

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.2156 of 2016 (O&M)
Date of Decision: 23.12.2016**

Simarjeet Singh

.....Petitioner

Vs

Swaran Kaur

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jagbir Singh Brar, Advocate
for the petitioner.

Mr. R.D. Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 08.03.2016 (Annexure P-9) passed by Civil Judge (Jr. Divn.) Guhla vide which application for sending the documents viz. agreement to sell dated 23.04.2010, standard signature of Joga Singh on power of attorney in favour of Sh. R.D. Sharma, Advocate and also signatures on the sale deed dated 04.11.2008 for comparison to State Forensic Science Laboratory (for short 'the SFSL)/Central Forensic Science Laboratory (for short 'the CFSL) by directing the Authorities to inspect the document and to submit report thereof was dismissed.

[2]. Brief facts are that the petitioner filed a suit for possession by way of specific performance of agreement to sell dated 23.04.2010 executed by respondent Swaran Kaur in favour of the plaintiff for consideration of Rs.14,20,000/- per acre. Defendant received an amount of Rs.28 lacs as earnest money. Target date for registration of sale deed was fixed as 30.04.2010 on payment of balance sale consideration. Total land was 62 *Kanals* 12 *Marlas*.

[3]. The suit was contested by the defendant Swaran Kaur on the ground that defendant never entered into agreement to sell dated 23.04.2010 with the plaintiff, rather the agreement to sell was the result of fraud. It was stated that the plaintiff might have obtained the thumb impression of the defendant after mixing the document of alleged agreement with the documents of registered sale deed No.32/1 dated 23.04.2010. The factum of agreement to sell was denied altogether.

[4]. At the stage of evidence, Joga Singh son of defendant appeared on behalf of the defendant Swaran Kaur and filed an affidavit, in which, he deposed that his mother Swaran Kaur was an old illiterate lady and was suffering from old-age ailments. Since she could not come to the Court being under treatment and confined to bed, so he showed his willingness to depose in

the Court. In the affidavit, it was stated that the agreement to sell was forged and fabricated. He never affixed the signature in the said agreement. Joga Singh signed the agreement in question as a witness.

[5]. The affidavit of Joga Singh prompted the plaintiff to seek report of handwriting and fingerprint expert to prove that Joga Singh also signed the agreement in question. Handwriting and Fingerprint Expert Navdeep Singh was engaged to seek opinion on the signature of Joga Singh. Said Expert gave his opinion that the disputed signatures were tallying with the standard signatures. To counter the same, defendant engaged services of Handwriting and Fingerprint Expert namely R.V. Vashishtha, who gave his report in favour of the defendant to the effect that purported signatures of Joga Singh did not tally with the standard signatures. In this way, both the Experts gave opinions in favour of their mentors.

[6]. In view of aforesaid, it was thought appropriate by the plaintiff to seek report from SFSL/CFSL and the application in question was moved by him. The said application was contested by the defendant on the ground that the original agreement to sell and original power of attorney forming part of case file pending before Sub-Divisional Magistrate, Guhla and original

sale deed which was not part of the record were not possible to be sent to the CFSL.

[7]. Registry Clerk with the record of sale deed 1879/1 dated 04.11.2008 had already been summoned by the trial Court. Another summon was issued to the concerned Clerk of Sub-Divisional Magistrate, Guhla with case file No.21/SDO D.OD. 10.4.13 titled "*State Vs. Swaran Kaur etc.*" under Section 145 Cr.P.C.

[8]. Learned counsel for the petitioner contended that since both the files were available and statement of Clerk of DC office, Kaithal was recorded on 28.10.2015, therefore, the opinion of the Expert was very necessary in order to determine the *lis* completely between the parties. Learned counsel relied upon ***Chamkaur Singh vs. Mithu Singh, 2014(1) RCR (Civil) 303*** and contended that when both the Experts talk the lines of their mentors, the documents can be sent to CFSL to resolve the conflict.

