

In the High Court of Judicature at Madras

Dated : 07.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.4722 of 2014 and M.P.No.1 of 2014

Rajendran

...Petitioner

Vs

1.R.Pushparaj

2.Pushpalatha

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal orders dated 14.2.2014 made in I.A.No.438 of 2013 in O.S.No. 319 of 2011 on the file of the Principal Subordinate Court, Erode.

For Petitioner : Mr.N.Manokaran

ORDER

The petitioner has come up with the above revision petition challenging an order passed by the Principal Subordinate Court, Erode allowing an application filed by the first respondent herein, for producing the petitioner and his wife before a Medical Officer and to subject them to a DNA test.

2. Heard Mr.N.Manokaran, learned counsel for the petitioner.

3. The first respondent herein filed a suit against the petitioner

and his wife, who is the second respondent herein, in O.S.No.319 of 2011 on the file of the Principal Subordinate Court, Erode, praying for a declaration that he is the legitimate child of the petitioner and the second respondent herein and for the relief of partition and separate possession of his half share in the suit schedule property.

4. In the suit, the petitioner herein filed a written statement, claiming that the first respondent is not his son. Thereafter, issues were framed and the parties went to trial. The petitioner herein was examined as D.W.1. In the cross examination by the second respondent herein, a suggestion was put as to whether the petitioner would dare to submit himself to a DNA test. The petitioner herein accepted the challenge in the witness box. Therefore, the first respondent/plaintiff filed an application in I.A.No.438 of 2013 for a direction to submit the petitioner and the second respondent herein for medical examination and DNA test. This application has been allowed by the Trial Court on 14.2.2014. Aggrieved by the said order, the petitioner is before this Court.

5. The positive stand taken by the petitioner/first defendant in

the suit is that the first respondent/plaintiff is not his son. The first respondent did not immediately jump to file an application for DNA test. In the course of cross examination of the petitioner herein as D.W.1, a challenge was posed. He accepted the challenge. Therefore, I do not think that the petitioner can now oppose the prayer granted by the Trial Court.

6. If the petitioner is right in his contention that the first respondent/plaintiff was not born to him, the only way to establish the same is to subject the petitioner to DNA test. The contention of the petitioner that the DNA test is not conclusive, is an argument that could be taken up by the petitioner at the time of trial. It cannot be a ground to reject the prayer of the first respondent. I find no reason to interfere with the order of the Trial Court.

7. Therefore, the civil revision petition is dismissed. Consequently, the above MP is also dismissed.

07.1.2015

Internet : Yes

To
The Principal Subordinate Court, Erode.

V.RAMASUBRAMANIAN,J

RS

CRP.(PD) No.4722/2014
and MP.No.1 of 2014

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