

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.475 of 2025 (O&M)

Reserved on: 07.02.2025

Date of Order: 28.02.2025

Rakesh Aggarwal

.Petitioner

Versus

Krishna and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Atul Lakhanpal, Sr. Advocate, with  
Mr. Vineet Jakhar, Advocate  
for the petitioner.

ANIL KSHETARPAL, JUDGE (Oral)

1. **Brief Facts:-**

1.1 The suit filed by the respondents for grant of decree of declaration with consequential relief of permanent injunction and mandatory injunction is pending before the trial court.

1.2 Defendant no.1 assails the correctness of the interlocutory order passed by the trial court permitting the plaintiff to examine an expert to compare the defendant's no.1 voice sample with recording in the pendrive containing audio-video of various conversations between plaintiff no.1, plaintiff no.2 and defendant no.1. Previously, the trial court permitted the plaintiffs to summon defendant no.1 to prove the recording in the pendrive Ex.P6. However, he denied his voice and face in the audio-video. Consequently, the plaintiffs have filed an application which has been allowed by the trial court.

1.3 In the plaint, the plaintiffs claim to have borrowed a sum of Rs.2 Crores from defendant no.1, who at the time of advancing the loan

procured signatures of the plaintiffs on blank stamp papers, plain papers, blank cheques and also kept several original sale deeds belonging to them as security.

1.4 Subsequently, the plaintiffs purchased 35 kanals 10 marlas land vide registered sale deeds dated 27.06.2011 and 19.12.2011. However, those sale deeds were also kept by the defendants who again got their signatures on stamp papers. Thereafter, the plaintiffs again obtained a loan of Rs.78,00,000/- from defendant no.1 with the help of his friend Tilak Raj Arora.

1.5 Some more blank stamp papers were got signed from the plaintiffs and on the insistence of defendants, name of Manju Malik along with the Plaintiffs Krishna Devi and Phool Wati was entered in the sale deed dated 13.12.2012, with respect to land measuring 19 kanals and 11 marlas. Manju Malik was disclosed to be purchaser of 7 kanals land. The original sale deed was also kept by the defendants as surety even on returning of the whole amount.

1.6 Defendants failed to cancel the sale deed in favour of Manju Malik and another sale deed dated 27.02.2012, was again executed in favour of Manju Malik by the plaintiffs on the insistence of the defendants. The plaintiffs were also forced to execute yet another sale deed dated 04.07.2013 and power of attorney dated 05.07.2013.

1.7 Subsequently, another power of attorney was executed by plaintiff no.1 in favour of defendant no.2 on 06.10.2014, for borrowing the loan amount of Rs.2 crore. An agreement to sell reflecting full and final payment, will, affidavits and receipts were also got executed. The plaintiffs are claiming that in the pendrive there is an audio-video recording to prove

the terms of the agreement and the manner in which the sale deeds and power of attorneys were executed. The court has permitted the same.

2. **Arguments put forth by learned counsel representing the parties:-**

2.1 Learned senior counsel representing the petitioner has submitted that such expert evidence would not be admissible in view of Sections 91 and 92 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the 1872 Act'). He submits that once there is a contract in writing, oral evidence for the purpose of contradicting, varying, adding to or subtracting from its term is not admissible in evidence. He also relies upon the judgments passed in **Doddamallappa Channabasappa Kari vs. Gangappa Shiddappa Gulganji, since deceased by LRs., 1961, Musore Series, 513, Roop Kumar vs. Mophan Thedani, (2003) 6 SCC 595** and **Jatinder Pal Singh vs. Krishan Kishore Bajaj, 2018 SCC Online P&H 7095.**

3. **Analysis and Discussion:-**

3.1 This court has considered the submissions of the learned counsel representing the petitioners.

3.2 There appear to be series of events between the parties. The court has already permitted the plaintiffs to prove the audio-video recording in the pendrive, which has been exhibited as Ex.P6. For proving that pendrive recording, defendant no.1 was summoned, however, he denied his voice and face. In these facts, Section 91 and 92 of the 1872 Act will not be applicable. The plaintiffs admit execution of the sale deeds. They also admit execution of power of attorney, however they claimed that these sale deeds and power of attorney were executed pursuant to the loans which were borrowed by the plaintiffs from defendants. They also want to prove its re-

payment. Such evidence is not likely to result in contradicting/varying the terms of written contract. The plaintiffs are claiming oral contracts which were arrived at during discussion. This court has also called upon the petitioner to produce its transcript. After having gone through the transcript, this court is of the considered view that it would help the court in properly adjudicating the dispute. The trial court has already exercised its discretion. Hence, in exercise of revisional jurisdiction, this court does not find it appropriate to interfere.

3.3 The judgments relied upon by the petitioner's counsel are distinguishable. In *Roop Kumar's case(supra)*, the Supreme Court examined Section 91 and 92 of the 1872 Act and held that oral evidence is admissible to show that the document executed was never intended to operate as an agreement. Thus, the Supreme Court itself has permitted production of such evidence.

3.4 Similarly, in *Jatinder Pal Singh's case (supra)*, the court dismissed the revision petition while upholding the trial court's order in the context of Section 65(b) of the 1872 Act. In this case the court never considered the exclusion of evidence in the context of Section 91 and 92 of the 1872 Act.

3.5 In *Doddamallappa's case (supra)*, the Madras High Court held that the oral evidence to show the terms of contract between the parties were different or were at variance with the terms contained in the registered instrument could not be permitted.

3.6 In this case, audio-video recording is sought to be proved. Hence, the evidence sought to be led cannot be said to be in violation of Section 91 and 92 of the '1872 Act'. Moreover, the final opinion can be

formed by the court after analyzing the entire evidence. At this stage, it would not be appropriate to debar the plaintiffs to lead evidence.

4. **Decision:-**

4.1 Consequently, finding no merit, the revision petition is dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)  
JUDGE

February 28th, 2025  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No