

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 102 of 2018**

- Mohammad Nasir Khan S/o Shri Mohammad Nazir Khan, Aged About 57 Years R/o H.250, Sunder Nagar, In Front Of Mango Bageecha, Mahadevghat Road, Raipur (Chhattisgarh)

---- **Petitioner****Versus**

1. Mateen Rizvi S/o Late Sayaid Quamar Said Rizvi, Aged About 40 Years R/o Through Ikabal Khan, Excise Inspector, Near Chhattisgarh College, Byrang Bazar, Raipur (Chhattisgarh) Presently R/o Assistant Manager, Essar Steel, Kirandul, Jagdalpur, Bastar (Chhattisgarh)
2. Smt. Naseem Rizvi, W/o W/o Late Sayaid Quamar Said Rizvi, Aged About 72 Years R/o Through Ikabal Khan, Excise Inspector, Near Chhattisgarh College, Byrang Bazar, Raipur (Chhattisgarh)
3. Smt. Raziya @ Aamreen, W/o Tayyab, Aged About 37 Years R/o Dhobi Line, Baijnath Para, Raipur (Chhattisgarh)

---- **Respondents****MCC No. 91 of 2018**

- Mohammad Nasir Khan Aged About 50 Years R/o 250, Sunder Nagar, Mahadevghat Road, Raipur Chhattisgarh.....Plaintiff

---- **Petitioner****Versus**

1. Mateen Rizvi S/o Late Shri Quamar Saeed Rizvi Aged About 33 Years R/o Through Ikabal Khan House Near Chhattisgarh College, Raipur Chhattisgarh
2. Naseem Saeed Rizvi W/o Late Shri Quamar Saeed Rizvi Aged About 65 Years R/o Through Ikabal Khan House Near Chhattisgarh College, Raipur Chhattisgarh
3. Smt. Raziya @ Amrin W/o Ikabal Aged About 30 Years R/o Dhobi Line, Baijnath Para, Raipur Chhattisgarh.Defendants,

---- **Respondents**

For Petitioner : Shri Sumesh Bajaj, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/06/2018**

1. The present petition is against the order dated 03.01.2018, wherein two applications one under Section 45 of the Indian Evidence Act, 1872 read with Section 151 CPC and another application under Order 26 Rule 1 read with Section 151 CPC by the plaintiff/petitioner, was dismissed.
2. It is contended that Mohammad Nasir Khan, who is the plaintiff herein filed a civil suit for declaration and permanent injunction against the respondents. The suit was based on the ground that a property comprised in house bearing No.261/A is comprised in plot No.28 i.e. one of the house in College Ward Co-operative Housing Society Limited, Raipur, Sundar Nagar Mahadev Ghat Marg, Raipur. It was stated that the house has been gifted in favour of the plaintiff/petitioner by the donor/owner namely Sayaid Quamar Said Rizvi in favour of the plaintiff/petitioner and the petitioner/plaintiff has accepted the gift and is in possession thereof. It is contended that in such gift deed, the father of the plaintiff and respondent No.2, who is the wife of the donor, were witnesses. It is further contended that when the written statement was filed, the signature on the gift deed was denied by respondent No.2, who was the witness to the deed. It is stated the respondent No.2 had filed its pension identity card as her document, which bears her signature. As such when the application was moved by the plaintiff under Section 45 of the Indian Evidence Act, 1872 to get the signature verified & compared with the signature which appears in the gift deed, the same was dismissed without any application of mind.
3. It is further submitted that one more application was moved to get the witnesses examined i.e. the father of the plaintiff, who is also a witness to

the gift deed and is aged about 94 years and one lady who is aged about 70 years namely Shahin Hussain to get them examined by a commissioner, was dismissed without going into the merits of this case simply because of the fact that on the earlier round of litigation on the petition filed by the petitioner itself, the High Court had directed to conclude the hearing of the suit and decide the same within a period of three months. It is stated that since the time limit has been given, the trial Court without going into the merits of this application dismissed the application simplicitor, therefore, in absence of such evidence petitioner/plaintiff would be remedy less to prove the gift deed, therefore, the petition may be allowed.

4. Perused the order and the document filed along with the petition. Copy of the plaint would show that the house bearing No.261/A, which is one of the house comprised in plot No.28 at Sundar Nagar has been claimed by the plaintiff on the basis of the gift deed executed by Sayaid Quamar Said Rizvi. The copy of the gift deed which is on record would show that it is dated 24.01.1985 and the particulars of the house is also shown in the gift deed. In the said gift deed signature of two witnesses appears, which on the bare perusal would show the signatures of one Sayida & MN Khan. The written statement which is filed by the respondents wherein Smt. Naseem Rizvi, who is the wife of late Sayaid Quamar Said Rizvi, the donor, it is stated that the gift deed dated 24.01.1985 is forged and do not bear the signature of Sayaid Quamar Said Rizvi. It is also stated that in that deed signature of respondent No.2 i.e. Smt. Naseem Rizvi also do not appear & exists. One of the document filed by respondent of Smt. Naseem Rizvi is placed that of identity of pension card which bears her signature. It is contended by the plaintiff that the similar signature appears on the gift deed. Under the circumstances if the respondents are not willing to produce the original of

the pension card which bears the impression of signature, then in such case, the Court may draw the adverse inference in respect of the signature of the respondent which appears in the gift deed. Under the facts, in order to ascertain the fact whether in the gift deed and the pension deed the same signature of the contesting witness appears or not, the Court can very well send it for opinion of the expert under Section 45 of the Indian Evidence Act, 1872. This fact cannot be ignored that the document of pension identity card filed by respondent which bears her signature, came from the custody of respondent. Therefore, when the signature on gift deed was denied in order to ascertain the truth, it was necessary to obtain the opinion of the signature expert as contemplated under Section 45 of the Indian Evidence Act, 1872.

5. Accordingly, the order whereby the application under Section 45 of the Indian Evidence Act, 1872 was dismissed is set aside. As a consequence, the application under Section 45 of the Indian Evidence Act, 1872 is allowed. The trial Court is directed to sent for the opinion of the expert with respect to the gift deed which is presently marked as Ex. P-1 and the original identity card of pension should be called for production from the respondent and be sent for to the expert for expert opinion. In case the original identity card of the pension is not produced, then the trial Court would be free to draw the adverse inference for non production of the same.
6. With respect to the dismissal of the application under Order 26 Rule 1 read with Section 151 CPC, the perusal of the gift deed would show that it bears the signature of MN Khan, Mr. MN Khan is said to be the father of the petitioner and is said to be aged about 94 years. In the application under Order 26 Rule 1 CPC it is stated that MN Khan, who is aged about 94 years and one of the witness Smt. Shaheen Hussain is aged about 70 years and

they are local residents. The reasons assigned by the trial Court for dismissal of the application for examining the witnesses on commission cannot be appreciated considering their age especially when they are local witnesses. In a result, the application under Order 26 Rule 1 read with Section 151 CPC, also is allowed. Witnesses namely MN Khan and Shaheen Hussain are allowed to be examined by appointment of local commissioner. It is further directed that the trial Court shall make all possible endeavour to conclude the proceeding within a further period of 3 months from the date of receipt of this order.

7. With the above observation the petition bearing WP (227) No.102 of 2018 stands allowed.
8. In view of the order passed in WP (227) No.102 of 2018 no further order is required in the PUD as further time is granted in the case bearing WP (227) No.102/2018. Accordingly, the MCC stands disposed of.

Sd/-

Goutam Bhaduri
Judge

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