

Habib Ansari and Anr Vs. Jasim Ansari and Ors

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Court : Jharkhand

Decided On : Dec-07-2016

Appellant : Habib Ansari and Anr

Respondent : Jasim Ansari and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 1347 of 2015 1. Habib Ansari 2. Md. Minhaj Abnsari Petitioners Vrs.

1. Jasim Ansari 2. Nasim Ansari 3. Haider 4. Asgar 5. Israil Mian 6. Saibun Nisha 7. Ashik Ansari 8. Ladla @ Sonu 9. Sabnam Khatoon 10. Guriya @ Putul 11. Zeneman Khatoon 12. Rajia Khatoon 13. Khataban Khatoon Respondents
CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Rajeev Ranjan Tiwary For the Respondents : Mr. A.K. Sahani 07/07.12.2016
Heard learned counsel for the parties.

2. The instant writ petition is the forth consecutive writ petition on the question of examination of Left Thumb Impression (LTI) of one Sheikh Rahmat who is said to have executed 3 sale deeds dated 24.8.1936(Ext.B), 20.2.1970 and 14.9.1979(Ext.2). As a matter of fact the Plaintiffs requested the learned Court of Sub Judge-II, Hazaribag in Title Suit No. 93 of 1996 to allow them to summon the Thumb Impression register from the Sub Registrar, Gola and get the sale deed no. 1204 dated 20.2.1970 compared to ascertain whether the thumb impression of the said Rahmat Ali appearing in sale deed no. 1065 dated 24.8.1936(Ext.B) is

genuine or not. Though the prayer was initially refused by the learned Court below by order dated 24.3.2011 but this Court in W.P.C. No. 2014 of 2011 vide judgment dated 21.12.2011(Annexure-1) allowed the prayer in substance with a direction to the Trial Court to summon the Sub Registrar, Gola along with register of LTI and enable the petitioner to lead its evidence as well as the Defendants to offer evidence in rebuttal. Learned Sub Judge was however directed to conclude the exercise within a period of 6 months. 2

3. The comparison of the two documents was carried out thereafter. The Defendants who are the Respondents herein however chose to assail the order dated 5.10.2012 passed by the learned Court below refusing it to undertake the exercise of examination of LTI by expert again by taking photograph of the LTI of the said Rahmat Ali on the sale deed dated 24.8.1936 and 20.2.1970. However, the Writ Court in the challenge thereto in W.P.C. No. 6583 of 2012 vide order dated 20.3.2013(Annexure-5) allowed one last opportunity to the Defendants to adduce evidence of rebuttal. Again an attempt was made by the Defendants / Respondent herein to take photograph of the LTI of Rahmat Ali from sale deed dated 24.8.1936 and sale deed dated 20.2.1970 for the purpose of expert opinion. On the request being declined vide order dated 28.11.2013, they again approached this Court in W.P.C. No. 7674 of 2013. By the order dated 25.2.2014(Annexure-9) the writ petition was disposed of. The order is quoted in extenso as it has a bearing on the present controversy:- The petitioners are aggrieved by order dated 28.11.2013 whereby the learned court below has rejected their petition for allowing them to take photograph of the L.T.I of Rahmat Ali-the executant of the sale deed dated 24.08.1936 and 14.05.1979 for the purpose of taking expert opinion. It has been submitted that the said petition was filed availing the liberty given to the petitioners by order of this Court dated 21st December, 2011 passed in W.P.C. No. 2014 of 2011 and order dated 20th March, 2013, passed in W.P.C. No. 6583 of 2012. But in spite of the opportunity given to the petitioners for adducing evidence in rebuttal, learned court below has rejected their prayer for adducing evidence in rebuttal. It has been further submitted that if petitioners are not given opportunity of rebuttal, they shall be put to irreparable loss and injury and shall be highly prejudiced. The respondents have opposed the petitioners' prayer and submitted that the impugned order is well considered,

sound and legal. The earlier expert opinion, which had been sought to be rebutted was based on the comparison of the sale deed dated 20.02.1970 with the sale deed dated 24.08.1936 but the petitioners sought comparison of the signature of the L.T.I. of deed dated 24.08.1936 with a different sale deed dated 14.05.1979. The petitioners thus want to introduce a new controversy only for the purpose of delaying disposal of the suit. Learned court below has, thus, rightly held that the defendants in spite of opportunity given by this Court have not adduced any evidence in rebuttal and filed the said misconceived petition with extraneous prayer. Having heard learned counsel for the parties and considered the facts and materials on record, I find force in the submission of learned counsel for the respondents. The petitioners have admitted that instead of getting opinion of the expert on the deed in question with the sale deed earlier examined by the expert, the petitioners have sought comparison of the signature with a third deed. The petitioners were given opportunity by this Court to rebut the said opinion, if any, by adducing evidence but instead thereof the petitioners made prayer for getting it compared with other deed, which was not concurred with the earlier report of the expert. I find no error in the impugned order. However, in course of hearing, the petitioners sought liberty to pray before the court below for one more opportunity to adduce evidence in rebuttal, in view of the prejudice likely to be caused to the petitioners, petitioners are given liberty to make similar prayer before the learned court below disclosing the nature of evidence intends to bring on record in rebuttal. Considering the above, this writ petition is disposed of giving liberty to the petitioners to file a fresh petition before learned court below seeking such indulgence of the court. If such petition is filed, learned court below shall consider the same and pass appropriate order including imposition of compensatory cost in case of affording such opportunity. It is made clear that since the suit is of 1996, learned court below shall not grant unnecessary adjournment on that ground to either party and shall make all endeavour to dispose of the suit as soon as possible. (underline supplied, not part of original text)

