

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.909 of 2022

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Murari Prasad S/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town,
District- Siwan.

... .. Petitioner/s

Versus

1. Awadh Kishor Prasad S/o Late Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.
2. Nand Kishor Prasad S/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.
3. Sarita Devi D/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.
4. Usha Devi D/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.
5. Rita Chaurasiya D/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.
6. Nutan Chaurasia D/o Bhola Prasad, R/o Babunia Road, PS and PO Siwan Town, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate
For the Respondent No.1:		Mr. Yogesh Chandra Verma, Sr. Advocate
		Mrs. Kumari Anupam, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 09-07-2024

Heard learned counsel for the petitioner as well as
the learned senior counsel for the respondent No. 1.

2. The instant petition has been filed under Article
227 of the Constitution of India for setting aside the order dated
02.09.2022 passed by learned ADJ 8th Siwan in Title Suit No. 03
2013 (Probate Case No.23/2010) whereby and whereunder the
learned trial court has rejected the petition of the petitioner for



comparing the signature of witness with his *Vakalatnama* filed in some other case.

3. Mr. Chandrakant, learned counsel for the petitioner submits that the learned trial court committed error when it disallowed the petition filed on behalf of the petitioner. Learned counsel further submits that the petitioner and respondent no. 1 are sons of Bhola Prasad, who has been shown as a witness on the Will for which probate has been sought by the respondent no.1. This person Bhola Prasad had earlier filed Title Suit No. 164 of 2003 for declaration of title over Schedule I land and his *Vakalatnama* was marked exhibit in the said Title Suit No. 164 of 2023. The petitioner moved before the learned trial court for comparing the signature of Bhola Prasad on the Will as witness with the signature of Bhola Prasad on *vakalatnama* marked as Ext. A in Title Suit No. 164 of 2023. But the learned Trial Court did not consider the fact that there was no hurdle in allowing the petitioner's petition to get the signature of Bhola Prasad compared with the *Vakalatnama* since *vakalatnama* was a document beyond doubt as Bhola Prasad himself filed the title suit and gave power of attorney to the learned counsel. Moreover, the learned trial Court was duty bound to see that when the signature of witness on the Will is



being challenged, the same needs to be compared with some authentic document and hence the trial court should have got it compared with other available documents. The document from which comparison was sought was an exhibited document of the title suit before a competent court. Thus, the said document can be considered as authentic document for purpose of comparison as Bhola Prasad authorized his learned advocate to appear on his behalf and it cannot be said that Bhola Prasad had not executed the *vakalatnama*. Learned counsel further submits that the learned trial court ought to have further considered the facts and circumstances of the case as the will is completely false and fabricated and the same has been filed for probate only after death of Bhola prasad and thus relevant fact has also not been taken into consideration. Learned counsel further submits that when there is no other document to compare the signature, the document available in the present case, i.e., *vakalatnama* in Title Suit No. 164 of 2003, should have taken into consideration for comparison of signature of Bhola Prasad as witness on Will. Thus, learned counsel submits that the impugned order is not sustainable in the eyes of law and the same be set aside.

4. Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of the respondent no. 1, on the



other hand, contradicts the claim of the petitioner. Learned senior counsel submits that the purportedly containing the signature and sought to be used for comparison is not an admitted document and hence cannot be used for the said purpose. Execution of *vakalatnama* was not before any witness and its authenticity is always doubtful. Purported signature on *vakalatnama* could be under a number of circumstances and when the respondents are not admitting the execution of the *vakalatnama* by Bhola Prasad, such documents could not be taken into consideration by the learned trial Court for making comparison of signature. Moreover, the exhibited document does not contain the signature of the Presiding Officer before the learned Trial Court and it is also not clear who witnessed the signature of Bhola Prasad in filing of *vakalatnama*. All these facts have been considered by the learned trial court before rejecting the prayer of the petitioner and there is no infirmity in the impugned order and hence the same needs no interference.

5. I have given my thoughtful consideration to the submission of the parties. Signature on *vakalatnama* of a person cannot be considered as signature of assured standard for comparison. It is not a document of unimpeachable quality and lacks the required certainty and assurance about the signature.



Moreover, when the same is being challenged or disputed, in that case it is not safe to rely on such document. Moreover, execution of *vakalatnama* in this part is a casual business and signatures on its cannot be considered as signatures of matching and irrefutable quality. The learned trial court rightly avoided to use *vakalatnama* for comparison of signature of Bhola Prasad. Though it is submitted that no other document is available for comparison but I fail to understand why there is insistence on comparison of signature with *vakalatnama* when affidavit or deposition or other similar documents might be available having better credibility than the *vakalatnama*. For the reasons aforesaid, I am of the opinion that the learned trial court acted within jurisdiction and passed a reasonable order which does not need any interference from this Court and the same is affirmed.

6. In the result, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	NA
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