

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.958 of 2023

1. Ramesh Chandra Gupta, son of Satya Narayan Prasad @ Satya Narayan Prasad Gupta, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.
2. Om Prakash Gupta, Son of Satya Narayan Prasad @ Satya Narayan Prasad Gupta, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.
3. Rajesh Gupta, Son of Satya Narayan Prasad @ Satya Narayan Prasad Gupta, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.
4. Anup Kumar Gupta @ Anoop Kumar Gupta, Son of Satya Narayan Prasad @ Satya Narayan Prasad Gupta, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.
5. Nilesh Kumar, Son of Satya Narayan Prasad @ Satya Narayan Prasad Gupta, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.

... .. Petitioner/s

Versus

Saraswati Devi, Wife of Late Chandra Shekhar Gupta @ Hira Lal Jee, resident of Mohalla-Karan Sarai, Post and Police Station-Sasaram, District-Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kumar Choubey, Advocate
For the Respondent/s : Mr. Rajani Kant Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 08-04-2025

Heard learned counsel for the petitioners as well as learned counsel for the respondent.

2. The petitioners are aggrieved by the order dated 08.02.2023 passed by learned Additional District Judge-18, Rohtas at Sasaram in Civil Misc. Probate Case No. 30 of 2013 whereby and whereunder the petition dated 02.08.2022 filed by the petitioners for comparing the thumb impression of the



Testator Chandra Shekhar Gupta with his thumb impression on the registered deed dated 09.12.1974 has been rejected.

3. Learned counsel for the petitioners submits that the learned trial court has rejected the prayer of the petitioners on wrong assumption as the learned trial court held that the onus of proof was on the opposite parties, the respondent herein. The respondent has already moved for appointment of an expert for comparison of the signature and his evidence was recorded and for this reason there was no requirement for appointment of any expert at this stage. Learned counsel further submits that the learned trial court held that the petitioners should have moved their application when their evidence was being recorded. The petitioners herein are also the petitioners in the probate case and the burden lies on them to prove their case through their evidence and if the opposite party was allowed to call expert for comparing the signature with an admitted document, the petitioners could not be denied the same indulgence. Therefore, the impugned order is not sustainable.

4. Learned counsel appearing on behalf of respondent vehemently contents that there is no infirmity in the impugned order and the same is valid and proper. Learned counsel submits that when the evidence of the petitioners was being recorded,



the petitioners did not take any steps for appointment of expert for comparison of signature. Thereafter, the respondent moved before the learned trial court and prayed for appointment of expert for comparison of the signature with the same document which is now being sought by the petitioners to be compared with the thumb impression of the Testator. Learned counsel further submits that the expert has been examined and cross-examined by the petitioners. The petitioners only want to create confusion and for this reason they have filed a completely frivolous application. Once the expert has examined the signatures and submitted his report and thereafter his evidence was recorded, unless the report is discarded for any reason, on the same point, second expert cannot be called.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Evidently when an expert has been appointed by the court though on the application of the opposite party/respondent, there is no occasion for the court to again order for appointment of another expert on asking of the petitioners. The petitioners could have taken steps for appointment of the expert at the time of recording of their evidence and they did not take any steps at that time and thereafter at the instance of the opposite



party/respondent an expert was appointed for comparison of thumb impression of the Testator with the same document with which the petitioners also seek comparison. The evidence of this expert has already been recorded and he has been examined and cross-examined and discharged. So at this stage praying the court for appointment of another expert on behalf of the petitioners is without any merit. The petitioners could not demand for appointment of an expert for do their bidding. Court has already called an expert for examination of thumb impression of the Testator and the report has been submitted.

6. In the aforesaid facts and circumstances, I do not find any infirmity in the impugned order dated 08.02.2023 passed by learned Additional District Judge-18, Rohtas at Sasaram in Civil Misc. Probate Case No. 30 of 2013 and the same is affirmed.

7. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

