

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 45 of 2018

Abdul Wahid Khan, S/o. Valayat Khan, Aged About 70 Years, R/o. Village Lakhanpur, Tahsil Surguja, District Surguja, Chhattisgarh.

---- **Petitioner**

Versus

1. State Of Madhya Pradesh (now State Of Chhattisgarh), Through the Collector, Ambikapur, District Surguja, Chhattisgarh (defendant No. 2)
2. Ali Hussain, Aged About 69 Years,
3. Fayaz Hussain (Dead)
4. Ahmad (Dead) Through LR's :-
 - (a) Saddik Hussain, S/o. Ahmad, Aged About 45 Years
 - (d) Safiq Hussain, S/o. Ahmad, Aged About 38 Years
 - (f) Mahboob Hussain, S/o. Ahmad, Aged About 30 Years
 - (d) Abdus Hussain, S/o. Kudus, Aged About 28 Years
 - (e) Abdul Hussain, S/o. Kudus, Aged About 25 Years
 - (f) Ansar Hussain, S/o. Kudus, Aged About 22 Years
 - (g) Sansar Hussain, S/o. Kudus, Aged About 18 Years

All by Caste Muslim, R/o. Lakhanpur, Tahsil Ambikapur, District Surguja (C.G.).

---- **Respondents**

For Petitioners	:	Mr. Govind Ram Miri, Advocate
For State	:	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16.01.2018

Heard

1. This petition is against the order dated 15.12.2017 whereby an application under Section 151 of C.P.C. has been dismissed.
2. Learned counsel for the petitioner submits that the dispute is about the question of sale deed dated 12.05.1966 whereby the respondent Ali Hussain though has executed the sale deed in favour of the petitioner/defendant but the same is denied. However, when the expert was examined since the original was

not before her, therefore, ambiguity in the statement of the expert has come. He further submits that unless and until the Registrar brings the original before the Court and examined by the hand-writing expert, the ambiguity will remain.

3. Perused the order dated 15.12.2017 whereby an application under Section 151 of C.P.C. has been rejected. As also perused the statement of the hand-writing expert Sunanda Dhenge who has been examined as DW-8. According to her statement, the sale deed dated 12.05.1966 has been signed by the same person who has executed other sale deed in question. The said finding has to be evaluated by the trial Court alongwith the other documents. Apart from this fact, the document in question appears to be of the year 1966 and in such circumstances Section 90 of the Evidence Act, 1872 will come into play, which holds presumption of the documents of 30 years old. In such circumstances, I do not find any reason for re-opening of the case for evidence to the defendant and in the opinion of this Court, recalling of the Sub Registrar would be a futile exercise in view of the observation made above.
4. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge