(2008) 04 JH CK 0020

Jharkhand High Court

Case No: None

Sohan Mahto and Others		APPELLANT
	Vs	
Mundrika Devi		RESPONDENT

Date of Decision: April 4, 2008

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2008) 2 JCR 513

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
This writ application under Article 227 of the Constitution of India is directed against the order dated 21.2.2007 passed by 1st Additional Munsify Giridih in Title Suit No. 180 of 1997 by which he has allowed the application filed by the plaintiff-respondent for examination of documents by handwriting expert.

2. The plaintiff-respondent filed the aforementioned suit for declaration of right, title and interest over the suit and further for setting aside the sale deed dated 8.12.1977 alleged to have been executed by Bukhlal Mahto and the plaintiff Mundrika Devi in favour of the original defendant and, further for confirmation of possession. During pendency of the suit, the plaintiff filed application for comparison of the thumb impression of plaintiff Mundrika Devi appearing in the sale deed dated 8.12.1977 with the thumb impression of late Bukhlal Mahto in the said sale deed and also with the admitted thumb impression on the gift deed dated 22.6.1987. The said application was opposed by the defendants-petitioners on the ground, inter alia, that the evidence of both parties were

closed and even the arguments of the defendants have been closed. The Court below held that no doubt at the fag end of the trial when arguments of the defendants have been closed and the plaintiffs arguments have been advanced, the plaintiff cannot be allowed to reopen the case but the best evidence cannot be shut off.

3. I have heard the learned Counsel appearing for the parties.

4. As noticed above, the plaintiff challenged the sale deed dated 8.12.1977 after about 20 years of its alleged execution by Bukhlal Mahto and the plaintiff. At the same time, she sought declaration of title of the suit property on the basis of gift deed dated 22.6.1987 alleged to have been executed by Bukhlal Mahto. The defendants, on the other hand, challenged the genuineness of the gift deed dated 22.6.1987. Both parties led evidence and closed their case. Even the argument of the defendants was closed. It was at this stage such application was filed. In my view, therefore, the Court below has committed serious error of law in allowing the petition for sending the thumb impression for examination by expert.

5. It is not in dispute that genuineness of both the sale deed and the gift deed was in issue in the suit, but neither party ever made any prayer for examination of the thumb impression by expert. In that view of the matter, the Court below ought not to have allowed the said petition. The impugned order, therefore, cannot be sustained in law.

6. For the reasons aforesaid, this application is allowed and the impugned order is set aside.