

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1673 of 2017

Barkha Devi @ Barkha Rani, Daughter of Gurusharan Patel, Wife of Rakesh Roshan, Resident of Mohalla-Pokhara Birsan Singh Colony, Police Station-Hajipur Town, Post office Municipality Hajipur, District-vaishali

... .. Petitioner/s

Versus

1. Ram Pyare Patel, Son of Late Jagdish Patel
2. Gurudayal Patel, Son of Late Jagdish Patel
3. Haridayal Patel ,Son of Late Jagdish Patel
4. Shivdayal Patel, Son of Late Jagdish Patel
All Residents of Mohalla-Manik Chauk @ M.Chauk, Police Station-Hajiur Town, Post Office-Municipality Hajipur, District-Vaishali
5. Dharam Sheela Devi, Daughter of Jagdish Patel, Wife of Baijnath Patel Singh, Resident of Village-Salahpur Lalganj, Police Station-Lalganj, District -Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Kumar, Advocate
For the Respondent/s : Mr. Kalyan Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-03-2025

Heard learned counsels for the respective parties.

2. The petitioner is aggrieved by the order dated 08.06.2017 passed by the learned Additional District Judge-VIII, Vaishali at Hajipur in Probate Case No. 29 of 2011 whereby and whereunder the learned Additional District Judge directed for comparison of signature of the testator late Jagdish Patel existing on the Will dated 29.03.1993 as well as on Mortgage Deed dated 21.09.1959.

3. The learned counsel for the petitioner submits that



the learned trial court has not considered that the documents are not admitted documents and under Section 73 of the Evidence Act, the said documents cannot be used for comparison of signature of testator. The learned counsel further submits that the Will as well as Mortgage Deed are unregistered document and there is even no presumption of correctness associated with such documents. The learned counsel further submits that the learned trial court has not considered the fact that in his application, the probate petitioner/respondent has not even mentioned with which document, the handwriting and signature of the testator are going to be compared. The learned counsel further submits that the present petitioner denies the execution of unregistered mortgage deed brought on record by the probate petitioner/respondent and unless documents are admitted, no comparison could be made. Thus, learned counsel submits that the impugned order is not sustainable and the same needs to be set aside.

4. The learned counsel appearing on behalf of respondents submits that there is no infirmity in the impugned order and the same does not need any interference. The learned counsel further submits that vide order dated 16.01.2017, the probate petitioners/respondents were directed to bring the



original document on record for comparison and consequently, the respondents brought the said document on record, which is one of the documents stated to be executed by the testator way back in the year 1959 and so, there is presumption of correctness of the said document. The learned counsel further submits that the learned trial court considered the matter and passed orders for photography of the document and sending the same to the handwriting expert for comparison. Thus, there is no infirmity in the impugned order.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

6. From perusal of application dated 16.06.2016, it is apparent that the respondents have not mentioned anywhere that with which document the respondents wanted to compare the signature of the testator and whether such document was admitted document or not. From the impugned order, it appears that the learned trial court passed the order on 16.01.2016 purportedly directing the respondents to bring on record the documents with which the respondents wanted to compare the signature of the testator. But nowhere the learned trial court has mentioned about the document being acceptable to both sides and as it has been submitted that the said document is not a



registered document, its execution would always be surrounded in suspicion as the same is not being admitted by the present petitioner. Thus, learned trial court has not discussed at all the document which it was going to allow for comparison with the signature of the testator on the Will for which probate has been sought. Hence, the impugned order dated 08.06.2017 passed in Probate Case No. 29 of 2011 by the learned Additional District Judge-VIII, Vaishali at Hajipur, could not be sustained and the same is set aside.

7. However, the respondents are at liberty to move before the learned trial court to bring some other document for comparison of signature of testator and the same would be dealt with by the court concerned strictly in accordance with law.

8. With the aforesaid observations/directions, the present petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2025
Transmission Date	NA

