

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 660 of 2018

Meghraj Rohra S/o Shri Thakurdas Rohara Aged About 56 Years R/o D 5, Galaxy Residency, Amlidih, Tehsil & District Raipur, Chhattisgarh. --- **Petitioner**

Versus

1. Purvanchal Grih Nirman Sahakari Samiti Maryadit Ring Road Chowk, Pachpedi Naka, Raipur, Chhattisgarh. Through Its President, Shri Pawan Tiwari, S/o Shri B.P. Tiwari, R/o Vyas Gali, Sadar Bazar, Raipur, Tehsil & District Raipur, Chhattisgarh.
2. State of Chhattisgarh, through District Magistrate, Raipur, District Raipur, Chhattisgarh. --- **Respondent**

For the Petitioner	:	Mr. Amrito Das, Advocate
For the State	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

01.08.2018

1. The present petition is against the order dated 17.07.2018 passed in Civil Suit No.51-A/11/17 by the Second Additional Judge to the Court of First Additional District Judge, Raipur whereby the application under Order 13 Rule 10 of CPC and application under order 16 Rule 1 of CPC moved by the plaintiff (petitioner herein) were dismissed.
2. Learned counsel for the petitioner/plaintiff would submit that a civil suit was filed to declare the sale deed dated 28.04.1997 as void and also declaration and permanent

injunction was also claimed against respondent No.1 Purvanchal Grih Nirman Sahkari Samiti Maryadit. It is stated that the sale deed was not executed by the plaintiff/petitioner and having come to know the fact that the sale deed exists in respect of the land owned by the plaintiff, a report was made to the police. The police after investigation of the complaint came to conclusion that the sale deed is fake as the sale deed did not bear the signature of the seller. The expert opinion was also obtained and thereafter since the cooperative society, the beneficiary, stated that they have not got the sale deed executed in their favour and disowned the liability of the person who committed the fraud could not be found out, the closure report was filed before the court of CJM in Crime No.213/2011 & Crime No. 310/2011. It is stated that since the sale deed dated 28.04.1997 is claimed to be forged, as such, the report of the Forensic expert which was obtained by the police on a report made by the petitioner/plaintiff would be necessary to substantiate the fact that the sale deed is forged. It is stated at present stage, the cooperative society is claiming that the sale deed is to be genuine one. It is submitted that without application of mind, the application under Order 13 Rule 10 was dismissed by the Court below and further an application under Order 16 Rule 1 of CPC to summon the hand-writing expert who had examined the sale deed during the investigation of criminal case namely Nirmal Dubey was also dismissed.

3. Perused the order of the Court below and the documents annexed to the petition. The record shows that a civil suit

was filed to declare the sale deed dated 28.4.1997 as null and void being forged. The record also shows that the final report is placed on record in respect of crime No.213/2011 u/s 420, 467, 468, 471, 120-B of IPC which was lodged by one Harish Gowri. The final report filed in criminal case also contains the fact wherein the statement of the present petitioner was recorded that on a report of petitioner that by putting a forged signature, the sale deed was executed, the Crime No.310/2011 was registered u/s 420, 467, 468, 471. It also records that a sale was executed in favour of Pawan Tiwari, the then President of the said Society on 28.04.1997 and since the said person Pawan Tiwari had died on 04.04.2004, the crime was registered against the unknown person. The closure report further shows that it was placed before the JMFC and there is no document to record that the same has been accepted.

4. A perusal of the document in this case, therefore, would show that the main claim is made that the sale deed dated 28.4.1997 be declared void being an outcome of fraud. The document so attached with this petition prima facie shows that the petitioner has also made a report to the police that forged sale deed has been created and the Police after investigation has filed the report before the JMFC. Under the circumstances, taking into consideration the facts of the case if the allegation of such forged signature is existing in the closure report, in such a case, that would be most relevant to to prove the case of the plaintiff/petitioner. The denial of such prayer to call for the document may lead to absurdity as in such a case, the truth cannot come to the fore. Under

the facts and circumstances, taking into the facts and circumstances involved in this case, it is directed that since the impugned sale deed for which the criminal investigation was carried out and certain opinion was arrived at appears to be relevant which may be required to be proved for which the Court is empowered to give a direction under Order 13 Rule 10 of CPC to obtain the records of the criminal case. Accordingly, the order rejecting the application under order 13 Rule 10 is set aside. The said application is allowed.

5. The trial Court is directed to call for the record of the criminal case which is seized with the concerned Magistrate in connection with Crime No.213/2011.
6. Like wise the dismissal of the application under order 16 Rule 1 of CPC wherein the appearance of hand writing expert has been sought to adduce evidence also appears to be unsustainable on the premises that the main claim is made that the alleged sale deed dated 28.4.1997 is said to have been not executed by the petitioner and the opinion of the expert exists for the same which finds favour with the petitioner, therefore, the petitioner may claim his right to call the witness i.e., the expert and such evidence appears to be necessary to arrive at a finding by the learned court below about the authenticity of the alleged sale deed for which the suit has been filed claiming that it is out come of fraud.
7. In the result, the order rejecting application under Order 16 Rule 1 is also set aside. The application under Order 16 Rule 1 of CPC is allowed. On payment of cost of Rs.2500/- by respondent No.1, the learned court below shall issue the summons to the concerned person to procure his attendance

before the Court. Necessary process fee and diet money shall be adjusted from the said cost. The necessary summons may also be paid to call for the records of criminal case in connection with crime No. 213/2011 for which the closure report is filed before the concerned Magistrate.

8. With the above observation, the petition is allowed.

Sd/-

**GOUTAM BHADURI
JUDGE**

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