

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 40 of 2018**

(Arising out of order dated 24.11.2017 passed by the Civil Judge Class-II,
Janakpur District- Koriya in Civil Suit No. 74/2015)

...

Barnawas Toppo Son of Thomas Toppo, Aged About 72 Years
Resident of Rawanbhata, Post Gariyabandh, District
Gariyabandh, Chhattisgarh. Civil And Revenue District Koriya.

---- Petitioner**Versus**

1. Ramdhani Son of Dilkaran Baiga, Aged About 55 Years Resident of Village Janakpur, Tahsil Bharatpur, District Surguja, Chhattisgarh.
2. Sunil Kumar, Son of Fulwendra Singh Gond, Aged About 35 Years Resident of Janakpur, Tahsil Bharatpur, District Koriya.
3. Abraham Bada, Son of Khorsa Bada, Aged About 40 Years Resident Of Catholic Ashram, Janakpur, Tahsil Bharatpur, District Koriya, Chhattisgarh.
4. State of Chhattisgarh, through The Collector, Koriya, Baikunthpur, Chhattisgarh.

--- Respondents

For the petitioner : Mr. Manay Nath Thakur, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****11.01.2018**

1. This petition is against the order dated 24.11.2017 passed by the Civil Judge, Class II, Janakpur in civil Suit No. 74/2015 whereby the application filed by the petitioner under Order 16 Rule 1 of C.P.C., Was rejected.
2. Learned counsel for the petitioner submits that the original sale deed whereby Ramdhani has executed the sale in favour of Barnawas Toppo on 06.02.1995 shows the endorsement of one M. Navare, the Sub-Registrar whereas in the certified

copy of the sale deed the signature of A.K. Nag, Sub-Registrar has been shown. Therefore since there cannot be variation in the original document and as the copy of the same is kept and maintained in Sub-Registrar Office, Janakpur, an application was moved under Order 16 Rule 1 of CPC to call for the present Sub-Registrar with original record to remove the ambiguity and prove the said sale deed. However, The trial court, without any reason, only by assigning a cause that the name of such witnesses were not given as per the mandate of Order 16 Rule 1, the same was dismissed.

3. Counsel for the petitioner submits that the necessity of such evidence can be ascertained from the original sale deed and the certified copy of the sale deed which projects different name, as such to arrive at a just decision, the evidence of witnesses would be necessary.
4. Perused the original sale deed which is filed as Annexure P/5 wherein it shows that the sale deed was executed by Ramdhani in favour of Barnawas Toppo and on the back side the name of Sub-Registrar as Mr. M. Naware has been shown whereas the certified copy of the same sale deed shows the name of A.K. Nag, the Sub-Registrar who signed the said sale deed.
5. The suit appears to have been filed for declaration and permanent injunction as also possession. In the written statement, the pleadings are made that on 06.02.1995, the land bearing Khasra Nos. 613 & 702 was sold in favour of defendant No. 1 Barnawas Toppo. In view of such fact it would be necessary to remove the ambiguity and call the

Sub-Registrar to prove the document by comparing with the copy maintained in their office. If the petitioner is not allowed to lead the evidence, the ambiguity in respect of the particulars of the property shall remain in doubt. Considering the same and taking into the nature of difference/variation of the name with respect to the Sub-Registrar who registered the sale deed and in order to clarify the same, I am inclined to allow the application. The evidence of the said witness will not prejudice the right of the parties as the copy of sale deed would only be proved by the document of Sub-Registrar, Janakpur which is kept and maintained in their office. Consequently, the application filed under order 16 rule 1 to call for the witness i.e. Sub-Registrar, Janakpur is allowed

6. On payment of process fee, necessary summons may be issued to the Sub-Registrar, Janakpur to come with the copy of sale deed which is kept and maintained in his office to adduce evidence.
7. With the above observation, this petition stands disposed of.

Sd/-
GOUTAM BHADURI
JUDGE