

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.797 of 2019

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1. Menka Devi (deleted vide order dated 26.07.2023) W/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 2. Jagat Prasad Singh S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 3. Deo Prasad Singh S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 4. Nawal Kishore Singh S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 5. Sunil Kumar S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 6. Raj Kumar S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna
 7. Keshav Ranjan S/o Late Ramchandra Singh Resident of Village-Rukunpura,P.O. B.V. College,P.S. Danapur now Rupaspur,.Dist.Patna

... .. Petitioners

Versus

Most. Brahmadei Devi W/o Late Gajendra Rai and D/o Late Bimal Sharan Singh Resident of Village-Gopalpur,P.S. Maner,Dist.-Patna at present residing at Village Rupaspur,P.S. Danapur,now Rupaspur,P.O. Shastrinagar,Dist.-Patna.

... .. Respondents

with

CIVIL MISCELLANEOUS JURISDICTION No. 470 of 2023

1. Jagat Prasad Singh Son of Late Ramchandra Singh Residents of Village-Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna
2. Deo Prasad Singh Son of Late Ramchandra Singh Residents of Village-Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna
3. Nawal Kishore Singh Son of Late Ramchandra Singh Residents of Village-Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna
4. Sunil Kumar Son of Late Ramchandra Singh Residents of Village-Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna
5. Raj Kumar Son of Late Ramchandra Singh Residents of Village- Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna



6. Keshav Ranjan Son of Late Ramchandra Singh Residents of Village-
Rukunpura, P.O.-B.V. College, P.S.-Danapur now Rupaspur, District-Patna

... .. Petitioners

Versus

Most. Brahmadei Devi W/o Late Gajendra Rai and D/o Late Bimal Sharan
Singh Resident of Village-Gopalpur, P.S.-Maner, District- Patna at present
residing at Village-Rupaspur, P.S. - Danapur, now Rupaspur, P.O.-
Shashtrinagar, District-Patna

... .. Respondents

Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 797 of 2019)

For the Petitioner : Mr. R.K.P. Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate
For the Respondents : Mr. P.N. Shahi, Sr. Advocate
Mr. Amar Nath Singh, Advocate

(In CIVIL MISCELLANEOUS JURISDICTION No. 470 of 2023)

For the Petitioner : Mr. R.K. P. Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate
For the Respondents : Mr. P.N. Shahi, Sr. Advocate
Mr. Amar Nath Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
COMMON ORAL JUDGMENT**

Date : 24-09-2024

Since the issue involved in both the cases are
similar and arising out of the same Title Suit bearing Title Suit
No.04 of 2005, they have been heard together and are being
disposed of by this common judgment.

2. In C. Misc. No.797 of 2019, the petitioners
have challenged the order dated 08.02.2019 and consequential
order dated 22.04.2019 passed by the learned Munsif, Danapur,
in Title Suit No.04 of 2005, whereby the defendant no.1 was
permitted to bring the thumb impression (T.I.) register of the gift
deed bearing deed no.18276 of 1985 dated 23.12.1985



registered at Kolkata registry office, in which one of the plaintiffs namely, Jagat Prasad Singh, was an attesting witness, at her own effort and also permitted her to file *Dasti* summon.

3. In C. Misc. No.470 of 2023, the same petitioners have challenged the order dated 17.03.2023 passed by the learned Munsif in Title Suit No.04 of 2005, by which the petition dated 10.12.2020 filed by the petitioners-plaintiffs for recalling the order dated 08.11.2019 passed by the then Munsif, Danapur, has been rejected.

4. It is the case of the petitioners that the father of the petitioners filed Title Suit No.04 of 2005 before the Court of learned Munsif, Danapur for adjudication of his title, degree for permanent and perpetual injunction in favour of the plaintiff against the defendants restraining them from interfering with the title and possession of the plaintiff over the land described in schedule-1 and 2 of the plaint. The original plaintiff died during the pendency of the suit and in his place, the heirs and legal representatives were substituted. The defendant no.1 appeared and filed written statement denying the case of the plaintiffs. The other defendant nos. 4, 5 & 7 supported the case of the plaintiffs in their written statement. In course of trial, the petitioners filed a petition for examination and comparison of



signature, endorsement and thumb impression of Bimla Sharan Singh on two *Wazidaba* with the admitted writing, signature and thumb impression of sale deed dated 24.09.1959. The Court below vide order dated 18.06.2015 refused to send the documents for comparison and expert report on the ground that it has been filed at belated stage.

5. Being aggrieved by the order dated 18.06.2015, the petitioners moved before this Court by way of filing C.W.J.C. No.9891 of 2015. This Court vide judgment and order dated 18.09.2018 allowed the writ petition. Paragraph nos. 5 and 6 of the aforesaid judgment reads as under:-

“5. On going through the submission of both the parties and documents on record, I find that in course of cross examination of PW-1 (plaintiff no.2) a suggestion was given by contesting defendants as regards signature of Bimla Sharan Singh whereafter the petitioners filed petition for scientific examination and comparison of disputed signature with the admitted writing and signature of Bimla Sharan Singh by an expert. It appears that the provision of Benami Act has influenced the mind of the court below. It was not the stage of considering the applicability of Section 4 of Benami Transaction Act. The respondents had raised objection as regards maintainability of the suit in view of provision of Benami



Transaction Act which was rejected by the learned court below as per order dated 20.10.2005. The defendants filed C.R.No.2260 of 2005 before this Court and the same was dismissed as per order dated 04.08.2006. Similar plea was again taken by the defendants which was also dismissed by the court below and also by this Court. The matter relating to maintainability of suit in view of provision of Benami Transaction Act has to be decided during trial. The order rejecting the petition of the petitioners has prejudiced the petitioners as they are entitled to prove their case by adducing oral and documentary evidence.

6. *In view of above discussions, the impugned order refusing to send the Wazidawa deeds and admitted sale deed for comparison and expert report to the Finger Print Bureau, State of Bihar, is set aside and this application is allowed. The court below is directed to give an opportunity to the petitioners to get the disputed writing signature/thumb impression examined and compared by the expert.”*

6. Pursuant to the aforesaid order of this Court, the petitioners filed an application dated 26.11.2018 in the Court below with a prayer to allow them to examine the signature endorsement and thumb impression of Bimla Sharan Singh appearing on the documents mentioned in the earlier petition



dated 22.01.2015 for comparison by an expert and also to send those documents to Finger Print Bureau.

7. It is also the case of the petitioners that till the order dated 18.06.2015 passed by the Court below, the original defendants-respondents did not raise any objection in respect to the document marked as Exhibit-1(C) and all along treated the same as an admitted document, in other words, the contesting defendant no.1-Brahmadei Devi did never object to the execution of Exhibit-1(C) and as such, admitted that Bimla Sharan Singh executed the sale deed marked as Exhibit-1(c) but she in her reply dated 03.12.2018 to the petition dated 26.11.2018 filed by the plaintiffs-petitioners denied the execution of the sale deed dated 24.09.1959 marked as Exhibit-1(c). In the said reply, the certified copies of a deed of gift dated 23.12.1985 bearing deed no.18276 of 1985 registered at Calcutta International Registry Office in favour of Vijay Kumar Singh and Ajay Kumar Singh executed by Bimla Sharan Singh was filed and referred this gift deed as admitted document executed by Bimla Sharan Singh for comparison with the two disputed *Wajidawa* deeds before the Court of learned Munsif. Furthermore, the defendant no.1 also relied upon a registered deed of sale dated 18.10.1985 bearing deed no.15326 of 1985



executed by Bimla Sharan Singh in favour of Adarsh Nirman Shahkari Grih Samitee Limited for the purposes of comparison.

8. It is further the case of the petitioners that the defendant no.1 also filed a petition on 03.12.2018 with a prayer to call for Thumb Impression Register of gift deed dated 23.12.1985 bearing deed no.18276 of 1985 from the concerned Kolkata Registry Office for expert opinion. The petitioners filed a reply on 10.12.2018 to the said petition dated 03.12.2018 alleging therein that the alleged gift deed registered at Kolkata Registry Office is a forged and fabricated document but in order to mislead the Court, the defendant no.1 filed the petition on 03.12.2018. The Court below vide orders dated 08.12.2019 and 22.04.2019 permitted the defendant no.1 to bring the thumb impression register of the gift deed bearing deed no.18276 of 1985 dated 23.12.1985 registered at Kolkata registry office, in which one of the plaintiffs namely, Jagat Prasad Singh was an attesting witness, at her own effort and also permitted her to file *Dasti* summon, which are impugned in C. Misc. No.797 of 2019.

