been filed on behalf of the defendants against the said report.

5. During the evidence on behalf of the defendants, an application on 16.06.2016 was filed on behalf of defendants to allow defendants to take step for expert opinion regarding the signature of Late Naresh Mohan Prasad both admitted and disputed. The said application was objected by the petitioner. However, learned trial court has allowed the said



petition vide order dated 22.06.2016 without assigning cogent reason. A recall application was also filed by the petitioner which was also rejected by the learned Trial Court vide order dated 27.06.2016 observing that it is true that defendants have never objected the report of expert but if defendants want to examine the signature of Naresh Mohan Prasad on its own level then it can be presumed that they are not agreed with the expert report.

6. Learned counsel for the petitioner submits that the learned court below has passed the order ignoring the settled principles of law that if one report of the expert is on record then without setting aside the same, taking the second report from another expert is against the settled law.

7. In this regard, he has referred the judgment of this Court in **Saudagar Mahto Vs. Ram Charitra Mahto** reported in **2015 (2) PLJR 52**. He also relied on the Full Bench Judgment of this Court in **Asifunisa Vs. Ah Imam** reported in **1992 (1) PLJR 380** and also the judgment of Division Bench of Kerela High Court in **Swami Premanand Bharathi Vs. Swami Yogananda Bharathi & Anr.** reported in **AIR 1985 Kerala 83**.

8. Per Contra, learned counsel for the



respondents submits that due to denial by the plaintiff with respect to execution of sale deed dated 30.12.1997 executed by Late Naresh Mohan Prasad, the burden of proving the genuineness of his signature is on defendants and it is in the interest of justice that contesting defendant may be permitted to prove his case by examination of the said signature by another handwriting expert. He further submitted that when the plaintiff has examined the disputed signature by the hand writing expert by private expert then the defendant- respondent has right to dispute the same and can examine the another hand writing expert so that both the reports shall assist the court to find out the true fact. He has relied on the judgment of this Court passed in **Janardan Singh Vs. Aseem Sunder Das** reported in 1997 (2) PLJR 584.

9. In the judgment of **Saudagar Mahto Vs. Ram Charitra Mahto** (supra), it was observed placing reliance on the judgment of Full Bench of this Court in **Asifunisa Vs. Ah Imam** (supra) that the Court has power to issue second commission after setting aside the report of first commissioner under Section 151 of CPC, if any situation arises. In paragraph 9 of the said judgment, this Court observed that “In such view of the matter, I find no hesitation in holding that the court below



could not have passed the order for appointment of second finger print cum handwriting expert without setting aside the earlier order.

10. The Division Bench of the Kerela High Court was of the same view wherein there was question whether the appointment of a second commissioner without setting aside the report and proceeding of the first commissioner is jurisdictional error and the court held as under :-

“ Time and again, the Courts have condemned or deprecated the tendency of the subordinate courts in the appointment of a second commissioner before superseding the first commissioner’s report and proceedings. That the first commissioner’s report and proceedings should be set aside for reasons to be recorded and then only the court can proceed to appoint another commissioner to do the work is a wholesome rule of law based on public policy. The precedings in the court below could be expedited, without waste of time and money. We are of the view, that only if the court has reason to be dissatisfied with the proceedings and report of the first commissioner for reasons stated, it can appoint a second commissioner for further inquiry. This is a condition precedent.”

11. This Court in **Janardan Singh Vs. Aseem Sunder Das** (supra), observed that it is well settled that there is no legal bar to the Judge using his own eyes to compare disputed writing with admitted one even without the aid of



evidence of handwriting expert. It was also observed that there cannot be any doubt that the onus to prove the case of the plaintiff was on the plaintiff and not on the defendant, but when the memorandum of lease was examined by the expert at the instance of the plaintiff, then in order to contradict the expert's opinion, onus had shifted on the defendant to get another expert's opinion on examining writings and signatures over the same by expert at his instance.

12. The purpose of expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one.

13. Having heard the learned counsel for the parties and considering the material available on record and the impugned orders, it appears that earlier the signature of Late Naresh Mohan Prasad on documents was sent to state examination department who sought more documents for which parties show difficulty and with the consent of defendant the same was examined and given report by Private hand writing expert. The report of the expert opinion was filed on the record but the defendant/ respondent has not objected the same report.

14. Now the question is when the first report is on record and the same has not been set aside by the Court and



there is no objection against the said report by the respondent then the filing of petition by defendant for examination of said signature of Late Naresh Mohan Prasad by another private expert cannot be treated as objection of the defendant/ respondent on the report of the first handwriting expert.

15. In view of the settled principles, as stated above, the order of appointment of second hand writing expert vide the impugned orders are illegal and, accordingly, set aside.

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

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.08.2023
Transmission Date	

