

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (227) No.358 of 2019

Smt. N. Memon, aged about 56 years, W/o Shri Habib Memon, R/o- Infront of Dada Bhai Chaal, Juni Line, Bilaspur, Police Station-City Kotwali, Tahsil, Civil & Revenue District-Bilaspur (CG)

---- Petitioner

Versus

1. Smt.Rajiya Memon, aged about 56 years, W/o-Late Ibrahim Memon,
2. Najiya Memon, aged about 32 years, D/o-Late Ibrahim Memon
3. Mohd. Moinuddin Memon, aged about 29 years, S/o-Late Ibrahim Memon,
4. Siraj Memon, aged about 27 years, S/o-Late Ibrahim Memon,
5. Sadab Memon (wrongly mention Sadak), aged about 25 years, S/o-Late Ibrahim Memon,

All are R/o-Near Dada Bhai Chaal, Juni Line, Bilaspur, Police Station-City Kotwali, Tahsil, Civil & Revenue District-Bilaspur (CG)

6. Municipal Corporation Bilaspur Through Commissioner, Municipal Corporation Bilaspur, Police Station-Civil Lines Bilaspur, Tahsil, Civil & Revenue District-Bilaspur (CG)

---- Respondents

For Petitioner:-	Mr.Ratnesh Kumar Agrawal, Advocate
For Respondents No.1 to 5:-	Mr.M.D.Sharma, Advocate
For Respondent No.6:-	Mr.Pankaj Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/05/2019

1. By the impugned order, application filed by respondents No.1 to 5 under Section 45 of the Indian Evidence Act has been granted by the trial Court and they have been allowed to get the questioned document examined by hand-writing expert, which has been

questioned by the petitioner/defendant No.2 by way of this writ petition.

2. Mr.Ratnesh Kumar Agrawal, learned counsel for the petitioner/defendant No.2, would submit that similar application has already been rejected by the trial Court on 11.4.2014 and that order has become final and for the same relief, second application is not maintainable and barred by principle of res-judicata.
3. On the other hand, Mr.M.D.Sharma, learned counsel for the respondents No.1 to 5, would support the impugned order and submit that the order passed by the trial Court is strictly in accordance with law.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. It is correct to say that the plaintiff's application for grant of questioned document dated 27.8.1998 was rejected by the trial Court on 11.4.2014 holding that he has not produced original document dated 27.8.1998 and therefore, application under Section 45 of the Indian Evidence Act is not maintainable. Thereafter, the plaintiff filed an application under Order 13 Rule 10 of the CPC for calling original record from Municipal Corporation, Bilaspur as original document is available in that record. On 5.12.2018, the trial Court rejected that application and recorded a finding that original document need not be called for and documents produced and available on record of the Court, which can be examined by hand-writing expert. Based on the

said finding, respondents No.1 to 5 again filed an application for examination of the questioned documents by hand-writing expert, which has been granted on 6.4.2019. It is not the case that earlier application under Section 45 of the Indian Evidence Act was rejected on merits, it was rejected on technical ground that original document dated 27.8.98 is not available on record as being not produced by the plaintiff and when the trial Court subsequently recorded a finding on 5.12.2018 that original document need not be called for from the Municipal Corporation and documents produced and available on record, it can be examined by hand-writing expert, then respondents No.1 to 5/legal representatives of original plaintiff moved subsequent application, which was granted by the trial Court.

6. Since earlier application was not decided on merits, it was dismissed on technical ground, it cannot be held that second application was not maintainable and barred by principle of res-judicata. Second application was filed pursuant to subsequent order dated 5.12.2018 passed by the trial Court holding that original document need not be called for and document produced, which is available on record, can be examined by hand-writing expert. Therefore, by the impugned order, the second application for examination of questioned document by handwriting expert was entertained based on order dated 5.12.2018. I do not find any illegality or perversity in the said order.
7. Accordingly, the writ petition being devoid of merit is liable to be and hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge