



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

WRIT PETITION NO. 32595 OF 2024 (GM-CPC)

BETWEEN:

1. SHRI. SHIVAKUMAR. A
SON OF SRI. ANNAIAH REDDY,
AGED ABOUT 70 YEARS,
2. SHRI. MANJULA
WIFE OF SRI. SHIVAKUMAR. A,
AGED ABOUT 54 YEARS,
3. SHRI. S. NIRANJAN
SON OF SRI. SHIVAKUMAR. A,
AGED ABOUT 33 YEARS,

THE PETITIONER NO.1 TO 3
ARE RESIDING AT NO.53/5,
NIRANJAN NILAYA,
LNT MAIN ROAD,
MUNNEKOLALA,
OPP. KIRTANA APARTMENT,
NEAR BACHPAN PLAY SCHOOL,
BENGALURU NORTH,
MARATHAHALLI COLONY,
BENGALURU-560 037.

Digitally
signed by
SUMA
Location:
HIGH
COURT OF
KARNATAKA

...PETITIONERS

(BY SRI. T.N. VISWANATHA, ADVOCATE)

AND:

1. SHRI. S. ARUN REDDY
AGED ABOUT 28 YEARS,
SON OF SHIVAKUMAR. A
(WRONGLY CLAIMS TO BE SON OF SHIVAKUMAR. A)
2. SMT. NARAYANAMMA
AGED ABOUT 47 YEARS,



WIFE OF SHIVAKUMAR. A
(WRONGLY CLAIMS TO BE WIFE OF SHIVAKUMAR. A)

THE RESPONDENT NO.1 AND 2
ARE RESIDING AT NO. 1014,
3RD CROSS, MARUTHINAGAR,
SRI PILLEKAMMA TEMPLE,
CHINNAPPANAHALLI ROAD,
BENGALURU NORTH,
BENGALURU-560 037.

3. SMT. S. HEMAVATHI
DAUGHTER OF SRI. SHIVAKUMAR. S,
AGED ABOUT 38 YEARS,
RESIDING AT NO. 53/5,
NIRANJAN NILAYA, LNT MAIN ROAD,
MUNNEKOLALA,
OPP KIRTANA APARTMENT,
NEAR BACHPAN PLAY SCHOOL,
BENGALURU NORTH,
MARATHAHALLI COLONY,
BENGALURU-560 037.

...RESPONDENTS

(BY SRI. MANJUNATHA G., ADVOCATE FOR RESPONDENT NOS.1 AND 2;

VIDE ORDER DATED 03.12.2024, NOTICE TO RESPONDENT NO.3 IS
DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 28.11.2024 PASSED ON I.A.NO. 3 IN
O.S.NO.6393/2024 ON THE FILE OF THE ADDITIONAL CITY CIVIL
JUDGE (CCH-19) BENGALURU VIDE ANNEXURE-A.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE R. NATARAJ



ORAL ORDER

The defendant Nos.1, 2 and 4 in O.S.No.6393/2024 pending trial before the VII Additional City Civil and Sessions Judge, Bengaluru (henceforth referred to as 'Trial Court') are before this Court challenging the correctness of an order dated 28.11.2024 by which, the Trial Court allowed the application (I.A.No.3) filed by the plaintiffs under Order XXVI Rule 10A of the Code of Civil Procedure, 1908 (henceforth referred to as 'CPC') and ordered a DNA profiling of the plaintiff No.1 with the defendant No.1.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court. The petitioners herein were the defendant Nos.1, 2 and 4, while the respondent Nos.1 and 2 were the plaintiff Nos.1 and 2. The respondent No.3 was the defendant No.3

3. A suit in O.S.No.6393/2024 was filed for partition and separate possession of the plaintiffs' share in the suit schedule properties. The plaintiffs contended that the defendant No.1 was father of plaintiff No.1 and husband of plaintiff No.2. They contended that the suit properties were



properties of the joint family and that they were entitled for an equal share in the suit properties.

4. The suit was contested by the defendant Nos.1, 2 and 4 who denied that the plaintiff No.2 was married to defendant No.1. They contended that the plaintiffs had filed O.S.No.4928/2024 against the defendants for the very same relief but withdrew it on 09.08.2024. They did not seek liberty to file a fresh suit. Therefore, they contended that the plaintiffs were not entitled to file a fresh suit for the very same relief. They also claimed that the suit 'A' property belonged to one Sri. N. Narayana Reddy and others and they sold it in favour of defendant No.1 in terms of a sale deed dated 05.06.2008 and that it was his self-acquisition. The suit 'B' to 'D' properties were the ancestral properties in the hands of the defendant No.1, which he derived it at a partition on 03.03.2020. They contended that the defendant No.1 had married defendant No.2 and from the wedlock defendant Nos.3 and 4 were born. They denied that the plaintiff No.1 was the son of the defendant No.1. They claimed that the plaintiff No.2 had created some documents to seem as if the plaintiff No.1 was the son of the defendant No.1.



5. Along with the plaint, the plaintiffs had filed an application (I.A.No.3) under Order XXVI Rule 10A of CPC to direct DNA profiling of the defendant No.1 and compare it with the DNA of plaintiff No.1. In the affidavit accompanying the application, it was stated that the defendant No.1 was suffering from serious health issues and his health is deteriorating day by day and therefore, in order to prove the relationship of plaintiff No.1 with defendant No.1, it was necessary to conduct a DNA test.

6. This application was opposed by the defendant Nos.1, 2 and 4 again reiterating that the plaintiff No.1 was not the son of the defendant No.1 and that the plaintiffs cannot seek for a scientific investigation even before evidence in the suit had commenced.

7. The Trial Court after considering the contentions urged and relying upon the order passed by a Coordinate Bench of this Court in W.P.No.112825/2019, held that having regard to the case and counter case of the plaintiffs and defendants respectively and since the plaintiff No.1 himself had come forward to undergo DNA test, the defendant No.1 would not



suffer any prejudice, if the application was allowed. Consequently, it allowed the application by the impugned order directing the defendant No.1 to undergo DNA test.

8. Being aggrieved by the aforesaid order, the defendant Nos.1, 2 and 4 have filed this writ petition.

9. The learned counsel for the defendant Nos.1, 2 and 4 submitted that the application for a scientific investigation was filed by the plaintiffs along with the plaint thereby indicating that even before evidence was adduced, they wanted a DNA profiling of the defendant No.1. He contends that this application could not have been entertained even before the plaintiffs had adduced evidence to conform to Section 50 of the Indian Evidence Act, 1872. Nonetheless, the Trial Court had allowed the application prematurely and even before evidence in the suit was recorded. He referred to the judgment of the Hon'ble Apex Court in ***Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia [(2024) 7 SCC 773]***, where the Hon'ble Apex Court while considering the need for conducting a DNA test held as follows:-



"43.4. Merely because either of the parties have disputed a factum of paternity, it does not mean that the court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test."

He therefore, contends that unless evidence of the parties was adduced, the Court should not venture to conduct DNA test, as there was no special circumstance warranting such conduct.

10. Per contra, the learned counsel for the plaintiffs contended that the need for conducting scientific examination arose in view of the precarious health condition of the defendant No.1. He contends that the defendant No.1 himself volunteered to undergo DNA test and therefore, the Trial Court was justified in allowing the DNA test.



11. I have considered the submissions of the learned counsel for the defendant Nos.1, 2 and 4 as well as the learned counsel for the plaintiffs.

12. As rightly contended by the learned counsel for the defendant Nos.1, 2 and 4, the plaintiffs had filed the application for a DNA examination of defendant No.1 along with the plaint, without clearly disclosing the need for such test. The plaintiffs merely stated that the health condition of the defendant No.1 is deteriorating, which in itself was not sufficient and strong ground for conduct of DNA examination. The defendant No.1 has children out of the marriage from the defendant No.2, who can be subjected to DNA examination if an exigency arose. Be that as it may, since the evidence of the parties is not yet adduced and as held by the Hon'ble Apex Court in ***Aparna Ajinkya Firodia***, referred supra, the DNA examination has to be resorted to, only in exceptional circumstances.

13. This Court in order to ascertain the health condition of the defendant No.1 called upon the learned counsel for the defendant Nos.1, 2 and 4 to keep the defendant No.1 present before the Court. Accordingly, the defendant No.1 appeared



before the Court on 19.12.2024. This Court noticed that the health condition of the defendant No.1 was fragile and therefore, felt it appropriate to first draw his blood sample and preserve it for future use after the evidence of the parties is adduced before the Trial Court. Accordingly, the blood sample of defendant No.1 was drawn by the medical team of the Bowring Hospital, Bengaluru, at the High Court dispensary, which was sealed and signed by the Registrar General of this Court and the concerned staff of the hospital. The Medical Superintendent of Bowring Hospital is directed to ensure preservation and safe keep of the sample drawn.

14. Since the paternity of plaintiff No.1 is in dispute, the best person who can depose regarding this is the defendant No.1. However, since his health condition is very fragile, this Court is of the opinion that the Trial Court should be directed to record evidence of the defendant No.1 only in so far as relationship of the plaintiffs with the defendant No.1 is concerned, before the parties go for a trial on other issues. Under Order XVIII Rule 16 of CPC, the Court is invested with the power to examine a witness immediately at any time after institution of the suit. This is one such case, where the Court



must record the evidence of the defendant No.1, lest it would be lost in perpetuity and the plaintiffs would be deprived of an opportunity to prove the relationship with the defendant No.1. In that view of the matter, the following:

ORDER

- (i) The writ petition is ***allowed in part.***
- (ii) The impugned order dated 28.11.2024 passed by the VII Additional City Civil and Sessions Judge, Bengaluru on I.A.No.3 filed by the plaintiffs under Order XXVI Rule 10A of CPC in O.S.No.6393/2024 is set aside.
- (iii) The application filed by the plaintiffs under Order XXVI Rule 10A of CPC is restored on the file of the Trial Court.
- (iv) The said application shall be considered after the evidence of the parties is adduced and in the event of need to conduct DNA test, the Court may pass appropriate orders directing the sample drawn and preserved at Bowring



Hospital, Bengaluru, to be sent for comparison with the blood sample of the plaintiff No.1 to the concerned laboratory.

- (v) The Trial Court shall forthwith record evidence of the defendant No.1 on the following issue:

"Whether the plaintiff No.1 proves that he is the son of defendant No.1?"

- (vi) The Trial Court shall record evidence of the defendant No.1 on the aforesaid issue and thereafter, proceed to frame other issues and record the evidence of the parties.

15. In view of disposal of the writ petition, pending I.As., if any, do not survive for consideration and the same stand disposed off.

Sd/-
(R. NATARAJ)
JUDGE

PMR
List No.: 1 Sl No.: 26