

**(1987) 05 CAL CK 0017****Calcutta High Court****Case No:** C.R. No. 1445 of 1983

Pradip Kumar Batabyal

APPELLANT

Vs

Pratima Batabyal and Others

RESPONDENT

**Date of Decision:** May 20, 1987**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 3 Rule 1, Order 5 Rule 20
- Evidence Act, 1872 - Section 45, 73

**Citation:** 92 CWN 320**Hon'ble Judges:** Mitra, J**Bench:** Single Bench**Advocate:** Tarun Chatterjee and Jayanta Benerjee, for the Appellant; Udayan Roy for the Opposite Party Nos. 1 to 3, for the Respondent**Judgement**

Mitra, J.

This Rule is directed against the order Nos. 13, 14 and 15 dated 28th May", 1983, 2nd June, 1983 and 3rd June, 1983 respectively passed by the learned Munsif, 3rd Court at Alipore, in Title Suit No. 63 of 1983 filed by the opposite parties nos. 1 to 3 against the petitioner and the proforma opposite parties Nos. 4 and 5 inter alia, for declaration that the decree passed in Title Suit No. 436 of 1980 of the said Court was obtained by fraud and collusion and also for permanent injunction. In the said Title Suit No. 63 of 1983 the summons upon the defendants therein including the petitioner was served under Order 5 Rule 20 of the CPC which was accepted by the court as valid service. Thereafter the petitioner and the proforma opposite party No. 5 filed an application praying for time to file written statement. The learned Munsif by the order No. 13 dated 28th May, 1983 disallowed the said prayer of the petitioner and the proforma opposite party No. 5 inter alia, on the ground that they had not entered appearance in the suit through any learned Advocate. Subsequently a Vakalatnama was filed by the petitioner in the said suit but as the Court doubted regarding the genuineness of the signature of the petitioner on the

said Vakalatnama, the Court by its order No. 14 dated 2.6.83 called for records of the previous Title Suit No. 4.36 of 1980. Subsequently, by the Order No. 15 dated 3rd June, 1983 the Court after comparing the signatures of the petitioner on the Vakalatnama filed in Title Suit No. 63 of 1983 with the admitted signature of the petitioner in Title Suit No. 436 of 1980 became suspicious about the genuineness of the signature of the petitioner on the Vakalatnama filed in Title Suit No. 63 of 1983 and asked the petitioner to appear before the Court to put his signature in presence of the Court. The petitioner had challenged in this present rule all the aforesaid three orders. Mr. Chatterjee, learned Advocate appearing on behalf of the petitioner, submits that the impugned order specially order No. 15 dated 3rd June, 1983 suffers from material irregularity as there was no sufficient ground for forcing the attendance of the petitioner before the Court for the purpose of taking his signature for comparison.

2. Mr. Matilal, learned- Advocate appearing on behalf of the opposite parties however, contends that the impugned orders are quite legal and valid and under Order 3 Rule 1 of the CPC the Court can direct the appearance of the party in person in court for the purpose of signing or writing in presence of the Court for comparison of the said hand-writing with the disputed signature of hand-writing of the person.

Having heard the learned advocates for the parties in my view, Court can direct the party to appear in Court in person when need arises. In this regard reference may be made to the decision of the Andhra Pradesh High Court (M).

Having heard the learned advocates for the parties in my view, the Court can direct the party to appear in Court in person when the need arises. In this regard reference may be made to the decision of the Andhra Pradesh High Court (M. Narayanaswami Vs. V. Yangatanna, wherein it has been held inter alia, relying upon earlier two decisions one of the Bombay High Court and other of the Madras High Court, by Rama Chandra Raju J., that provided under the proviso to Order 3 Rule 1 of the Code of Civil Procedure, though the party is appearing by recognised agent or by a pleader in a case, the court can always direct a party to appear in Court in person when the need arises. When power is given to a Court as provided u/s 73 of the Evidence Act to compare any signature, hand-writing or thumb impression and for that purpose as provided u/s 45 of the Evidence Act it can take the assistance of the Expert, there is no reason as why, as provided under Order 3 Rule 1 of the Code, the Court cannot direct a party to appear in Court in person and give his signature, hand-writing or thumb impression, as the case may be, to enable the court to compare the same with the disputed ones. Otherwise the parties and the Court would be helpless if the admitted signature, hand-writing or "thumb impression are not available. Relying upon the said decision of the Andhra Pradesh High Court, I am, therefore, of the opinion that by reason of the provisions contained in Order 3

Rule 1 of the CPC read with Sections 73 and 45 of the Evidence Act the Court can direct a party to be present in Court to give signature, hand-writing or thumb impression for the purpose of comparison either by itself or for sending the same to an expert for his opinion. The Civil Order is therefore discharged without any order as to costs.

Let the records sent down to the court below forthwith by a Special Messenger at the cost of the opposite party. Such cost is to be deposited within one week after the Summer vacation.