

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 57 of 2014

Deepak Deshmukh S/o Laxman Rao, Aged About 53 years R/o Laxminarayan Mandir, Shyam Nagar, Polsaipara, Near The House Of Lakhtin Bai, Police Station And Post Durg, Civil And Revenue Distt. Durg C.G.

---- Petitioner

Versus

1. Keshav Chandra Deshmukh S/o Badrinarayan Deshmukh Aged About 51 Years R/o Deshmukh Bangla, Station Gurudwara Road, Durg, Police Station Durg, Civil & Revenue Dist. Durg, Dist. Durg C.G.
2. Radhelal Jaswani S/o Tirumal Jaswani Aged About 55 Years R/o Sindhi Colony, Durg, Police Station And Post Durg, Civil And Revenue Distt. Durg C.G.
3. Municipal Corporation, Durg, Through Its Commissioner, Municipal Corporation, Durg, C.G.

---- Respondents

For Petitioner	: Shri Manoj Paranjpe, Advocate
For Respondents 1 and 2	: None, though served.
For Respondent No.3	: Ms. Sharmila Singhai and Shri Sanjay Agrawal, Advocates

Order On Board

28/07/2015

Heard.

The petitioner has assailed correctness and validity of order dated 07/01/14 passed in Civil Suit No.29A/2010 passed by 7th Civil Judge, Class II, Durg, whereby the application of respondent No.1 / plaintiff for leading secondary evidence has been allowed and the Court has allowed the photo copy of the will deed in the evidence.

2. Learned counsel for the petitioner, relying upon order dated 26/02/14 passed in the case of *Dr. Ashok Kumar Gupta Vs. Central Bank of India and ors.* in WP No.2593/05 submits that even assuming for argument's sake that the conditions required for leading secondary evidence were made out as per the requirements of Section 65 of the Act perforce Section 63 of the Evidence Act, the nature of secondary evidence that can be led is also exhaustively enumerated under Section 63 of the Act.

3. This Court, upon examining the statutory scheme engrafted under Section 63, 64 and 65 of the Evidence Act with regard to leading secondary evidence held -

“6. Secondary evidence, as a general rule, is admissible only in the absence of primary evidence. The universal rule of general application is that the best evidence, the nature of the case will admit shall be produced. It means that, so long as the higher or superior evidence is within possession, the party is required to give no inferior proof in relation to it.

7. Section 65 of the Act carves out exceptional circumstances, in which, the secondary evidence relating to documents may be given of the existence, condition or contents of a document. As many as seven situations have been exhaustively enumerated therein when secondary evidence of nature stated in Section 63 can be given.

8. Even in a case, where conditions justifying leading of secondary evidence are satisfied, the nature of secondary evidence that can be led is also exhaustively enumerated in Section 63 of the Act. Use of the words “means and includes” is clearly indicative of exhaustive nature of the provision.

9. A conjoint reading of the provisions contained in Section 63, 64 and 65 of the Act leads to a logical conclusion that while general rule of application is that the best evidence has to be led, in circumstances exhaustively enumerated in Section 65, secondary evidence of the nature exhaustively stated in Section 63 can be permitted to prove the existence, condition or contents of the documents.”

4. If the aforesaid law is applied to the facts and circumstances of the present case, it is found that the Court below allowed an ordinary photo copy to be led as secondary evidence which is impermissible in law. The impugned order, to the extent, it allows photo copy in the evidence, is held unsustainable in law and is set aside. The petition is accordingly allowed.

Sd/-

Manindra Mohan Shrivastava
Judge