

CR-5498-2022 (O&M)

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

CR-5498-2022 (O&M)

Reserved on : December 08, 2022

Pronounced on : December 12, 2022

Om Parkash and others

... Appellants

Versus

Som Nath and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

DEEPAK GUPTA, J.

This revision is directed against order dated 14.09.2022 (Annexure P-11), whereby learned Civil Judge (Jr. Divn.), Dera Bassi has dismissed the application of the petitioners-plaintiffs under Section 151 CPC for adducing additional evidence, in Civil Suit No.1782 of 2014.

2. Petitioners-plaintiffs assailed the sale deed dated 30.05.2008 purported to be executed by their mother in favour of her brothers on the ground that it was the result of misrepresentation and without consideration. The stand of respondents-defendants, on the other hand, is that they had purchased the land in question for consideration of ₹ 4,19,000/- by way of the impugned sale deed, which had been paid to the vendor in the presence of her son i.e. plaintiff No.1 on 30.05.2008 itself. Petitioners-plaintiffs closed their evidence on 11.10.2019, during which plaintiff No.4-Sonu, daughter of Smt. Ratni-vendor of the impugned sale deed also appeared in the witness box. DW4 Malkeet Ram is one of the

attesting witness to the sale deed, who during evidence on behalf of the respondents-defendants, deposed that sale consideration was paid in his presence.

3. It is after the statement of DW4 that petitioners-plaintiffs moved an application to direct DW4 Malkeet Ram to provide his voice sample in the Court for the purpose of comparing the same with original conversation, which allegedly took place between said Malkeet Ram and plaintiff No.4 Sonu on 21.09.2019 and in which he allegedly stated that no consideration had been paid qua the impugned sale deed. Said application was dismissed by the Trial Court on 27.01.2020. Petitioners-plaintiffs filed Civil Revision No.1028 of 2020 against that order, which was dismissed by a co-ordinate Bench of this Court on 24.02.2020. While dismissing that revision, it was observed as under:-

“Perusal of judgment relied upon by counsel makes it evident that there is no provision in the Code of Civil Procedure or Evidence Act that envisages taking voice sample of a witness for the purpose of comparison with record of conversation in CD. This apart, in para 56 of judgment, the Court has held that their Lordships of the Supreme Court held that the petitioner has to establish that the voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it and the accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibility of tampering with the record and the subject matter recorded had to be relevant according to rules of relevancy found in the Evidence Act. Since no person or persons connected with the alleged recording of the tape is/are examined so far and brought the tape on record, it cannot be said that it is a former statement of PW2 and is evidence. Unless that is done, it cannot be said that the former statement contained in the tape can be used. In view of the facts in this case, the only course the lower Court would have adopted was to defer the cross examination of PW 2 till the evidence of the defendants is

adduced regarding the tape. Order XVIII Rule (2) sub-rule (4) empowers it to adopt this course. It says that notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.

In the case at hand, there is nothing on record suggestive of the fact that the tape recorded conversation which was put to DW4 has been proved in accordance with law with which DW4 could be confronted being previous statement made by him. In the given circumstances, there is no question of calling upon DW4 to give his voice sample for the purpose of comparison with the unproved tape recorded conversation. In this view of the matter, I do not find an error much less perversity in the impugned order warranting intervention in exercise of extra-ordinary jurisdiction of the Court. ”

4. After the aforesaid order passed by this Court, petitioners-plaintiffs moved application under Section 151 CPC for additional evidence so as to examine the concerned Nodal Officers pertaining to the mobiles of plaintiff No.4 Sonu & DW4 Malkeet Ram besides Shri Shiv Arun Kaushal, who transferred the conversation from mobile phone to pen drive. They further sought to re-examine plaintiff No.4 Sonu by tendering her in additional evidence. Said application has been rejected by the Trial Court by way of the impugned order dated 14.09.2022, against which this revision has been filed.

5. It is contended by learned counsel that petitioners-plaintiffs are required to prove that impugned sale deed was without sale consideration; that one of the attesting witness, who deposed in favour of the sale deed, admitted during conversation with plaintiff No.4 that no consideration has been paid; that that conversation was recorded in the mobile phone of plaintiff No.4 and so, it is necessary to prove the same. It is further contended that while dismissing the earlier revision, it had been observed by this Court that since tape recorded conversation had not

been proved, therefore, DW4 Malkeet Ram could not be directed to give his voice sample. It is also contended that in order to prove the tape recorded conversation, additional evidence is necessary to be produced to resolve the controversy.

6. Learned counsel has relied upon the judgment of a co-ordinate Bench of this Court in case of ***“Amritpal Singh vs Jaswinder Singh & Ors.”*** reported as 2022(3) Law Herald (P&H) 2655, wherein it has been held that though order 18 Rule 17A CPC has been deleted, however, the Court retains its inherent powers to do substantive justice. The rules of procedure are to help the Court in delivery of justice as in every case, the Presiding Judge is in the quest to find out the truth and such truth can only be unearthed, if the parties are permitted to lead proper evidence. Reliance is further placed upon the judgment in case of ***“Rajesh Kumar vs Mangat Rai and others”***, reported as 2011(17) R.C.R. (Civil) 565, wherein a co-ordinate Bench of this Court held that a duty has been cast on the Court to examine the relevancy of the material sought to be produced so as to conclude that the application filed is bonafide and not to abuse the process of law to harass the opposite side by filing frivolous applications.

7. After considering the submission of learned counsel for the petitioners and having perused the paper book, I find no merit in this revision.

8. Impugned sale deed had been executed way back on 30.05.2008. Recorded conversation, which petitioners-plaintiffs want to prove is of 21.09.2019. The said alleged conversation came into

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existence prior to 11.10.2019, when the petitioners-plaintiffs had closed their evidence. During their evidence, petitioners-plaintiffs did not take any step to prove any such conversation. The contention of learned counsel that plaintiff No.4 Sonu did not disclose the said fact to her brothers or to the counsel, is not believable. Not only this, when DW4 Malkeet Ram entered into the witness box and he denied the conversation, his cross-examination was not got deferred for taking the voice sample. As observed by learned Trial Court in the impugned order, the application for taking voice sample was moved at the stage of arguments, which as already noticed above, has already been discussed. The instant application is just to fill up the lacunae as per the observations made by this Court in the earlier revision.

9. There can be no dispute that the Court has the inherent powers to allow additional evidence to do substantive justice but in the present case, I do not find any circumstance to exercise such powers in favour of the petitioners-plaintiffs. Considering the facts as noticed above, I do not find any illegality or perversity in the impugned order.

Dismissed.

December 12, 2022

sarita

**(DEEPAK GUPTA)
JUDGE**

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No