

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 219 of 2018

Madhusudan Majumdar, S/o. Manoranjan Majumdar, Aged About 40 Years, R/o. Subhashnagar Ambikapur, Tahsil Ambikapur, District Surguja Chhattisgarh.

---- **Petitioner**

Versus

1. Jagdish Sarkar, S/o. Late Dharendra Sarkar, Aged About 50 Years.
2. Vijay Sarkar, S/o. Late Dharendra Sakar, Aged About 48 Years.
3. Manoranjan Majumdar, S/o. Late Pulin Bihari Majumdar, Aged About 70 Years.

All are R/o. Sannapara Gali No.2, Ward No. 2, Subhash Nagar, Nagar Ambikapur, Police Station Gandhinagar, Tahsil Ambikapur, District Surguja Chhattisgarh.

4. State Of Chhattisgarh, Through the Collector Surguja, Ambikapur Chhattisgarh.

---- **Respondents**

For Petitioner	:	Mr. A.N.Pandey, Advocate
For Respondent/State	:	Mr. S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

14.03.2018

Heard

1. The present petition is against the rejection of an application under Order 26 Rule 10 of C.P.C. read with Section 45 of the Evidence Act moved by the plaintiff/ petitioner.
2. Learned counsel for the petitioner submits that the suit for specific performance was filed by the plaintiff Madhusudan against the mother of the defendant No.1 & 2 namely Amela Sarkar on the basis of an agreement dated 22.04.1993. He submits that while the parties were litigating over the issue, the seller Amela Sarkar died and subsequently the suit was brought against the legal heirs of Amela Sarkar namely Jagdish Sarkar & Vijay Sarkar.

3. Learned counsel for the petitioner submits that the defendant No.1 & 2 were the attesting witnesses to the agreement of sale and had inscribed their thumb impression on the deed, however, subsequently it was denied. Therefore, in order to prove the authenticity of the agreement, their thumb impression is required to be proved by the expert and unless and until command is given to the defendant No.1 & 2 the thumb impression cannot be obtained to get it examined by the agreement in question, therefore, the petition may be allowed.
4. Perused the order of the Court below. Learned Court below has dismissed the application under Order 26 Rule 10 of C.P.C. read with Section 45 of the Evidence Act on the ground that the defendants who were alleged to be the attesting witness has denied the thumb impression that it was of them over the documents in question i.e. the agreement; therefore, the evidence of expert need not be required.
5. Perusal of the documents prima facie would show that out of many two thumb impression were marked in the deed one shown to be of Jagdish Sarkar and another is of Vijay Sarkar. Since the agreement itself is sought to be enforced by way of specific performance in absence of the original executant i.e. Amela Sarkar, the defendants who are alleged to be the legal heirs and had put their signature as witness in the document, in the opinion of his Court, would be relevant evidence. The defendants when have been denied the thumb impression in such case in facts of the case there is no other course is left open to the plaintiff to prove the same. In view of the existence of document in this case, I am of the opinion that the order dated 19.02.2018 deserves to be set aside.

6. Accordingly, the order dated 19.02.2018 is set aside. The application of the petitioner/plaintiff is allowed to get the thumb impression of the defendant No.1 & 2 namely Jagdish Sarkar & Vijay Sarkar so as to get it examined by the expert with respect to the signatures on documents of agreement. Therefore, the summons or commission may be issued to the hand writing expert and defendant No.1 & 2 shall be required to put their thumb impression before the Court so as to send it to the expert alongwith the alleged documents.
7. With such observation, the petition stands allowed.

Sd/-
(Goutam Bhaduri)
Judge