4. This time the Defendants have moved 2 applications, one dated 3.4.2014 and other dated 22.5.2014 (Annexure-10 and 12 respectively), which contained inter alia the following prayers :- Annexure-10:- It is, therefore, prayed that this Hon'ble court may be pleased to allow this application by summoning the sub-Registrar,

Gola to produce the thumb impression Register relating to the registered sale deed no. 1204 dated 20.2.70 and to allow the defendants to take the photographs of the LTI of Sk. Rahmat from the aforesaid register and also the LTI appearing on the sale deed no. 1063 dt. 24.8.1936(Ext. B) and to get the same examined by an expert and to adduce evidence in rebuttal. And / or pass such other other(s) as this learned court may deem fit and proper, in the facts and circumstances of the case. And for this the defendants shall ever pray. Annexure-12:- It is, therefore, prayed that your honour may be pleased to allow these defendants to lead evidence in rebuttal as aforesaid in addition to prayer made in the petition dt. 3.4.2014 for which petitioner shall every pray. 4

5. Learned Court below by the impugned order has chosen to allow the petition dated 3.4.2014 while disposing of the petition dated 22.5.2014 as infructuous. Learned Court below appears to have been persuaded by the observations made by this Court in the judgment dated 25.2.2014 while granting indulgence to the Defendant to adduce other evidence in rebuttal of the evidence brought on record by the plaintiff through Handwriting and finger print experts.

6. I have considered the submission of the parties, for and against the impugned order. The chronology of facts, which have unfolded on the question of examination of Handwriting / LTI of Rahmat Ali finally leading to the observations made in judgment dated 25.2.2014, quoted herein above, do not appear to allow a fresh exercise by the Defendants to undertake comparison of the Handwriting / LTI of Rahmat Ali through Fingerprint Expert, as directed by this Court in the first order at Annexure-1 dated 21.12.2011.

7. This Court considering the background of the facts that the suit was at the fag end when such a request was made by the Plaintiffs, was pleased to direct by the order dated 21.12.2011 the learned Sub Judge to conclude the exercise within a period of 6 months while also directing examination of handwriting / LTI of Rahmat Ali in the manner directed therein. The subsequent forays by the Defendants were only in the nature of liberty to adduce evidence in rebuttal. Both judgments passed thereafter, Annexure-5 dated 20.3.2013 and Annexure-9 dated 25.2.2014 only intended to grant indulgence to the Defendants to adduce evidence in rebuttal.

Learned Court below taking cue from the observations made in the judgment dated 25.2.2014, however has practically allowed the Defendants to undertake fresh examination by handwriting / fingerprint expert to 5 compare the LTI of Rahmat Ali from the two documents i.e. sale deed dated 24.8.1936 and 20.2.1970 by summoning the record from Sub- Registrar, Gola. The other document now being sought to be compared by the Defendants is already an exhibited document, sale deed dated 14.5.1979.

8. The Defendants being conscious of the limitation under which they were required to adduce evidence in rebuttal, chose to file 2 applications, one dated 3.4.2014 and other dated 22.5.2014. The prayer made in the application dated 22.5.2014 was in accord with the observations made by the Writ Court in the judgment dated 25.2.2014. However, prayer made in the application dated 3.4.2014 in fact amounted to undertaking fresh exercise of examination of the documents in question through handwriting experts, which was not purport of the order passed earlier by this Court. The learned Court below has therefore fallen in an error in directing so.

9. It is however clarified that if the Defendants in rebuttal intend to adduce evidence on the basis of any expert's opinion obtained by them, as also reflected from their application dated 22.5.2014(Annexure-12), they are at liberty to do so. However, any fresh exercise and that too with the assistance of the Court is not warranted in the background of the case. With the aforesaid observations, the impugned order dated 25.3.2015 passed by Senior Civil Judge-IV, Hazaribag in Title Suit No. 93 of 1996(Annexure-14) is modified in the manner and to the extent indicated hereinabove.

10. The writ petition is disposed of. I.A. No. 1853 of 2016 also stands disposed of. (Aparesh Kumar Singh, J.) A. Mohanty

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