

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 63 of 2020

- Prakash Kumar, S/o Musai Gupta Aged About 60 Years R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar Bhatapara, Chhattisgarh. (Defendant No. 1).

---- Petitioner

Versus

1. Anil Kumar Gupta, S/o Narayan Prasad Gupta, R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar, Bhatapara Chhattisgarh.
2. Sunil Gupta, S/o Narayan Gupta, Aged About 44 Years, R/o Halwae Khapri, Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar, Bhatapara Chhattisgarh.
3. Chanchal, D/o Narayan Gupta, Aged About 40 Years, R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar Bhatapara, Chhattisgarh.
4. Sunita, D/o Narayan Gupta, Aged About 52 Years, R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar, Bhatapara, Chhattisgarh.
5. Shravan Kumar Gupta, S/o Husae Gupta, Aged About 67 Years, R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar, Bhatapara, Chhattisgarh.
6. Umesh Kumar, S/o Husae Gupta, Aged About 65 Years, R/o Halwae Khapri, Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar Bhatapara Chhattisgarh.
7. Kailash Kumar, S/o Husae Gupta, Aged About 63 Years, R/o Halwae Khapri Baloda Bazar, Tuluka, Baloda Bazar, District-Baloda Bazar, Bhatapara, Chhattisgarh.

---- Respondents

For petitioner	:	Mr. Dashrath Kushwaha, Advocate.
For respondents	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

22/01/2020

1. The petition has been brought being aggrieved by the order dated 24.12.2019 (Annexure P-1) passed by the learned Additional Civil Judge Class-II, Balodabazar, District-Balodabazar-Bhatapara in Civil Suit No. C.J.63/2017 rejecting the application filed by the petitioner under Section 65 of the Evidence Act.
2. It is submitted that the petitioner, who is plaintiff in the civil suit, has filed an application under Section 65 of the Evidence Act along with a photocopy of partition-deed stating that as none of the parties is in possession of original partition deed, the photocopy of partition deed be taken on record as secondary evidence. The learned trial Court has arbitrarily rejected the said application without affording any opportunity to the petitioner to prove that photocopy and other documents was prepared and compared from the original. Hence, the order impugned is erroneous, arbitrary and illegal, which may be set aside.
3. Considered the submissions and also perused the impugned order and other documents filed along with the petition.
4. Since the application filed by the petitioner has been disposed off only on the basis of arguments advanced by the parties, I am of this view that one opportunity should be given to the petitioner to prove before the Court below, that the document on which he wants to rely upon and proposed to be presented as secondary evidence was prepared and compared from its original and regarding which a short inquiry can be made which is permissible under Section 151 of CPC.
5. Accordingly, the writ petition is disposed off. The impugned order is set

aside and application of the petitioner filed under Section 65 of Evidence Act is restored. The learned trial Court is directed to afford an opportunity to the petitioner by making a short inquiry to bring on record such evidence that the documents produced by him can be taken as secondary evidence within the meaning of Section 63 of Evidence Act and then to decide the application in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha