

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 704 of 2019

1. Smt. Rambai Sahu, W/o Late Salikram Sahu, Aged About 45 Years, D/o Late Judawan Sahu, R/o Village - Urla, Ward No. 58, Tahsil Distt. Durg (Chhattisgarh).
2. Limeshwari Sahu, D/o Late Shri Shyam Lal Sahu Aged About 31 Years, R/o Village Kurud, Ward No. 16, Tahsil and Distt-Durg (Chhattisgarh).
3. Nirmal Sahu, S/o Late Shri Shyam Lal Sahu Aged About 29 Years, R/o Village Kurud, Ward No. 16, Tahsil and Distt. Durg (Chhattisgarh).
4. Urmila Sahu, D/o Late Shri Shyam Lal Sahu, Aged About 27 Years, R/o Village Kurud, Ward No. 16, Tahsil and Distt. Durg (Chhattisgarh).
5. Neera Sahu, D/o Late Shri Shyam Lal Sahu, Aged About 25 Years, R/o Village Kurud, Ward No. 16, Tahsil and Distt-Durg (Chhattisgarh).
6. Khilendra Sahu, S/o Late Shri Shyam Lal Sahu, Aged About 22 Years R/o Village Kurud, Ward No. 16, Tahsil and Distt-Durg (Chhattisgarh).
7. Jitendra Sahu, S/o Late Shri Shyam Lal Sahu, Aged About 16 Years, Minor Through Limeshwari Sahu, D/o Late Shri Shyam Lal Sahu, R/o Village Kurud, Ward No. 16, Tahsil and Distt-Durg (Chhattisgarh).

---- Petitioners

Versus

1. Ageshwar Sahu, S/o Samliya Sahu, Aged About 45 Years, R/o Village Kurud Ward No. 16, Tahsil and Distt. Durg (Chhattisgarh).
2. Smt. Shaymvati Sahu, W/o Pyarelal Sahu Aged About 65 Years D/o Late Judawan Sahu R/o Village Surdunga, Tahsil Dhamdha Distt-Durg (Chhattisgarh).
3. State of Chhattisgarh Through The Collector Distt-Durg (Chhattisgarh).

---- Respondents

For petitioners	:	Mr. Vipin Tiwari, Advocate.
For respondents	:	Mr. Jitendra Shukla, Panel Lawyer.

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

23/01/2020

1. This petition has been brought being aggrieved by the order dated 8.7.2019 (Annexure P-1) passed by the Court of 5th Additional Civil Judge Class-II, Durg in Civil Suit No.120A/2016 dismissing the application filed by the petitioner under Section 65 of Evidence Act.
2. It is submitted by the learned counsel that the petitioner was unable to get the certified copy of the document for the reason that the original of that document is not available in Tahsil office and his application for grant of certified copy was returned with the same note, therefore, he made a prayer that photocopy of the application for mutation be received as secondary evidence. The learned trial Court has observed that petitioner has been unable to explain how he could not get the certified copy of the document and rejected his application. This order is erroneous and illegal.
3. It is further submitted by the counsel for petitioner that petitioner relies upon this document to prove his case for the reason that the respondent No.1/defendant No.1 has made a false statement in that application on the basis of which mutation has been done in his favor by the Tahsildar, therefore, this document is essential to prove the case of the petitioner. Hence, the impugned order be interfered with and relief, as claimed, be granted to the petitioner.
4. Learned State counsel appearing for respondent No.3 formally opposed the petition.
5. On perusal of the impugned order itself, it is found that the private respondents in their reply have stated that on the basis of application filed by them, mutation has been done in their favor. Thus, there is no dispute regarding filing of mutation application and there is no need to prove the same.
6. As the situation is that the original copy of the said document is not available in the Tahsil office, therefore, there is no possibility of getting certified copy of the same. Neither there is any possibility of getting the photocopy document exhibited in evidence without there being any original of the same. However, the case of the petitioner is not this that

the concerned application is forged. On the other hand, the case is this that respondent No.1 made a false statement in the application for which he can lead evidence and prove the same in the trial. Therefore, I do not find any reason to interfere with the impugned order according to the observations made herein above.

7. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha