

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.877 of 2019

1. Anil Kumar S/o Late Nirendra Kumar Aged About 46 Years
 2. Sunil Kumar S/o Late Nirendra Kumar Aged About 44 Years
 3. Vikash Kumar S/o Late Nirendra Kumar Aged About 42 Years
- (All are r/o Village Bilari, Police Station And Tahsil Kashdol, District Baloda Bazar-Bhatapara, Chhattisgarh)

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Versus

1. Virendra Kumar S/o Late Ramcharan Aged About 76 Years
 2. Smt. Neelima Bai W/o Late Sanat Kumar Mishra Aged About 58 Years
 3. Ashish Kumar S/o Late Sanat Kumar Mishra Aged About 33 Years
 4. Abhishek S/o Late Sanat Kumar Mishra Aged About 30 Years
 5. Parul D/o Late Sanat Kumar Mishra Aged About 23 Years
- (all are r/o Bajarang Chowk, Kasdol, Police Station And Tahsil Kasdol, District Baloda Bazar-Bhatapara, Chhattisgarh)
6. Rama Mishra W/o Ishwar Chand Sharma Aged About 62 Years R/o Katiyapara, Dongaghat, Urai Chowk, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh
 7. Uma Mishra W/o Krishna Tiwari Aged About 60 Years R/o Tiwari Sadan, Dubey Colony, Sundar Nagar, Bemetara, Police Station And Tahsil Bemetara, District Durg, (Now Bemetara), Chhattisgarh
 8. Bramhani Mishra W/o Prakash Pandey Aged About 53 Years R/o Village Sendari, Post Kutra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh
 9. Pratibha Mishra W/o Sushil Dubey Aged About 50 Years R/o Village Gudhi, Sub Tahsil Seepat, Tahsil Masturi, District Bilaspur, Chhattisgarh
 10. Sharda Mishra W/o Santosh Tiwari Aged About 48 Years R/o Subham Vihar, Gauri Ganesh Colony, House No.5, Bilaspur, District Bilaspur, Chhattisgarh
 11. State Of Chhattisgarh Through Collector, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh

---- Respondents

For Petitioners	: Mr. H.V. Sharma, Advocate.
For Respondents No.1 to 10	: Mr. Vishvanath Shrivastava on behalf of Mr. Parasmani Shrivastava, Advocate.
For Respondent No.11/State	: Mr. Adil Minhaj, Govt. Advocate.

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

16-03-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 17.10.2019 passed by Civil Judge, Class-I, Kasdol, District- Baloda-Bazar, Bhatapara, C.G. in Civil Suit No.20A/2013.
2. Learned counsel for petitioners submits that the petitioners are the plaintiffs in that Civil Suit. The petitioners have prayed for relief of declaration, partition, separate possession and permanent injunction against the respondents/defendants. The petitioners rely upon the partition deed which was written in the year 1979. As the petitioners are not in possession of the original documents, which was in possession of their parents, therefore, they are not in a position to produce the same before the Court. The parents of the petitioners and private respondents have expired and after making all efforts, the petitioners could not find the original Batwaranama, that is why the application was filed in the trial Court under Section 65 of the Evidence Act, praying that the photocopy of Batwaranama dated 06.05.1979 be admitted as secondary evidence. The learned trial Court without appreciating the law in this respect has erroneously and arbitrarily rejected the application.
3. It is further submitted that the Batwaranama mentioned hereinabove was presented in the mutation proceeding and on that basis the mutation entries have also been recorded, which shows that the Batwaranama had existed in reality and this is a circumstance in favour of the petitioners. Therefore, the learned trial Court should not have rejected the application at the preliminary stage. Hence, it is prayed that petition be allowed and relief be granted to the petitioner.
4. All the respondents have been served with notice.

5. Learned counsel appearing for the respondent No.1 submits that the document proposed to be presented as secondary evidence is just a photocopy, therefore, it is not admissible in evidence.
6. Heard learned counsel for both the parties and perused the documents present.
7. The learned trial Court has held in the impugned order, that the petitioners have not made any effort as it is required under Section 66 of Evidence Act. As mentioned hereinabove, it was prayed by the petitioner in their application that the original document was in possession of the parents of the petitioners and the private respondents and there is no such pleading that it had been in the possession of the private respondents. The reason for non-production of original documents is this that the parents of both the parties have expired and despite the efforts made for tracing the original documents, that could not be found. Therefore, in this case, there was no circumstance present to comply with the direction given in Section 66 of the Indian Evidence Act. Hence, on this basis, the order passed by the trial Court appears to be erroneous.
8. Section 65(c) of the Indian Evidence Act provides that when the original document has been destroyed or lost or when the party offered the evidence of its contents cannot for any other reason not arising from his own default or neglect produced in reasonable time in that case. Evidence can be admitted as secondary evidence. In the present circumstance, the petitioners are in possession of only a photocopy, this document cannot be admitted as secondary evidence. However, Section 63 of Indian Evidence Act provides under Sub-Section 5 that oral account of content of any document can be given by some person who has himself seen it. Therefore, the secondary evidence which is permissible is only to this extent for such a document, that the oral

account can be given by the person who has seen the contents of the documents. Therefore, in this case, the learned trial Court should have considered the admissibility of oral evidence with respect to the contents of the documents on which the petitioners are relying in accordance with Section 63(5) of the Indian Evidence Act. Hence, this petition is disposed off at motion stage. The impugned order is set aside and the petitioners are allowed to bring in secondary evidence which shall be restricted so far it is permissible under Section 63(5) of the Indian Evidence Act.

9. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika