

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 383 of 2018**

- Deepak Kumar Jha S/o Late Sunil Kumar Jha, Aged About 44 Years R/o Turi Hatri, Old Basti, Laxminarayan Ward, Raipur, District Raipur Chhattisgarh..... (Defendant No. 1)

---- Petitioner**Versus**

1. Smt. Archana Jha W/o Shri Sanjay Jha, Aged About 44 Years R/o Block -55-A, Ruabandha Sector Bhilai, Tahsil And District Durg Chhattisgarh. (Plaintiff)
2. The Naib Tahsildar, Up - Tahsil, Bhilai - 3, District Durg Chhattisgarh
3. State of Chhattisgarh Through The Collector, District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri V.R. Tiwari, Advocate
For Respondent No.1	:	Shri B.P. Gupta, Advocate
For Respondents-State	:	Ms. Astha Shukla, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****01/05/2018**

1. Heard.
2. Challenge in this petition is the order dated 13.04.2018 & 17.04.2018, whereby the learned Court below has directed to produce WILL dated 16.12.1990 to the petitioner/defendant and in absence thereof subsequently when the time was sought for to produce the original WILL, which would have been relied by the defendant/petition, the Court has closed the right to rely on the WILL.
3. Learned counsel for the petitioner/defendant submits that as per the

defense, the defendant has relied on a WILL dated 16.12.1990 and the order in the like nature could not have been passed by the Court below, it amounts to closure of the right of evidence of the defendant, therefore, the said order may be set aside.

4. Shri B.P. Gupta, learned counsel for respondent No.1 objected the same and submits that the order of the Court below is well merited as despite the order to produce the WILL, the defendant has failed to produce, consequently his right has been closed to produce the WILL.
5. Perused both the orders and the documents. The documents would show that Smt. Archana Jha, the respondent/plaintiff herein, has filed a suit for declaration and permanent injunction, wherein the prayer is made that the WILL dated 16.12.1990 is forged and is a nullity, wherein the petitioner/defendant in his defense has relied on the WILL dated 16.12.1990 and stated that the property in question has been bequeathed in his favour. Reading of both the orders of the Court below shows that the entire issue has been missed up by the trial Court, since the defendant has relied on the WILL and claimed his title over the WILL, so it is for the defendant to produce the document i.e. WILL and his witness and the original WILL at the time of the evidence can be produced if copy is on record. It cannot be preponed by the order in the like nature and curtail the right of evidence of defendant. The petitioner if is not in possession of the WILL then the discovery and inspection could have been sought for as provided in the CPC and in absence thereof it is the duty of the plaintiff to prove his case on the basis of his own documents as the plaintiff cannot rely on any document in defense. In a result the right to produce the original WILL by defendant during course of evidence is restored. The order of trial Court is modified to the above extent.

6. Since the plaintiff has claimed that the WILL itself is forged, in the facts of this case, it is observed that as and when if the WILL is produced during the course of trial by the defendant, in such case, the right of the plaintiff shall be reserved to prove the authenticity of the WILL subsequently by their expert evidence. In a result, the plaintiff would be entitled to lead his evidence of expert to challenge the WILL by examination of expert. Consequently, both the order dated 13.04.2018 & 17.04.2018 are set aside. The defendant shall be entitled to produce the WILL during his evidence, if so advised.
7. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu