

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 239 of 2018**

Hazi Md. Hanif S/o Md. Ismaeel, Aged About 88 Years R/o Ward No. 18, Sakti, P.S. And P.O. Sakti, District Janjgir-Champa, Chhattisgarh. Through Power Of Attorney Holder Namely Md. Sajjad S/o Hazi Md. Hanif, Aged About 58 Years, R/o Ward No. 18, Sakti, P.S. And P.O. Sakti, District Janjgir-Champa, Chhattisgarh,

---- Petitioner

Versus

1. Md. Azim S/o Md. Vasi, Aged About 44 Years R/o Renjerpara, Sarangarh, P.O. And P.S. Sarangarh, District Raigarh, Chhattisgarh,
2. Ram Kumar Chaudhari S/o Shree Ishwar Prasad Chaudhari, Aged About 66 Years R/o Jailpara, Sarangarh, P.O. And P.S. Sarangarh, District Raigarh, Chhattisgarh
3. State Of Chhattisgarh, Through Collector Sarangarh, District Raigarh, Chhattisgarh

-- Respondents

For petitioner- Ms. Priyanka Mehta, Advocate.
For State –Shri S.R.J. Jaiswal, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order**

19/03/2018

Heard.

1. Instant petition is against the part of the order dated 24/02/2018 whereby an application preferred under Section 45 of the Evidence Act & Order 16 Rule 1 CPC has been dismissed.
2. Learned counsel for the petitioner submits that civil suit was filed by the plaintiff/petitioner herein for declaration and permanent injunction. Prayer was made that the sale deed dated 14/10/99 to be declared null and void and pleading contain that it does not bear signature of the plaintiff and the alleged sale deed is fake and forged. Learned counsel submits that while suit was filed opinion was obtained from the expert with respect to the signature which were prevailing in the alleged sale deed. Expert has opined that the sale deed do not bear signature of the plaintiff. Said report is already on record. She further submits that since report was

disputed by the defendant as such plaintiff wanted to get sale deed again examined by expert as the original sale deed is in possession of the defendant. She submits that while deciding the application under Section 45 of the Evidence Act read with Order 16 Rule 1 CPC court has already given its finding before actually case is decided on merits, therefore said order is required to be set aside and the plaintiff be directed to lead evidence of expert.

3. Perused the order of the court below. Order prima facie it appears to be too vague as in one part of the order court has observed that report of the hand writing expert is not required. The order further purports that finding in respect of the signature over the sale deed has been divulged in the order. Then it leads to natural inference that court has formed an opinion that the signature over the sale deed are correct which is disputed by the plaintiff who claims that sale deed do not bear his signature. During the course of argument since it is submitted that expert opinion is on record, therefore in order to prove such report plaintiff is always at liberty to call his witness i.e. expert to prove the same in the evidence. Under the circumstances, opinion expressed by the court that signature appears to be that of the plaintiff is preponement of the judgement and finding before actual evidence is appreciated in the civil suit. Under the circumstances, it is directed that the plaintiff shall be at liberty to call the witness i.e. expert who had given his/her opinion and the document i.e. expert opinion report is already on record. Further the opinion which has been expressed by the court in respect of the signatures of disputed sale deed are set aside.

4. With such observation, petition stands disposed off. Petitioner would be at liberty to call expert evidence by summoning the same to prove report which is on record.

Sd/-

(Goutam Bhaduri)
JUDGE

