

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.13197 OF 2010

*An application under Articles 226 & 227 of
the Constitution of India.*

Kamal Bibhar

: Petitioner

-Versus-

Smt. Asami Bag & anr.

: Opposite Parties

For Petitioner

: M/s.U.K.Samal, C.D.Sahoo,
S.P.Patra, M.R.Mohapatra
& S.Naik

For O.Ps.

: None

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 20.12.2022

1. The Writ Petition involves a challenge to the rejection of an Application under Section 66 of the Indian Evidence Act, 1872, vide order dated 6.5.2010 involving T.S. No.6/2000 under Annexure-3.

2. Mr.Samal, learned counsel for the Petitioner taking this Court to the background and pleading involving the case submits, there has been execution of a sale deed between the Plaintiff and the third party involved herein and Defendant No.2 filed an Application seeking production of

Registered Sale Deed No.226 of 1991 by the third party. Copy of the Application being served on the Plaintiff, there is no dispute that the Plaintiff has come forward for filing objection, vide Annexure-2 declining to have executed any such Sale Deed. Mr.Samal, learned counsel for the Petitioner taking this Court to the nature of Application through Paragraph-6 of Annexure-1 submits, for the contingency in Section 65 of the Indian Evidence Act, there was requirement for issuing notice to one Ghana Kumbhar S/o.Kusiaru Kumbhar of Village-Tikrapara to produce original Sale Deed. Taking this Court to the provision at Section 65 of the Indian Evidence Act, learned counsel for the Petitioner attempts to satisfy that once there is an Application under Section 66 of the Indian Evidence Act, looking to the contingency in Section 65 of the Indian Evidence Act, it is compulsory on the part of the trial court in putting the Party likely to produce such document to notice and then taking a decision. It is in the circumstance, taking this court to the manner of disposal of the Application, vide Annexure-3, learned counsel for the Petitioner contends, this Court should interfere with the impugned order and direct the Civil Judge (Sr.Divn.), Titilagarh for having re-exercise on the Application under Section 66 of the Indian Evidence Act and disposing of the same strictly in terms of Section 65 of the Indian Evidence Act.

3. In spite of notice and appearance of a set of Counsel for the contesting O.P.1, nobody is present in Court. The matter is decided hearing the learned counsel for the Petitioner and also involving the pleadings and documents on Board.

4. For the involvement of contingency through Section 65 of the Indian Evidence Act, this Court finds, Section 65(a) of the Indian Evidence Act reads as follows :-

“65.Cases in which secondary evidence relating to documents may be given.— Secondary evidence may be given of the existence, condition or contents of a document in the following cases:— (a) when the original is shown or appears to be in the possession or power -
of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or
of any person legally bound to produce it,
and when, after the notice mentioned in section 66, such person does not produce it;”

5. Reading through the above, this Court finds, for the nature of Application involved herein required to be disposed of only after the notice on application under Section 66 of the Indian Evidence Act is served on such person. Coming back to the issue involved and the disposal of Annexure-1, this Court finds, in deciding the Application under Section 66 of the Indian Evidence Act, the trial court only involved the Plaintiff and the Defendant and did not involve the Party required to produce the document involved therein. In the circumstance, this Court

finds, there is no compliance of the statutory requirement under Section 65 of the Indian Evidence Act in disposal of the Application under Section 66 of the Indian Evidence Act.

6. As a consequence, this Court interfering with the impugned order at Annexure-3 sets aside the same but however for re-disposal of the Application required, this Court remits the matter to the Civil Judge (Sr.Divn.), Titilagarh for re-adjudication involving the Application under Section 66 of the Indian Evidence Act but strictly in accordance with the provision at Section 65 of the Indian Evidence Act.

7. The Writ Petition succeeds. There is no order as to costs.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 20th December, 2022/M.K.Rout, A.R.-cum-Sr.Secy.