



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

134

CR-5998-2024
Date of decision : 06.11.2024

Ankit Verma Petitioner
versus

Ravi Sondhi and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.D. Singla, Advocate and
Mr. Ravinder Singh, Advocate
for the petitioner.

Mr. Avneesh Mittal, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Legality of the order dated 18.09.2024 passed by Additional Civil Judge (Sr. Divn.), SAS Nagar (Mohali) is under challenge.
2. Plaintiff-petitioner filed suit for specific performance propounding agreement to sell dated 22.02.2021. The suit was resisted by the defendant claiming that the agreement to sell indeed was a security transaction as the defendant had only availed loan from the plaintiff and as a security thereof, agreement to sell was executed. In order to substantiate the same, defendant alongwith the written statement, filed transcription of the conversation between the parties recorded on 12.06.2021. The suit was instituted on 15.06.2021. During the course of evidence, the plaintiff was confronted with the recording which he declined. One of the attesting witnesses to the agreement to sell namely Sunil Rajput @ Sunil Kumar expired 04 days after the



agreement. An application was moved by defendant No.1 claiming following reliefs:-

- “a) To allow the application of the Defendant no 1 and permit to appoint the expert for verifying the signature of attesting witness Mr Sunil Rajput @ Mr Sunil Kumar on the agreement to sell, receipt, possession letter with the signature on Bank records with Bank Account No- 015501008775 (Saving Account) from ICICI Bank, 19/20, Central Market, West Avenue Road, Punjabi Bagh Branch, New Delhi-110026
- b) To permit the application of the Defendant No 1 for appointment of the expert for verification of the voice recorded with the voice sample that may be allowed to taken by the expert
- c) To permit the application of the Defendant No 1 for appointment of the expert for verification of the aging of Ink, writing instrument, paper and printer used for preparing the documents.
- d) Pass any or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. The aforesaid application has been allowed by the Civil Judge (Sr. Divn.). Counsel for the petitioner-plaintiff has assailed the order claiming that the Trial Court has completely misdirected itself in allowing the application. He submits that the Trial Court on page No.6 of the impugned order has relied upon ratio of law laid down by Supreme Court in the case of ***K.S. Puttaswamy vs. Union of India***. However, the paragraph reproduced in the impugned order does not find place in the judgment delivered by the Supreme Court. He further submits that the plaintiff cannot be forced to give voice samples which in a manner will be forcing him to give self incriminating evidence. He relies upon ***Ram Media Limited vs. Dhanraj Singh, RCR (Civil) 583, Ritesh Sinha vs. State of Uttar Pradesh & Anr. 2019 AIR (Supreme***



Court) 3592, Dharmesh Sharma vs. Tanisha Sharma, People's Union for Civil Liberties (PUCL) vs. Union of India 1997(1) SCC 301 and Amar Singh vs. Union of India and others 2011(7) SCC 69.

4. *Per contra*, Mr. Mittal relies upon various judgments of High Courts and the Supreme Court to submit that once right from the beginning, the defendant alongwith its written statement submitted the transcription before the Trial Court and the plaintiff was confronted with the recording which was tendered alongwith certificate under Section 65-B of the Evidence Act. Trial Court has rightly allowed the application filed by defendant-respondent asking the plaintiff to submit his voice sample so that the factum of the conversation can be ascertained. He further submits that in view of the specific stand taken by the defendant with respect to execution of the agreement to sell claiming that it was merely a loan transaction, the conversation between the parties will be a vital piece of evidence that will help the Courts in ascertaining the real controversy between the parties. He further submits that so far as death of Mr. Sunil Rajput is concerned, the same is admitted fact. Plaintiff himself has propounded the agreement to sell and thus no fault can be found with the order passed by the Trial Court allowing the defendant to get the signatures of Sunil Rajput compared with his usual signatures that are being procured from his banker.

5. I have heard counsel for the parties and have carefully gone through the records of the case.

6. So far as order passed by the Trial Court allowing the defendant to prove signatures of the deceased-attesting witness to agreement to sell Sunil Rajput is concerned, this Court finds no fault



with the order passed by the Trial Court for more than one reason. It is the plaintiff who himself has propounded the agreement to sell and claimed the signatures of Sunil Rajput thereupon. It is also not in dispute that Sunil Rajput died just 04 days after the alleged execution of agreement to sell. Thus, defendant has every right to get the signatures of Sunil Rajput compared by examining hand writing expert.

7. In the considered opinion of this Court, controversy at the heart of the *lis* lies in the nature of the document. Plaintiff claimed it to be an agreement to sell, whereas defendant claims that the same was executed only as a security document to secure the loan availed by the defendant from the plaintiff. The document is in nature of an agreement that deals with disposition of property. Sections 91 and 92 of the Evidence Act specifically exclude ocular evidence. None of the judgment relied upon by the counsel for the parties deals with Sections 91 and 92 of the Evidence Act. It is from the covenants of the contract itself that the Court has to ascertain the nature of the document.

8. In view of Section 92 of the Evidence Act, the ocular evidence being excluded specifically, this Court finds that so far as giving of voice samples and the conversation is concerned, the same cannot be allowed to be brought on record to dispute the nature of document especially in view of specific bar under the Evidence Act. The necessity for external aid may arise only in a case where Court finds that the nature of document cannot be ascertained by contents thereof. There is no such satisfaction recorded in the impugned order. Apart therefrom, counsel for the petitioner brings to the notice of this Court that recording submitted by the respondent could not be played by FSL. The sample failed. Resultantly, part of the impugned order whereby petitioner has



been directed to give voice sample is quashed.

9. In view thereof, the present revision petition is disposed off.

(PANKAJ JAIN)
JUDGE

06.11.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No