

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-2867-2022 (O&M)
Reserved on : 21.11.2023
Pronounced on 14.12.2023

Smt. Indubala and anotherPetitioners

Versus

Smt. Arzoo Yadav and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Jai Singh Yadav, Advocate for the petitioners.

Mr. P.R. Yadav, Advocate for respondent No.1.

NAMIT KUMAR, J. (ORAL)

CM-8884-CII-2022

Prayer in the instant application filed under Section 151 of CPC is for exemption from filing certified/true typed copies of Annexures.

Allowed as prayed for subject to all just exceptions.

CR-2867-2022

1. The instant revision petition has been filed by the petitioners impugning the order dated 16.02.2021 passed by learned Additional Civil Judge (Senior Division), Kosli, District Rewari, whereby the application filed by respondent No.1/plaintiff under Order 12 Rules 2 and 3 of CPC for admission and denial has been disposed of by giving necessary permission to the plaintiff to prove the voice recording by way of evidences and petitioner No.1/defendant has been directed to give his voice sample regarding the same as and when required.

2. Brief facts of the case are that respondent No.1/plaintiff has filed an application in question by stating that the plaintiffs are owner in possession of property to the extent of 02 kanal 04 marla situated at village Tumna and petitioner No.2/defendant No.2 is close relative and trustworthy person of the plaintiff. On 09.09.2016 defendant No.2 got the sale deed No.992 executed fraudulently from the plaintiff and the same was registered in the office of Sub-Registrar, Kosli on 14.09.2016 without paying any consideration amount as per sale deed and it was assured to the plaintiff that she will get the property back after case is decided and she will receive the consideration amount as and when the property sold again. However, after registration of the sale deed defendant No.2 has become greedy and negotiations took place between them and on 29.05.2017, defendant No.2 executed an affidavit in favour of the plaintiff and it was got attested through Notary Public. Various calls were exchanged between the plaintiff and defendant No.2 and recording of the same has been done in a CD by the plaintiff. Therefore, it was prayed in the said application that defendant No.2 be summoned to admit or deny the affidavit dated 29.05.2017 and the recording of the CD and if the defendant denies the same then permission for taking voice sample of defendant No.2 and examination of the same through an expert be given to the plaintiff.

3. Reply to the said application was filed by the defendants denying the contents of the application and it was stated that defendant No.1, who was wife of defendant No.2, is bona fide purchaser of the land measuring 02 kanal 04 marla vide registered sale deed No.992 dated 14.09.2016 for sale consideration of Rs.6,32,500/- and it was

executed with the free will of the plaintiff. He also denied the meeting or giving of affidavit to the plaintiff. The said application was disposed of by the Court of learned Additional Civil Judge (Senior Division), Kosli vide order dated 16.02.2021. Aggrieved against the said order, the petitioners/defendants have filed the instant revision petition.

4. Learned counsel for the petitioners/defendants contends that the learned Trial Court has without appreciating the legal proposition contemplated in Section 65B(4) of the Indian Evidence Act, 1872 (for short 'the 1872 Act') has disposed of the application by wrongly granting necessary permission to the plaintiff to prove the voice recording by way of evidences. He submits that since no certificate as contemplated under Section 65B(4) of the 1872 Act has been obtained, therefore, the impugned order cannot sustained in the eyes of law. In support of his arguments, learned counsel for the petitioners has placed reliance upon the judgment passed by the Coordinate Bench of this Court in ***Gurbakshish Singh Vs. Sukhwinder Kaur and another : 2018(4) PLR 25.***

5. On the other hand learned counsel for respondent No.1/plaintiff contends that since there is complete denial by the defendants and the CD is not on record, therefore, the certificate under Section 65B(4) of the 1872 Act is not required at this stage as only permission has been granted to the plaintiff to prove the voice recording by way of evidences and defendant has been directed to give his voice sample regarding the same as and when required.

6. I have heard learned counsel for the parties and perused the relevant documents.

7. Order 12 of CPC deals with admission and denial and as per Rule 2 of Order 12 of CPC, either party may call upon the other party to admit any document and in case of refusal or neglect to admit, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be and since there is complete denial by the defendants with regard to the affidavit dated 29.05.2017 as well as contents of the CD and the Court has only granted the permission to the plaintiff to prove the voice recording by way of evidences and the defendant has been directed to give his voice sample regarding the same as and when required, therefore, there is no illegality or infirmity in the impugned order dated 16.02.2021 passed by learned Additional Civil Judge (Senior Division), Kosli.

8. Moreover, the revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

9. The judgment relied upon by learned counsel for the petitioners is not applicable to the facts of the present case.

10. Finding no merit in the revision petition, the same stands dismissed.

11. Interim order dated 25.07.2022 passed by this Court shall stand vacated.

14.12.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	No