9. It is the further case of the petitioners that on 05.09.2019 a petition was filed by the defendant no.1 prior to the fixed date i.e. 03.10.2019 in the title suit and without serving



copies to the other parties or their counsels in a clandestine manner in order to mislead the Court. It is further submitted that on the fixed/appointed date i.e. 03.10.2019 the learned Munsif was on leave and the matter was fixed for 08.11.2019. On 08.11.2019 the learned Court of Munsif directed the office to call for comparison report from the forensic laboratory as prayed by the contesting defendant no.1 without affording any opportunity to the plaintiffs or the supporting defendants. Therefore, it is submitted that not only the petition dated 05.09.2019 filed by the defendant no.1 was never duly served upon the plaintiff and/or their counsels but also the order dated 08.11.2019 was passed by the learned Munsif, Danapur ex-parte behind the back of the plaintiff-petitioners without affording any opportunity of hearing. Therefore, the plaintiffs filed a petition dated 10.12.2020 for recalling the order dated 08.11.2019. The defendant no.1 filed a rejoinder to the said petition. The learned Munsif, Danapur after hearing both the parties rejected the petition dated 10.12.2020 which is impugned in C. Misc. No.470 of 2023.

10. Learned counsel for the petitioners submits that the original defendant no.1-respondent herein has been litigating with Vijay Kumar Singh and Ajay Kumar Singh in the



mutation proceeding, which travelled up to the Appellate Court in Mutation Appeal No.29 of 1987-88. In the said proceeding, the original defendant no.1 has alleged that the said gift deed executed by her father Bimla Sharan Singh in favour of Vijay Kumar Singh and Ajay Kumar Singh is forged and fabricated. The D.C.L.R, Danapur after hearing the parties has passed a detailed order dated 06.11.1987 after assigning several reasons that the said gift deed executed by Bimla Sharan Singh is not a genuine document.

11. Learned counsel for the petitioners further submit that Vijay Kumar Singh and Ajay Kumar Singh, who are nephews of Bimla Sharan Singh, had preferred Letters of Administration Case Nos.07 and 08 of 1988 before the Court of learned District Judge, Patna on the basis of a Will executed by Bimla Sharan Singh in respect of the land situated in Rupaspur. The defendant no.1-respondent herein contested the aforesaid L.A. cases and in the supplementary objection petition dated 20.05.1988 filed in the said case has stated in paragraph nos. 8, 9 & 13 that the alleged gift deed executed by Bimla Sharan Singh is forged and fabricated. He further submits that in the Title Suit No.04 of 2005 said Vijay Kumar Singh filed a petition dated 23.04.2013 for intervention which was objected by both



the plaintiffs as well as the defendant no.1. In the said intervention petition, original defendant no.1 filed an objection dated 17.06.2013 categorically asserting that the gift deed as well as the Will was never executed by Bimla Sharan Singh and that the same was manufactured deed of gift.

12. It has also been argued that in the said gift deed, one Jagat Prasad Singh of village - Rupaspur appears to be an attesting witness. The contesting defendant no.1 with a *mala fide* intent tried to mislead the Court by correlating the present petitioner - Jagat Prasad Singh (PW-1) with the said attesting witness on the said gift deed. The petitioner no.1-Jagat Prasad Singh in his cross-examination, at para-66, had denied his signature on the forged gift deed as attesting witness. Moreover, it is submitted that the petitioner no.1-Jagat Prasad Singh is a resident of village - Rukanpura but the so-called attesting witness Jagat Prasad Singh on the alleged gift deed is a resident of Village- Rupaspur.

13. It has also been argued that the stand taken by the defendant no.1, which persuaded the Court below to pass the impugned order is not only *malafide* but also self-contradictory, upon which no reliance could have been placed. Therefore, the petitioners filed a detailed objection dated



10.12.2018 mentioning therein the aforesaid facts regarding the L.A. cases, Mutation Appeal Case and the detailed order of the D.C.L.R., however the Court below by an order dated 08.02.2019 and consequential order dated 22.04.2019 allowed the prayer of the defendant no.1 in an erroneous manner.

14. It is the submission of learned counsel for the petitioners that the impugned order dated 08.02.2019 and the consequential order 22.04.2019 are passed on mere surmises and conjectures and therefore are quite erroneous both in law and on facts and are fit to be set aside. Further submission of the petitioners is that the impugned orders are prejudicial to the interest of the petitioners and if they are allowed to stand, shall cause irreparable loss and injury to the petitioners causing miscarriage of justice because a disputed document can not be compared with another disputed document.

15. In both the cases, the sole respondent i.e. contesting defendant no.1 has filed her counter affidavits. In the counter affidavits, it has been stated that said two Bajidawa deeds had not executed by her father Bimla Sharan Singh and the signatures appearing thereon are forged and fabricated. It has also been stated that the respondent had also in para-13 of her written statement has made specific plea that the registered



deeds of Wajidawa dated 01.07.1972 alleged to be executed by the said Bimla Sharan Singh is not true.

16. It has also been stated in the counter affidavit that the petitioners are attempting to establish their title over the suit properties by way of fake deeds of relinquishment which according to the contesting defendant no.1-respondent are not title documents. She submits that the said deed of relinquishment could transfer no right title since it never saw the light of the day till the death of her father i.e. Bimla Sharan Singh. It has also been stated that the contesting defendant no.1-respondent in her written statement before the Court of Munsif, Danapur had categorically stated that for both the sale deeds for the suit properties dated 04.11.1955 and 21.12.1963, the entire consideration amount was paid and borne by her father-Bimla Sharan Singh and further that her father was not a name lender.

17. The contesting defendant no.1-respondent denied the fact that her father Bimla Sharan Singh ever executed any Wajidawa deed in favour of Ramchandra Singh and Ramnandan Singh but fake and fabricated Wajidawa deeds have been manufactured with an intent to grab the suit properties. During the cross-examination of PW-1-Jagat Prasad Singh, the contesting defendant no.1 - respondent suggested that there was



no signature of Bimla Sharan Singh on the two Wajidawa deeds, which was denied by the witness, therefore, it is the submission of the contesting defendant no.1- respondent that the petitioners want to collect evidence by riding over her whereas, the petitioner have to prove their case on its own merit and not exploit the lacuna of the contesting defendant no.1.

18. It has also been stated that the registered deed of gift dated 23.12.2985 executed by her father Bimla Sharan Singh in favour of Vijay Kumar Singh and Ajay Kumar Singh, registered at International Registry Office, Kolkata wherein the plaintiff - Jagat Prasad Singh is one of the attesting witnesses is the document for comparison with the signature and thumb impression on the two disputed Wajidawa deeds. Therefore, a petition dated 03.12.2018 (contained at Annexure-4) was moved by the contesting defendant no.1-respondent to call for the said registered deed of gift for the purpose of comparison. The respondent in her counter affidavit has submitted that the deed of gift dated 23.12.2985 is a genuine one.

19. It has also been alleged that after hearing both the parties on the petition dated 03.12.2018 moved by the contesting defendant-respondent, the Court of Munsif, Danapur



allowed the petition vide order dated 08.02.2019 and subsequent order dated 24.04.2019 which are under challenge. The respondent supports the orders passed by the Munsif being a reasoned one and further submits that the actions of the petitioners are only to linger and delay the litigation. Furthermore, after allowing the petition moved by the contesting defendant-respondent, the Munsif received the said deed from Kolkata Registry and vide letter no.237 dated 16.12.2019 the Munsif, Danapur issued a direction to the Director, Finger Print Bureau, Bihar for providing the details of expert fee and modality of payment. The said payment was duly deposited by the contesting defendant no.1-respondent and thereafter comparison of the thumb impression has already been done whereas, the comparison for signature endorsement is pending.

20. I have considered the submissions of the parties and perused the materials on record.

21. From the records of the case, it appears that the impugned orders dated 08.02.2019 and 22.04.2019 have been passed pursuant to the order of this Court passed in C.W.J.C. No.9891 of 2015. By the aforesaid order, this Court had directed the Court below to give an opportunity to the



petitioners to get the disputed writing signature/thumb impression examined and compared by an expert. From the records of the case, it also appears that the aforesaid order of this Court has not been challenged by the contesting defendant-respondent and thus the same has become final. Now, the petitioners are challenging the order dated 08.02.2019 and 22.04.2019, by which the Court below has not only allowed the prayer of the petitioners for getting the disputed signature endorsement/thumb impression examined and compared by the expert but also permitted the contesting defendant-respondent to bring thumb impression (T.I.) register of gift deed dated 23.12.1985 registered at Kolkata Registry office at her own effort. In my opinion, there is no patent illegality or infirmity in the order dated 08.02.2019 and 22.04.2019 as the Court below has rightly exercised its discretion and allowed both the parties to bring the relevant documentary records for proper appreciation of the case.

22. So far as the objection of the petitioners with regard to the documents produced by the contesting defendant-respondent is concerned, the same can be considered at the final hearing.

23. In view of the aforesaid, the impugned order



dated 17.03.2023, whereby the Court below has rejected the petition filed by the petitioner for recalling the order dated 08.11.2019, by which the Court below called for a comparison report from the Forensic Laboratory as prayed by the contesting defendant-respondent does not warrant interference by this Court.

24. For the foregoing reasons, these petitions stand dismissed with liberty to the petitioners to raise all the objections at the state of final argument of the title suit.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	07.10.2024
Transmission Date	

