

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 58 of 2019

- Sarvjeet Singh (Baba) S/o Shri Swarn Singh, Aged About 63 Years, R/o G.E. Road, in front of Power Grid, Village - Janjgiri, Tehsil Dhamdha, District Durg Chhattisgarh. (Defendant No. 1), District : Durg, Chhattisgarh

---- Petitioner

Versus

1. Smt. Sitadevi Agrawal W/o Late Ramesh Kumar Agrawal, Aged About 63 Years, R/o House No. B-1, Samta Colony, Raipur, Tehsil and District Raipur Chhattisgarh. (Plaintiff No. 1), District : Raipur, Chhattisgarh
2. Smt. Kantadevi Agrawal W/o Naval Kishore Agrawal, Aged About 57 Years, R/o House No. B-2, Samta Colony, Raipur, Tehsil and District Raipur Chhattisgarh. (Plaintiff No. 2), District : Raipur, Chhattisgarh
3. State of Chhattisgarh Through District Magistrate, Durg. (Defendant No. 2), District : Durg, Chhattisgarh

----Respondents

For Petitioner – Shri Prasoon Agrawal, Advocate.

For Respondents 1 and 2 – Shri Pawan Kesharwani, Advocate.

For State/respondent No.3 – Shri Sanjay Pathak, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

26-11-2019

1. This petition has been brought being aggrieved by the order dated 13-12-2018 passed by the 5th Civil Judge Class II, Durg, by which learned trial Court has dismissed the application of the petitioner filed under Section 45 of the Evidence Act in Civil Suit No.1235416A/10.

2. It is submitted that the respondents/plaintiffs had filed an application under Section 45 of the Evidence Act praying for examination of the disputed document by handwriting expert which was allowed and then at the request of the respondents Doctor Sunanda Dhenge was assigned to examine the disputed document. The report of the handwriting expert has been submitted on 30-11-2018. Subsequent to which, the petitioner/defendant not being satisfied with the report, filed an application for examination of the same disputed document by another handwriting expert which has been rejected by

the impugned order.

3. It is submitted that the trial Court has erroneously dismissed the application filed by the petitioner because the petitioner has a right to get the handwriting in the disputed document re-examined on the basis of his dissatisfaction to the earlier report filed by the handwriting expert. Referring to the order passed in the matter of **Hydru and another Vs. Govindankutty Nair**, 1981 SCC OnLine Ker 32, it is submitted that in this order the High Court of Kerala had held that there is no prohibition as such against making a second reference to a handwriting expert without setting aside the report of the first handwriting expert; the Court has a discretion in the matter.

Reliance has also been placed on the order passed by this High Court in **WP(227) No.754 of 2015** (Mu. Tapaswini Vs. Mu. Vrindavati and other) decided 14-11-2018.

Further, relying on the order of Karnataka High Court passed in the matter of **Krishnamurthy M. Vs. K. Narayanswamy and another**, 2010 SCC OnLine Kar 2454 it is submitted that in this order it has been held that the appointment of a commissioner would depend upon the nature of the dispute and the facts and circumstances of each case and also a report submitted by any expert can be challenged.

Referring to the judgment of High Court of Andhra Pradesh at Hyderabad in the matter of **M. Ramesh Babu Vs. M. Sreedhar**, 2009 (3) A.P.L.J. 134 (HC) it is submitted that in this judgment it was held by Andhra Pradesh High Court at Hyderabad that there are basic differences in the methodology adopted by the experts and even an expert may commit a mistake. Therefore, the petitioner is under impression that the report submitted by the handwriting expert in this case is erroneous. Therefore, he be permitted to get the document examined by another handwriting expert.

4. Learned counsel for respondents 1 and 2 opposes the petition and submission made. It is submitted that the petitioner has opportunity to challenge the report of the handwriting expert by calling her as a witness and also by objecting to the report and subsequent to that if the Court feels necessary, only then the discretion for examining the same document by another handwriting expert may be exercised. Therefore, this petition may be dismissed.

5. Learned counsel for the State/respondent No.3 makes formal objection.

6. The judgment of Kerala High Court in **Hydru and another Vs. Govindankutty Nair** (supra) is specific on this point, but before subscription to this view, the provisions present in the CPC need examination. The order 26 of the CPC provides for collecting evidence by appointment of Commissioner. Although, there is no specific rule under this Order for the handwriting expert, but, the provisions are similarly applicable to the report filed by whatever expert. Order 26 Rule 10(3) of the CPC provides that when the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. Further, Order 26 Rule 12(2) of the CPC provides that where the Court has reason to be dissatisfied with any report, it may direct such further inquiry as it shall think fit.

7. The stage where the Court should record his dissatisfaction with the earlier report filed and pass order for further inquiry is yet to come. There is no specific provision under the CPC for challenging the report of any expert, but, in absence of any such provision it cannot be said that the Court has no power to consider on any such challenge if it is made. Therefore, for the reason that there is no specific bar on the opposite party which is petitioner in this case who prays to have the same document examined by another expert and because the same provision of Law will apply to the report to be filed by second expert about challenging the same in the manner as provided under

the CPC. Therefore, for this reason that there is no specific bar in getting the same document examined by another Handwriting expert on the prayer made by another party, hence, I feel inclined to allow this petition.

8. Accordingly, the petition is allowed and the impugned order dated 13-12-2018 passed by the trial Court is set aside. The trial Court is directed to reconsider the application filed and pass order in view of the observation made hereinabove in this order.

Sd/-

(Rajendra Chandra Singh Samant)
Judge