

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

CR 2671/2022 (O&M)

Date of decision: 18.01.2023

Nazar Singh and others

.....Petitioners

Vs.

Jagraj Singh and others.

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tribhawan Singla, Advocate for the petitioners.

Nidhi Gupta, J.

Present revision petition has been filed for setting aside the order dated 7.3.2022 passed by Ld. Civil judge (Jr. Div.) Barnala whereby the application of the petitioner/defendant for taking permission of the court to take the photographs from the file with regard to thumb impressions of petitioner/defendant-applicant Nazar Singh and deceased Gurjeet Singh and signatures of petitioner-defendant Sukhjant Singh for being examined from the Handwriting and Fingerprints Expert, has been dismissed.

It is submitted by the learned counsel for the petitioners that the respondent No. 2 had brought on record one document Ex. D-1 purportedly executed by the petitioner No. 1 herein with the consent of his legal heirs, pertaining to the transfer of the suit land in favour of respondent No. 2. It is submitted that application with regard to production of original document Ex.D1 already stands dismissed as the respondent/plaintiff denied having a copy of the original of the same, and therefore, the petitioners were left with no option but

to move the present application for comparing the signatures/thumb impressions of the petitioners from the photocopy of Ex.D1. It is submitted that grave injustice will be caused to the petitioners if they are not allowed to prove thumb impressions of the petitioners from the photocopy of the document Ex. D1.

Heard Ld. Counsel for the petitioners.

In this regard, relevant findings of the Trial Court are reproduced hereunder:-

“It is pertinent to mention here that in the present case, the documents on which the questioned thumb impressions and signature are appended is a photocopy and the original of the same is not on record. Defendants-applicants Nos.4 to 6 earlier filed an application for directions to defendant-respondent No.1 to produce the original of the same on record. The said application was dismissed by the Court, vide order dated 17.8.2019 as defendant-respondent No.1 denied the possession of the original. It is settled law that a Photostat copy of only that document can be taken into evidence and can be read into, which is not disputed between the parties or the original of which has been proved to be lost or destroyed. In the present case also, the photocopy of the alleged agreement dated 2.9.2004 can only be read into evidence only if the party relying on the same is able to prove the existence and loss of its original. Merely because the other party denied the possession of original it cannot be presumed that original is lost. Meaning thereby, from the copy from which the defendants-applicants Nos.4 to 6 prayed that the photographs of disputed thumb impressions and the signatures be taken will only be admissible in evidence if the existence and loss of the original is proved. Mere exhibition of the same on file as Ex.D1 does not mean that the same is proved on file as per the provisions of Indian Evidence Act. This Court is of the view that the document, whose admissibility in itself is in question, cannot be used by any party for any purpose and can in no way create a valid and admissible evidence in favour of any of the party to the suit.

Furthermore, no law prescribes that an Expert opinion can be sought from taking photographs by Expert from a Xerox copy of the document. Learned counsel for the defendants-

applicants Nos.4 to 6 placed reliance upon the decision of Hon'ble Telangana & Andhra Pradesh High Court in case titled as "**Kati Maheswara Rao Versus Uppati Lalitha & ors., 2018(3)-Civil Court Cases-085 (T&A)**". However, after going through the said authority, this Court finds that the decision of Hon'ble Court is not applicable to the facts of the present case. In the said case, the original document was available on the file with the Court, whereas, in the present case, there is only a Xerox Copy of the document on file. Further, in that case, Court already took opinion of Expert under section 45 of Indian Evidence Act and after the same, one of the party after obtaining the certified copy of the document took opinion of private expert over the same and wanted to place on record the said evidence. Furthermore, in that case, Court nowhere stated that a Xerox copy can also be used for taking opinion of Handwriting and Finger Print Expert. The Hon'ble Court held that a photographic copy of the document can be used for that purpose. There is difference between a Xerox copy and a photographic copy. In the present application, defendants-applicants Nos.4 to 6 prayed for taking photographic copies of the thumb impressions and signatures by Expert, but the document from which the same were to be taken is not original, but is a Xerox copy and no expert opinion can be sought regarding the thumb impressions and signatures appearing on the Xerox or Photostat copy”

On a specific query by this Court, learned counsel admits that the document Ex. D-1 from which photographs are sought to be taken to seek opinion of Handwriting and Fingerprints expert, is a photocopy. That being so, when the admissibility of the document Ex. D-1 itself is questionable having not yet been established on record, then any expert opinion taken therefrom will be questionable.

Furthermore, it is admitted that the evidence of the petitioners/defendants stands closed and the case was fixed for rebuttal evidence before the learned Trial Court when the present application was moved by the

petitioners. As such, there is no error in dismissing said application as it was moved at a belated stage of the trial.

It has further come on record that the petitioners’ evidence was closed vide order dated 26.3.2019. However, an application dated 21.11.2019 was moved by them seeking permission to tender further evidence. The said application was allowed by the learned Trial Court. However, as no further evidence was led by the petitioners thereafter, their evidence was again closed vide order dated 13.12.2019. Thereafter, the petitioners moved the present application dated 20.1.2020, seeking permission to examine thumb impressions of petitioners from the Handwriting and Fingerprints Expert. It is to be noted that no permission was sought by way of the said application to lead additional evidence. As such, I am in concurrence with the view of the learned Trial Court that the present application is devoid of merit, also in view of the fact that it has been moved at a stage when the evidence of the petitioners already stands closed.

Accordingly, I find no merit in the present revision petition, and the same is hereby dismissed.

Nothing stated above shall be taken as an expression of opinion on the merits of the case.

(Nidhi Gupta)
Judge

18.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No