

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 656 of 2019

Awadhesh Prasad, S/o. Late Raghuvansh Prasad, Aged About 54 Years, R/o. D. Road, Krishnapuri Colony, Devpuri, Raipur, Tahsil and District - Raipur Chhattisgarh. Through Power of Attorney Rahul Prasad, Aged About 25 Years, S/o. Shri Awadhesh Prasad, R/o. Krishnapuri, G.E. Road, Devpuri, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

Gautam Prasad, S/o. Late Shri Raghuvansh Prasad, Aged About 52 Years, R/o. Shivanand Nagar, Sector - 3, Khamtarai, Alfa Vihar Colony, Near Hina Fancy and General Stores, Raipur Chhattisgarh.

-----Respondent

For Petitioner : Mr. Ravindra Sharma, Advocate

For Respondents : Mr. J.K. Gupta, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/02/2020

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 22.07.2019, passed by the trial Court in Civil Suit No.162-A/2013 dismissing the application filed by the petitioner under Section 65 of the Evidence Act praying for production of secondary evidence to prove the sale deed dated 10.02.1997.

2. It is submitted by the counsel for the petitioner that the petitioner is not in possession of the original sale deed and he has pleaded in his plaint that respondent/defendant is in possession of the same. A notice under Order 11 Rule 12 of C.P.C. was served upon the respondent/defendant, who has in reply, denied the possession of the sale deed in question. Therefore, the application was filed praying to prove secondary evidence, which has been rejected by the impugned order.
3. It is also submitted that earlier the petitioner filed an application praying for summoning the Registrar and one witness and the vendor of the sale deed as witness for plaintiff side, which was rejected by order dated 05.03.2019, therefore, the plaintiff has no option left, hence, this petition is filed praying for relief.
4. Counsel for the respondent opposes the petition and the submission made in this respect. It is submitted that the trial is at an advance stage since the suit is pending since the year 2013, hence, the petitioner/plaintiff is playing dilatory tactics to prolonged the civil suit. No error has been committed by the Court below. Hence, the petition be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Considered on the submissions made from both the sides and also perused all the documents that are present in this petition. It is clear from perusal of the documents that sale deed dated 10.02.1997 is a documents on which the whole case of the

petitioner/plaintiff is based. The petitioner is not in possession of the same as well as the respondent has also denied the possession in his reply to the application under Order 11 Rule 12 of C.P.C.. Section 65 of the Evidence Act provides that in such situation, the parties have opportunity for presenting the secondary evidence. What shall be accepted as secondary evidence is specifically described in Section 63 of the Evidence Act. It had been burden of the petitioner/plaintiff to obtain certified copy of the sale deed as that sale deed is registered and it is after filing of the said sale deed before the Court, the petitioner has to take steps to call such witness, who may be able to prove that certified copy in support of the claim of the petitioner.

7. On perusal of the impugned order, it is found that the learned trial Court has rejected the application of the petitioner only for the reason that the application has been filed belatedly. Requirements of proof on the part of the petitioner and the question of admissibility of the secondary evidence, which is proposed to be produced by the petitioner has not at all been examined, therefore, for proper and complete adjudication of the civil case between the parties, it is necessary that they should be afforded with all the opportunities, which are available to them under the provisions of law. Therefore, I am of this view that the petitioner deserves to have an opportunity to prove his case.
8. Accordingly this petition is disposed off at motion stage. The impugned order dated 22.07.2019 is set-aside. Liberty is granted

to the petitioner to file certified copy of the sale deed and then press upon the application restored and pending under Section 65 of the Evidence Act and he has also liberty to file further application for production of witness in proof of the documents filed as secondary evidence.

9. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram