

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.888 of 2022

Ajay Kumar Pandey Son of Late Mahatam Pandey @ Late Mahatm Pandey,
resident of village and P.O.- Rajwara, P.S. - Sahebganj, District - Muzaffarpur.
... .. Petitioner

Versus

1. Sanjay Kumar Pandey son of Late Mahatam Pandey @ Late Mahatm Pandey Resident of village and P.O. - Rajwara, P.S. - Sahebganj, District - Muzaffarpur.
2. Mosst. Dev Kumari Devi, Wife of Late Mahatam Pandey @ Late Mahatm Pandey Resident of village and P.O. - Rajwara, P.S. - Sahebganj, District - Muzaffarpur.
3. Smt. Jay Sheela Kumari, daughter of Late Mahatam Pandey @ Late Mahatm Pandey, wife of Dev Brat Shastri, Resident of village and P.O.- Deoriya, Chaudhary Tola, P.S. - Deoriya, District - Muzaffarpur.
4. Mostt. Pushpa Kumari, daughter of Late Mahatam Pandey @ Late Mahatm Pandey, Wife of Late Manoj Kumar Singh, resident of village and P.O. - Karja, P.S. Karja, District - Muzaffarpur.
5. Smt. Meera Kumari, daughter of Late Mahatam Pandey @ Late Mahatm Pandey, wife of Sri Rakesh Kumar, resident of village - Pokhraiya, P.O. - Gidha, P.S. - Saraiya, District - Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore, Advocate Ms. Rupa Kumari, Advocate Mr. Jay Prakash Singh, Advocate
For the Respondent/s	:	Mr. Niranjana Kumar, Advocate Mr. Shubham Singh, Advocate Mr. Bipin Yadav, Advocate Mr. Ravi Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-10-2024

Heard learned counsels for the respective parties.

02. The present petition has been filed under Article 227 of the Constitution of India on behalf of the petitioner for setting aside the order dated 14.10.2022 passed by the learned Additional District Judge-II, Muzaffarpur in Probate Case No. 18 of 2012, whereby and whereunder the application dated



03.06.2022 filed by the petitioner for comparing the signature of testator of the Will dated 18.01.2010, namely Mahatm Pandey from the copy of certified copy of registered sale deed dated 27.02.2007 has been refused.

03. Learned counsel for the petitioner submits that the the impugned order is not sustainable in view of the fact that the document which was produced for comparing the signature of Mahatm Pandey, was the copy of registered sale deed which was executed by the testator of the Will at around same time when the Will is said to have been executed. The Will is dated 18.01.2010 and the registered sale deed is dated 27.02.2007. Learned counsel further submits that the learned Additional District Judge refused to get the signatures compared on the ground that the signature on the document was neither admitted nor proved to the satisfaction of the court. But the learned Additional District Judge has not mentioned anything why the genuineness of the document, with which the comparison of signature was sought to be made, was not to the satisfaction of the court. Learned counsel further submits that the document is a photocopy of certified copy of the registered sale deed and the Hon'ble Supreme Court in the case of *Appaiya Vs. Andimuthu @ Thangapandi & Ors.*, reported in *2023 INSC 835* has held



the certified copy of a sale deed to be a public document. On the same proposition, learned counsel also relied on the decision of Gauhati High Court in the case of *Md. Saimuddin Sheikh Vs. Abejuddin Sheikh*, reported in *AIR 1979 GAUHATI 14* and also the decision of High Court of Jammu & Kashmir in the case of *Surinder Dogra Vs. State through CBI (decided on 12.04.2019, CRA No. 03 of 2006)*. Thus, learned counsel for the petitioner submits that there appears no reason to disbelieve the document filed for comparison of signature of testator-Mahatm Pandey and the learned trial court committed an error and wrongly rejected the application of the petitioner.

04. Learned counsel appearing on behalf the respondents vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondents submits that there is no infirmity in the impugned order and it has been passed after due consideration of the existing provisions of law. The learned trial court has rightly held that the signature on the document, i.e., copy of certified copy of registered sale deed is not admitted and the same was also not found genuine to the satisfaction of the court and for this reason, the refusal to exceed to the prayer of the petitioner was proper and correct.

05. I have given my thoughtful consideration to the



rival submission of the parties and also considered the facts and circumstances of the case. Section 73 of the Indian Evidence Act read as under:

"73. Comparison of signature, writing or seal with others admitted or proved –

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[This section applies also, with any necessary modifications to finger-impressions.]”

06. Bare perusal of the aforesaid provision shows that the document from which comparison of signature is being sought to be made, needs to be admitted or proved to the satisfaction of the Court. In the present case, the document is admittedly the copy of certified copy of a registered sale deed. If the same has not been admitted by the other-side, one of the conditions under Section 73 providing for comparison of



signature, writing or seal with other admitted or proved document, is not satisfied. So far as satisfaction of the court is concerned, admittedly its a photocopy of certified copy of the registered sale deed. So, the court concerned rightly held that the applicant has not taken steps to prove its genuineness. On these grounds, I do not find any infirmity in the impugned order. Therefore, the impugned order dated 14.10.2022 requires no interference of this Court and hence, the same is hereby affirmed.

07. Accordingly, the present petition stands dismissed.

08. However, the petitioner is at liberty to file appropriate application before the learned trial court with certified copy of the document from which signature is sought to be compared and the learned trial court would then pass orders as to its satisfaction about its genuineness or otherwise since in the light of decision of Hon’ble Supreme Court in the case of *Appaiya Vs. Andimuthu @ Thangapandi & Ors* (supra), certified copy of a registered document is a public document.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2024
Transmission Date	NA

