

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.151 of 2015

1. Smt. Pushpa Kale Wd/o Late Shyam Rao Kale Aged About 68 Years
2. Rajeev Kale S/o Late Shyam Rao Kale Aged About 48 Years
3. Sandeep Kale S/o Late Shyam Rao Kale Aged About 43 Years

(All are r/o Budhapaara, At-Teh.- Distt. Raipur, Chhattisgarh)

---- Petitioners

Versus

1. Smt. Indu Bai Wd/o Late P.G. Supekar Aged About 81 Years E--2/295, Arera Colony, Bhopal Mp, Madhya Pradesh
2. Murli Verma S/o Shir Kodan Verma Aged About 51 Years R/o Vill. Seoni, Po Godhi, Teh. Aarang, Distt. Raipur
3. Premlal Dhidhi S/o Jagatu Dhidhi Aged About 58 Years
4. Bhaglal Dhidhi S/o Jagatu Dhidhi Aged About 65 Years

(respondents No.3 and 4 are r/o Vill. Nakati, Po Mana Camp, Teh.- Distt. Raipur, District : Raipur, Chhattisgarh)

5. State Of Chhattisgarh Thro Collector, Raipur

---- Respondents

For Petitioners	– Mr. Raja Sharma, Advocate.
For respondent No.1	– Mr. Ashish Surana, Advocate.
For State/respondent No.5	– Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05-07-2021

1. This petition under Article 227 of Constitution of India has been brought being aggrieved by the order dated 12.02.2015, by which the learned trial Court has refused to admit the partition deed dated 25.12.1987 in evidence.
2. It is submitted that earlier when the partition deed dated 25.12.1987 was presented in evidence by the petitioners, who are defendants in the Civil Suit. The presentation of the same was objected to by the plaintiff's side. The trial Court passed an order dated 25.12.1987 for impounding the document under the provisions of Stamp Act. This order was challenged before this Court in W.P.(227) No.7301 of 2011, which was decided on 08.02.2013. The petition was allowed holding that the learned trial Judge, while exercising the powers under Section 33 of the Stamp Act by impounding the document in question, stopped at that stage and did not pass any consequential order, as to what steps should be taken by the parties in relation to document in question. On this basis, the order passed by the trial Court was set aside and the case was remanded to the trial Court with direction to the trial Judge to pass appropriate order.
3. Learned counsel for the petitioners submits that the issue was taken up by the trial Court in compliance of the order of High Court and it was held in the impugned order that the partition deed is not admissible in evidence for the reason that it is not signed by all the parties concerned.
4. It is further submitted by the learned counsel for the petitioners that the learned trial Court has failed to comply with the direction of the High Court in W.P.(227) No.7301 of 2011, which was very clear on this point that the trial Court had to pass appropriate order regarding giving the directions, consequent to the impounding of the document. Hence, the impugned order is erroneous, illegal and arbitrary, which is not sustainable. Hence, it is prayed that the petition may be allowed and appropriate directions may be issued to the trial Court to do the needful

for admitting the partition deed in evidence.

5. Learned counsel for the respondent opposes the petition and submissions made by the learned counsel for the petitioner and submits that the order in W.P.(2227) No.7301 of 2011 has had set aside the order for impounding the document in entirety. The direction in that order is very clear for the trial Court to pass appropriate order again on the admissibility of the document in question, keeping in view, all the law applicable. Therefore, the learned trial Court has rightly considered and decided on the admissibility of the document in evidence as the deed of partition is not signed by all the parties concerned, therefore, the execution of this document is itself not complete and it cannot be compounded.
6. Reliance has been placed on the judgment of Supreme Court in the case of Sneh Gupta Vs. Devi Sarup and Ors. reported in (2009) 6 SCC 194, in which it has been held that a family arrangement must be entered into by all the parties thereto so as to satisfy the conditions of a lawful agreement.
7. Reliance has also been placed on the judgment of Supreme Court in the case of Narendra Kante Vs. Anuradha Kante and Ors. reported in (2010) 2 SCC 77, it is submitted that there is no error committed by the trial Court, hence, this petition is without any substance, which may be dismissed.
8. In reply, it is submitted by learned counsel for petitioners that the trial Court had simply reviewed the previous order, which is not permissible. The petitioner is relying on this document to prove his defence in the Civil Suit, therefore, the petitioners may be given an opportunity for bringing evidence on the basis of this document.
9. This Court had while disposing off the W.P.(227) No.7301 of 2011 vide

order dated 08.02.2013 ordered in paragraph No.6 as follows:-

“(6) Since in this case, the trial Judge after exercising the powers under Section 33 by impounding the document in question, stopped there and did not pass any consequential order as to what steps should then be taken by the parties in relation to document in question and hence it is necessary to remand the case with a direction to the trial Judge to pass appropriate order again on the admissibility of the document in question, keeping in view all the relevant sections, referred above, which are part of Chapter- IV of the Act, so that parties are able to get their rights decided in respect of the document in question, as provided under the Stamp Act and then the document in question can be eventually received in evidence after all the formalities, contained in the Act are gone into.”

10. The learned trial Court has while complying with the orders of the High Court has considered on the admissibility of the document and held that the document on which the petitioners are relying does not fall in the definition of an instrument which is defined under Section 2(15)(III) of the Stamp Act, 1899.

11. It appears that the learned trial Court has committed an error in following the directions of the High Court. The direction had been to pass appropriate order again on the admissibility of the document in question, keeping in view all the relevant Sections referred above, which are part of Chapter IV of the Indian Stamp Act, 1899. The provisions in Chapter IV of the Indian Act, 1899 do not decide on the admissibility of the document. The authority of the Court is limited to this extent that the document produced in evidence has to be examined only on this point that it is properly stamped or not and subsequent to that, pass order on the same for impounding the document. The question of admissibility and evidentiary value of any document is another field, which has to be

dealt with under the provisions of the Indian Evidence Act. Therefore, it is found that the learned trial Court has traveled beyond the directions given by this Court in W.P.(227) No.7301 of 2011, hence, the impugned order is not sustainable, which is liable to be set aside, hence, the impugned order is set aside and the learned trial Court is directed again to pass appropriate order in compliance with the directions of this Court in W.P.(227) No.7301 of 2011.

12. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika