

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.17 of 2004**

Laxmi Narayan, Son of Kunj Bihari Thawait, aged about 50 years,
residnet of village Baloda, Tahsil : Janjgir, Dist : Janjgir-Champa (CG)

---- Appellant

Versus

1-a) Smt. Hem Bai Thawait, widow of late Radheshyam Thawait,
aged about 56 years,

1-b) Rajendra Kumar, son of late Radheshyam Thawait, aged about
25 years,

1-c) Radha Bai, wife of Santosh Kumar Thawait, daughter of late
Radheshyam Thawait, aged about 36 years, present resident of near
Bus-stand, Post Office, Karnoud, District-Janjgir-Champa (Chhattis-
garh)

1-d) Kailash Kumari, wife of Deepak Thawait, daughter of lat
Radheshyam Thawait, aged about 32 years, Present resident of near
Railway Bridge, Post Office: Rani Road, Korba, District Korba
(Chhattisgarh)

1-e) Chanda Kumari, daughter of late Radheshyam Thawait, aged
about 24 years,

1-f) Purnima Kumari, daughter of late Radheshyam Thawait, aged
about 22 years,

1-g) Pratibha, daughter of late Radheshyam Thawait, aged about 20
years,

Respondent No.1-a, 1-b, 1e, 1-f & 1-g are residents of Balouda,
Tehsil-Balouda, District-Janjgir-Champa (CG)

2. State of Chhattisgarh through : The Collector, Janjgir-Champa (CG)

---- Respondents

For Appellant	:	Mr.V.K.Pandey, Advocate
For Res.1-a to 1-g	:	Mr.J.A.Lohani, Advocate
For Respondent No.2	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

12/09/2018

1. The substantial question of law involved, formulated and to be

answered by this Court in this defendant's second appeal is as under:-

“Whether the order refusing the examination of hand-writing expert is perverse ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiff filed a suit for possession based on sale deed dated 2.3.83. That suit was decreed by the trial Court.

(2.2) During the course of trial, on an application filed by the defendant under Section 45 of the Indian Evidence Act, 1872 (hereinafter called as “the Act of 1872”) Ex.D/2 was referred to hand-writing expert who submitted his report on 19.7.99 before the trial Court, but the defendant did not examine hand-writing expert, however, when the case was fixed for final argument on 28.6.2000 he filed an application for examination of hand-writing expert, which was rejected by the trial Court by order dated 28.6.2000.

(2.3) The First Appellate Court also dismissed the appeal filed by the defendant affirming the judgment and decree of the trial Court.

3. Assailing legality, validity and correctness of the judgment and decree passed by the First Appellate Court, this second appeal under

Section 100 of the CPC has been filed by the appellant/defendant, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

4. I have heard learned counsel for the parties, perused the impugned judgment and decree and records of the Courts below.

5. The defendant's application under Section 45 of the Act of 1872 was granted on 19.7.99 and in compliance of which, the matter was referred to hand-writing expert, who had submitted his report, thereafter the defendant made an application for re-examination of the plaintiff under Section 33 of the Act of 1872, which was also rejected by the trial Court by express order dated 16.10.99 clearly stating that though hand-writing expert report has been filed, but the defendant has not taken any steps to examine the said hand-writing expert by calling him in witness box and thereafter matter was adjourned for the defendant's evidence on 22.11.99, 3.1.2000, 11.2.2000, 23.2.2000, 1.3.2000, 22.3.2000, 18.4.2000, 11.5.2000 and ultimately, on 23.6.2000 the trial Court granted time to the defendant to adduce evidence subject to payment of cost of ₹ 25/- and granted last opportunity clearly stating that if on the next date of hearing, the defendant will not produce his witness, opportunity to lead evidence will be closed and also granted opportunity to serve humdust service to witnesses, if any, for examination. On 26.6.2000, the defendant examined his witness Siyaram Thawait (DW-2) and closed his evidence. The trial Court looking to the fact that civil suit was filed on

22.2.93, fixed the case for final argument on 28.6.2000 and on the said day (28.6.2000), the defendant filed an application for examination of hand-writing expert, which was rejected by the trial Court on the ground that the defendant has already closed his opportunity of evidence and sufficient opportunity has been granted to him to lead his evidence and at belated stage, such an application cannot be granted. It appears that it is not bonafide application.

6. No doubt, the defendant can certainly challenge the interlocutory order dated 28.6.2000 passed by the trial Court during the course of trial by the provisions contained in Section 105(1) of the Code of Civil Procedure, but from perusal of the order-sheets of the trial Court, it is quite vivid that despite the submission of report of hand-writing expert at the instance of the defendant and despite the express order of the trial Court that the defendant has not taken any steps for examination of hand-writing expert, the defendant did not take any call and though took repeated adjournment to produce his witnesses and only when the Court had granted last opportunity to lead evidence subject to payment of cost clearly indicating if on the next date of hearing, witness is not examined, opportunity to lead evidence will be closed, then only the defendant examined his witness Siyaram Thawait (DW-2) and declared his evidence closed. In view of the aforesaid factual scenario, it cannot be held that the trial Court is unjustified in rejecting his application for examination of hand-writing expert on 28.6.2000 as the said order cannot be held to

be illegal or contrary to law. Accordingly, the substantial question of law is answered against the defendant.

7. I do not find any merit in this second appeal. Accordingly, it is dismissed. A decree be drawn up accordingly. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-