

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.498 of 2016

Hariganesh Mishra, S/o Late Narbada Prasad Mishra, aged about 63 years, R/o Village & Police Station Mandir Hasaud, Tahsil Arang, District Raipur (C.G.)

(Defendant No.1)
---- Petitioner

Versus

1. Bishnu Patel, S/o Late Ramcharan Patel, aged about 75 years;

2. Jethu Patel, S/o Late Ramcharan Patel, aged about 72 years;

Both R/o Village & Police Station Mandir Hasaud, Tahsil Arang, District Raipur (C.G.)

(Plaintiffs)

3. Manvishram Satnami (Died and deleted)

4. Kamla Bai, D/o Late Manglu Satnami, aged about 46 years;

4. Dukalhin Bai, D/o Late Manglu Satnami, aged about 44 years;

5. Bisahin Bai, D/o Late Manglu Satnami, aged about 30 years;

6. Kaushaliya Bai, Wd/o Late Manglu Satnami, aged about 70 years;

Respondent No.4 to 7 all R/o Village & Police Station Mandir Hasaud, Tahsil Arang, District Raipur (C.G.)

7. State of Chhattisgarh, Through Collector, Raipur, Tahsil & District Raipur (C.G.)

(Defendants)
---- Respondents

For Petitioner: Mr. Vaibhav A. Goverdhan, Advocate.

For Respondents No.1 and 2: -

Mr. H.B. Agrawal, Senior Advocate with Mrs. Meera Jaiswal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/11/2016

1. Heard.

2. The trial Court by its impugned orders rejected the application for taking the certified copy of the sale deed dated 9-2-1973 on record and also declined to summon the Registrar for proving the said document against which this writ petition under Article 227 of the Constitution of India has been filed.
3. Mr. Vaibhav A. Goverdhan, learned counsel appearing for the petitioner / defendant No.1, would submit that the sale deed dated 9-2-1973 has already been filed by the plaintiffs themselves and therefore production of certified copy of the sale deed could not have been rejected by the trial Court. He relied upon a decision of the Supreme Court in the matter **Ashok Sharma v. Ram Adhar Sharma**¹ to buttress his submission.
4. After hearing learned counsel for the parties, I am of the opinion that since the plaintiffs themselves have produced the copy of the document i.e. the sale deed dated 9-2-1973 and defendant No.1 has made prayer for filing certified copy of the same to be taken on record, same could not have been rejected by the trial Court, as by virtue of the provisions contained in Order 16 Rule 1, sub-rule (2), of the CPC, a party desirous of obtaining any summons for the attendance of any person stating therein the purpose for which the witness is proposed to be summoned, can file an application in the Court. In the present case, defendant No.1 / petitioner herein has proposed to call the Registrar or other officer concerned from the Office of the Registrar to prove the execution and attestation of sale deed dated 9-2-1973. Examination of Sub-Registrar / any officer from the concerned office is necessary to establish the attestation and

¹ (2009) 11 SCC 47

execution of sale deed dated 9-2-1973, therefore, it could not have been rejected.

5. Accordingly, the impugned orders passed by the trial Court rejecting the application for taking the document i.e. the sale deed dated 9-2-1973 on record and rejecting the application for summoning the said witness are set aside. The certified copy of the sale deed dated 9-2-1973 is taken on record. The trial Court is directed to issue summons for procuring the attendance of Registrar / Sub-Registrar / any other officer from the office for examination as prayed by the petitioner / defendant No.1.
6. The writ petition is allowed to the extent indicated herein-above, subject to payment of cost of Rs.4,000/- to the plaintiffs / respondents No.1 and 2 herein.

Sd/-
(Sanjay K. Agrawal)
Judge