[9]. Learned counsel for the petitioner further relied upon ***Ahmad Reshi vs. State and others, 2008 AIR (J&K) 5*** and contended that the genuineness of the thumb impressions cannot be proved without having recourse to the comparison. Examination by FSL was held to be a reliable mode of getting

substantial evidence. In case of disputed signatures, the Expert opinion can be asked for, even at the stage of arguments in terms of Section 45 of the Evidence Act. According to learned counsel, in view of Section 45 of the Act, there can be no embargo that the application should be filed soon after filing of the written statement. Such application can be filed even at belated stage.

[9]. On the other hand, learned counsel for the respondent relied upon **Ravichandran vs. State by Dy. Superintendent of Police, Madras, 2010(2) RCR (Criminal) 549** and contended that, the opinion evidence of Handwriting Expert would be relevant only when conditions laid down in Section 47 of the Evidence Act were complied with. The opinion evidence would not be acted upon, in the absence of substantial corroboration. In case of report of Handwriting Experts, preference should be given to well-reasoned report of the Expert, when two divergent opinions were available on record. The Court could prefer one of the report where it felt the same to be more logical and well reasoned.

[10]. I have heard learned counsel for the parties.

[11]. The opinion of the Expert is not binding on the Courts. Ordinarily, the Court should not take upon itself the

responsibility of comparing disputed signatures. These are the matters of intrinsic technicalities, requiring some technical expertise. Even if, a document is admitted in evidence, though the contents may not be conclusive, yet the power of the Court to get the signatures compared while exercising the powers under Section 73 of the Evidence Act, is somewhat on explanatory note. The Court is not a Handwriting Expert, the Court can do it only on visual experience.

[12]. The comparison of signature by an Expert is a piece of evidence only. The Court should avoid reaching conclusions of its own by mere casual or routine glance. The Court has to determine the fact only after analysing the credibility of expert opinion. The opinion of the Government Expert may be an independent opinion and the same may help the Court to break the stalemate and mitigate the conflict between the opinions of the private Experts. Although the opinion of the two Experts is also not binding upon the Court, yet the Court can visualise the opinion of Expert on permissible parameters to see that which of the report is elaborate and appealing to reasons.

[13]. There is no dispute with regard to the proposition as laid down in different precedents. The only issue is with regard to signature of Joga Singh appearing on agreement to sell,

power of attorney in favour of Sh. R.D. Sharma, Advocate and on the sale deed dated 04.11.2008. Earlier Experts laid their hands to the documents while giving their respective opinions. The reply filed by the defendant was that the original agreement to sell, original power of attorney and original sale deed were not part of the record of the case, therefore, such an examination cannot be made. Evidently, Registry Clerk, Guhla along with the record of sale deed No.1879/1 dated 04.11.2008 had already been summoned in the case. Another summons were also issued to the concerned Clerk of Sub-Divisional Magistrate office, Guhla with case file No.21/SDO D.OD. 10.4.13 titled "*State Vs. Swaran Kaur etc.*" under Section 145 Cr.P.C.

[14]. Both the aforesaid files can be made available for inspection. In this context, order dated 14.07.2015 and 28.10.2015 passed by the trial Court are required to be appreciated. So from the aforesaid facts, it can be culled out that there is no legal impediment in making the documents available for inspection of the Expert. Since both the private Experts have towed with their mentors, therefore, it would be just and appropriate not to allow the trial Court to take responsibility upon itself of comparing the disputed signatures. Since the matter is of intrinsic technicality, therefore, third

opinion that too from the Government agency can be asked, which would help in resolving the conflict. Even that report would be an opinion evidence and that can still be considered to note down the flaws in any of the report and the Court would be in a position to see which one of the report would be logical and well reasoned in the light of independent third opinion.

[15]. Therefore, in my considered opinion, the report from the Government agency i.e. Central Forensic Science Laboratory would go in a way to resolve the conflict. The impugned order is set aside. This revision petition is accordingly allowed. Necessary consequences to follow.

December 23, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No