

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.322 of 2015**

- Sanjay Singh S/o Late Shri Satyavrat Singh Aged About 39 Years R/o Ameri Road Bilaspur Tahsil Bilaspur District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. Dinesh Jibkhate S/o Shri Gyaneshwar Jibkhate Aged About 24 Years R/o Imlipara, Infront Of Khadi Gramoudyog, Bilaspur Tahsil And District Bilaspur Chhattisgarh
2. Ramdas S/o Late Sukhram Ji Tarare, Aged About 48 Years R/o Imlipara Bilaspur Tahsil And District Bilaspur Chhattisgarh
3. Smt. Pramila Tarare W/o Shri Rajesh Tarare Aged About 35 Years R/o Imlipara Bilaspur Tahsil And District Bilaspur Chhattisgarh
4. Rakesh Kumar Sharma S/o Late Shri Ramadhar Aged About 37 Years R/o Juna Bilaspur Ward No. 27 Baniyapara (Dhamni Bada) Bilaspur Tahsil And District Bilaspur Chhattisgarh
5. State Of Chhattisgarh Throguh Collector, District Bilaspur Chhattisgarh
6. Ritesh Nikare @ Maddy Aged About 28 Years R/o Near Jathiyatalab Jarhabhata Omnagar, Bilaspur Shop Address Manya Service Centre Beside Raiur Engineering Center Indu Chowk, Jarhabhata Bilaspur Tahsil And District Bilaspur Chhattisgarh

---- Respondents

Shri CJK Rao, counsel for the petitioner.

Shri KR Nair, counsel for respondents 1 to 3.

Shri Aditya Sharma, Panel Lawyer for the State/respondent No.5.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17.12.2015**

Heard.

2. Facts brief as in the instant writ petition is that in a Civil Suit No.6A/12 (Dinesh Kumar Jibkhate & Ors. vs. Rakesh Kumar Sharma & Anr.) pending before 7th Civil Judge Class-II Bilaspur, the plaintiffs/respondents 1 to 3 filed an application under Section 65 of the

Evidence Act and prayed that as they are not in possession of the original copy of the registered sale deed, certified copy of the same may permitted to be admitted as secondary evidence. After hearing parties, the court below i.e. 7th Civil Judge Class II Bilaspur, vide order dated 14.3.2013 held that before obtaining permission to lead secondary evidence, no any notice was given under Section 66 of the Evidence Act to the person in whose possession the original sale deeds are lying hence, denied the prayer for admission of the certificate copy of the sale deed as secondary evidence. Thereafter again the above respondents 1 to 3/plaintiffs filed application under Section 65(e) and (f) of the Evidence Act and prayed that to prove their case and also with the facts that the certified copy of the sale deed is a public document under Section 74 of the Evidence Act, hence the certified copies may be permitted to admit in the evidence as secondary evidence as per provisions of Section 65 (e) and (f) of the Evidence Act. The Court below, i.e. 3rd Civil Judge Class II, Bilaspur vide order dated 17.10.2014 held that after registration of the sale deed under the provisions of Section 51 of Registration Act 1907, the said document becomes public documents under the provision of Section 74(2) of the Evidence Act, hence, certified copy may be admitted in the evidence for the existence, content and their possession under Section 65 (e) & (f) of the Evidence Act as secondary evidence without prior permission. The trial court thereby allowed the application and permitted the plaintiffs to exhibit the documents as secondary evidence. Against the said order the petitioner/defendants 2 has filed the instant petition and taken the ground that the trial court vide order dated 14.03.13 dismissed the prayer for admitting those documents as secondary evidence and again on 17.10,14 the court below allowed the application and held that those

documents are public documents under section 74(2) of the Evidence Act, and it may be used and admitted under Section 65 (e) & (f) of the Evidence Act. The subsequent order is not proper and legal as it is barred under Section 11 of the Code of Civil Procedure, hence, the petitioner prayed that suitable direction be issued to quash the order dated 17.10.14 as the same is not permitted and also not legal.

3. Learned counsel for the petitioner submitted that the petition is solely based on the ground as available under Section 11 of the Code as the earlier order operates as *resjudicata* to the subsequent order. Hence, the matter may be admitted for consideration and hearing and relief as prayed may be granted.

4. To appreciate the arguments advanced and the ground taken in the petition, Orders dated 14.03.13 and 17.10.14 are perused. On close scrutiny it appears that both the orders are pertaining to same certified copies of the sale deed for which the plaintiffs submitted that original is not in their possession, it will be with the purchasers of the property. Hence, they are not in a position to produce the original copy of the registered sale deed. On perusal of the order dated 14.3.13 it appears that the court below has not appreciated whether the documents in question fall under the category of public documents or not. As there is no any appreciation hence, order dated 14.3.13 cannot be held as the order is based on all the relevant provisions of law. Though there was an argument on behalf of the defendants No.2 that the documents are not a public documents, but the court below failed to appreciate those objections.

5. On 17.10.14 the plaintiffs again filed an application and submitted that as the copy of the registered sale deed obtained from

the office of the registrar is a public document, they be permitted to prove their case, hence Section 65 (e) & (f) of the Evidence act is attracted. The Court below after due appreciation allowed the application and held that the documents in question are public documents and certified copy may be adduced as secondary evidence under the provisions of Section 65 (e) & (f) of the Evidence Act without permission from the court below. But after entire appreciation of the facts of the both orders, in the considered view of this Court, Section 11 of the CPC is not attracted in the matter as to held that subsequent appreciation is barred by *res judicata*. If the court below is not considered the provisions of law in the earlier order the subsequent order may not be held as bar and *res judicata*. I do not see any illegality or impropriety in the merits of the order dated 17.10.2014 and the same is based on the principles of law and also section 74(2) and Section 65 (e) & (f) of the Evidence Act are attracted in the matter. The plaintiffs were not in a position to produce the original registered sale deed and they obtained certified copy of the same from the authority under the law. They be given opportunity to prove their case and even otherwise no any prejudice is caused to the other parties as they may be rebut through the documents or facts if otherwise.

6. Consequently, I am not inclined to interfere with the order dated 17.10.14 passed by the court below. In the considered view of this court, as there is no illegality or impropriety in the impugned order thus the matter is not worth for admission. Consequently the petition is dismissed at the motion stage itself. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

