

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 371 of 2018**

1. Smt. Usha Gupta Wd/o Late Durga Shandkar Gupta, at present Aged About 65 Years
2. Pramod Rani Gupta, D/o Late Durgashankar Gupta, at present Aged About 43 Years
3. Anurag Narayan Gupta, S/o Late Durgashankar Gupta, at present Aged About 40 Years
4. Ku. Priyanka Rani Gupta, D/o Late Durgashankar Gupta, at present Aged About 36 Years
5. Ku. Abha Rani, D/o Late Durgashankar Gupta, at present Aged About 28 Years

Nos. 1 – 5 Through Power of Attorney Holder And Petitioner No. 6 Anand Narayan Gupta. S/o Late Durgashankar Gupta, Nos. 1,2,4-5 all R/o Shikshak Nagar, Tamerpara Durg Tehsil And District Durg Chhattisgarh

6. Anand Narayan Gupta, S/o Durgashankar Gupta, Aged About 42 Years R/o Tamerpara, Shikshak Nagar, Durg, Tahsil And District Durg Chhattisgarh.

---- Petitioners**Versus**

1. Saurabh Soni D/o Pawan Kumar Soni, (Gupta) Aged About 19 Years R/o Rambagh Dhamtari, Tahsil And District Dhamtari Chhattisgarh. (Plaintiff)
2. State of Chhattigarh, Through Collector Dhamtari Chhattisgarh..... (Defendant No. 8)
3. Shradhha Gupta, W/o Ashok Gupta, Aged About 42 Years R/o Bamlaiaara, Dhamtari, Tahsil And District Dhamtari Chhattisgarh..... (Defendant No. 9)
4. Smt. Lekha Gupta, W/o Manoj Saraf Aged About 40 Years (D/o Late Durga Shankar Gupta), R/o In Front Of Hanuman Mandir, Hata, Tahsil Hata, District Damoh (Madhya Pradesh)..... (Defendant No. 10)

---- Respondents

For Petitioners	:	Shri Alok Bakshi, Advocate
For Respondents-State	:	Shri Sangharsh Pandey, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25/04/2018**

1. Heard.
2. The instant petition is against the order dated 23.02.2018 whereby an application under Section 65 of the Indian Evidence Act, 1872 (for short 'the Act, 1872') to lead secondary evidence in respect of the photocopy of the agreement dated 17.07.2005 has been rejected.
3. Learned counsel for the petitioner submits that in a suit for specific performance when the notice was served initially before filing of the suit, photocopy of the agreement was sent along with the notice to the plaintiff/petitioner, however, when the suit was filed for specific performance, the original found to be different, as such when the application under Section 65 of the Act, 1872 was filed to prove the same as secondary evidence it was rejected. He further submits that when it is a case of the defendants that the photocopy of the agreement was sent along with the notice before filing of suit by plaintiff, therefore, in such case the Court should have allowed the application to lead secondary evidence.
4. Perusal of the order would show that the application under Section 65 of the Act, 1872 was rejected on the ground that the original of the agreement is already on record, therefore, permission to lead secondary evidence to prove the same cannot be allowed. Section 65 of the Act, 1872 purports that permission can only be granted when the original has been destroyed or lost then the secondary evidence of the document can be produced. Therefore, when it is the case of the parties that the original is already on record, if the secondary evidence is allowed adduced then it will destroy the

admissibility of the original document which is already been exhibited. If it is the case of the defendants that the copy of the agreement which was sent along with notice, he may lead evidence on that but the application under Section 65 of the Act, 1872 cannot be allowed when the original is said to be already on record.

5. In the circumstances, in the facts of this case, in view of the law laid down by the Supreme Court in the matter of ***Bipin Shantilal Panchal Vs. State of Gujrat {2001 AIR SCW 841} (Three Judges Bench)***, the petitioners are allowed to mark the photocopy of the agreement as exhibit and the Court shall decide the admissibility of the document at the time of final adjudication.
6. With such observation, the petition stands disposed of.
7. Certified copy today.

Sd/-

Goutam Bhaduri
Judge

Ashu