

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 8 of 2020

1. Prakash Gupta S/o Lt. Rajendra Prasad Gupta Aged About 37 Years R/o Panchpathpara Chowk (Bhoipara), Lakhenagar Chowk, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioner/Plaintiff

Versus

1. Smt. Saraswati Dani W/o Balkrishna Dani (Deleted) Through Legal Heirs
 - (a) Awadesh Dani S/o Balkrishna Dani, Aged About 38 Years, Resident of Navbharat Chowk, Kankalipara, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
 - (b) Muktesh Dani S/o Balkrishna Dani, Aged about 35 years, Resident of Navbharat Chowk, Kankalipara, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
 - (c) Abhishek Dani S/o Balkrishna Dani, Aged about 33 years, Resident of Navbharat Chowk, Kankalipara, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Shri Balkrishna Dani S/o Ramgulam Dani, Aged About 62 Years, R/o Navbharat Chowk, Kankalipara, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. State of Chhattisgarh through Collector, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

--- Respondents/Defendants

For Petitioner – Shri Awadh Tripathi, Advocate.

For Respondents 1(a) to 1(c) and 2 – Shri Manoj Paranjpe and Shri Bharat Sharma, Advocates.

For State/Respondent No.3 – Shri D.P. Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-02-2020

Heard.

1. This revision has been brought being aggrieved by the order dated 01-08-2019 by which the application filed by the petitioner/plaintiff under Section 65 of the Evidence Act was rejected by the trial Court.
2. It is submitted that agreement dated 09-08-2011 was executed between the petitioner and respondent No.1 and on that basis one authority letter dated 06-09-2011 and one sale deed/authority letter dated 06-09-2011 were also separately executed by the parties mentioned above. All these documents were given in possession of Chandrakant Kapgat. The Chandrakant Kapgate

was earlier defendant No.3 in the Civil Suit No.136A/2014 who is now discharged, however, after that the Chandrakant Kapgate was called as witness for the plaintiff and he has not made any specific statement in favour of the petitioner, therefore, the petitioner made a prayer to the Court to exhibit the photocopy documents in proof as secondary evidence.

It is submitted that the learned trial Court has erroneously rejected the application without appreciating the provisions under Section 65 of the Evidence Act. Hence, it is prayed that the petition be allowed and the impugned order be interfered with.

3. Learned counsel for the respondents No.1(a) to 1(c) and 2 opposes the submission made and submits that the documents on which the petitioner/plaintiff is placing reliance have been very clearly denied by the respondents/defendants by pleading that the said documents are forged. The documents proposed to be proved by secondary evidence are not within the meaning of secondary evidence as it is defined under section 63 of the Evidence Act, therefore, the documents cannot be exhibited in evidence. Relying on the judgments of Hon'ble the Supreme Court in the case of **Rakesh Mohindra Vs. Anita Beri and others**, (2016) 16 SCC 483 and in the case of **J. Yashoda Vs. K. Shoba Rani**, (2007) 5 SCC 730 it is submitted that the required condition may be fulfilled before permission is granted for producing any secondary documentary evidence.

4. Heard learned counsel for the parties and perused the documents.

5. Considered on the submissions made from both the sides. Admittedly the documents on which the petitioner places reliance and proposed to prove them as secondary evidence cannot be taken in record as secondary evidence. Section 63 of Indian Evidence Act reads as under:-

“63. Secondary evidence. – Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained;
- (2) copies made from the original by mechanical processes which in

themselves insure the accuracy of the copy, and copies compared with such copies;
(3) copies made from or compared with the original;
(4) counterparts of documents as against the parties who did not execute them;
(5) oral accounts of the contents of a document given by some person who has himself seen it.”

Therefore, as the provision has specifically mentioned as to what documents can be produced as secondary evidence, therefore, the present documents is not a document as mentioned in sub-section 1, 2, 3 and 4 of Section 63 of the Evidence Act. Still the petitioner has an option to present oral account about the contents of the document given by some person who has seen it, as its provided in sub-section 5 of Section 63 of Indian Evidence Act. Therefore, it is a condition specific under Section 63(5) according to which, the original document appears to be either destroyed or lost and it cannot be produced before the Court, therefore, only limited permission can be granted in favour of the petitioner, however, the permission to exhibit photo copy of the documents cannot be granted. Therefore, I am of this view that there is no error in the impugned order, however, the impugned order is of such nature that the opportunity available to the petitioner/plaintiff under Section 63(5) of the Indian Evidence Act also appears to be closed. Hence, limited interference can be made in the impugned order. Therefore, the petition is disposed off at the motion stage and it is ordered that the petitioner shall be allowed by the trial Court to lead evidence as provided under Section 63(5) of the Indian Evidence Act and as regards the prayer made by him in his application which has already been dismissed by the trial Court needs no interference.

6. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge