

HONOURABLE SRI JUSTICE S.RAVI KUMAR
+ CIVIL REVISION PETITION No.2611 OF 2014

% Dated 30-1-2015

Between:

Manjudari Neerada @ Radhi.

_____.Petitioner.

And:

\$ M.P.Narasimha Rao.

_____.Respondent.

! Counsel for the petitioners
MURTHY.

: SRI G.KRISHNA

^ Counsel for respondent
V.L.N.G.K.MURTHY.

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>HEAD NOTE:

? Cases referred:

- 1) 2014(3) CCC 104 (Jhar.)
- 2) (2010) 11 SCC 483
- 3) (2010) 8 SCC 633
- 4) (2005) 4 SCC 449
- 5) AIR 1954 SC 176
- 6) (1993) 3 SCC 418
- 7) 2014 SCC OnLine SC 831
- 8) (2005) 1 SCC 787
- 9) (1998) 1 SCC 112
- 10 (1987) 1 SCC 727

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ORDER:

This revision is against order dated 15-7-2014 in I.A.No.191 of 2013 in O.S.No.15 of 2011 on the file of Senior Civil Judge, Rajam whereunder he allowed petition filed under Section 45 of Indian Evidence Act directing the revision petitioner herein for scientific examination of D.N.A. Test along with her mother Tulasi.

Brief facts leading to this revision are as follows:

Revision petitioner herein filed suit against respondent herein claiming a sum of Rs.3,00,000/- towards educational and marriage expenses claiming herself as daughter born to the respondent herein through her mother Tulasi. Respondent herein resisted the suit questioning the paternity of the revision petitioner and he filed I.A.No.191 of 2013 requesting the court to refer revision petitioner herein and her mother Tulasi for D.N.A.Test. Trial judge, on a consideration of contentions and rival contentions of both parties and also the law on subject, allowed the application and directed the revision petitioner herein and her mother to go for D.N.A.Test. Aggrieved by which, present revision is preferred.

Heard both sides.

Now the point that would arise for my consideration in this revision is whether the order of trial court dated 15-7-2014 is legal, correct and proper?

POINT:

Respondent herein earlier filed a divorce petition against mother of the revision petitioner-Tulasi and the said petition was settled and as per the settlement, the respondent herein paid Rs.3,00,000/- to the mother of the revision petitioner towards full and final settlement of all her claims. According to respondent herein, mother of revision petitioner received the said amount as guardian of revision petitioner towards her future claims and the petition is not maintainable. Respondent also contended that after consummation of marriage, it was discovered that mother of revision petitioner conceived within 4 days of marriage. Admittedly, marriage with mother of revision petitioner was solemnized on 23-5-1989 and the revision petitioner was born on 7-1-1990. According to respondent, within seven and half

months of marriage, revision petitioner was born and as per the Medical Certificate issued by Dr.G.Prameela, revision petitioner was a full term baby and it is not a prematured delivery. According to respondent, mother of revision petitioner had premarital contacts with one Ramanayya who was the boy friend of revision petitioner's mother and that the revision petitioner was not born through the respondent and therefore, he is not liable to pay any expenses and to prove the same, he requested the court to direct the revision petitioner and her mother to undergo D.N.A. test and for that purpose, the above I.A.No.191 of 2013 is filed.

Objection of the revision petitioner is two folded.

First objection is that under Section 112 of Evidence Act, there is a legal presumption and therefore, directing the revision petitioner to go for D.N.A.test is not maintainable. For this objection, the answer of respondent's counsel is that this presumption of Section 112 of Evidence Act is a rebuttable presumption and as birth of revision petitioner was within seven and half months of marriage and as he questioned the paternity of the revision petitioner, only by D.N.A. test that legal presumption can be rebutted and no prejudice would be caused to the revision petitioner by undertaking a D.N.A. test.

Advocate for revision petitioner contended that Section 112 of Indian Evidence Act specifically states a fact that any person was born during the continuance of a valid marriage within 280 days after the consummation where the mother remained unmarried, shall be conclusive proof that the said person is a legitimate child of that couple unless it is shown that the party to the marriage had no access with each other. He further submitted that here the respondent has not contended anywhere that there was no access between himself and wife Tulasi and without proof of such non-accesses at any point of time, he cannot question the paternity of the revision petitioner. To support that presumption under Section 112 of Evidence Act is a conclusive proof, advocate for revision petitioner placed reliance on the following decisions:

RABINDRA KUMAR vs. USHA DEVI (^[1]), BHARATHA

MATHA AND ANOTHER Vs. R.VIJAYA RENGANATHAN AND OTHERS ([2]), BHABANI PRASAD JENA Vs. CONVENOR SECRETARY, ORISSA STATE COMMISSION FOR WOMEN AND ANOTHER ([3]), BANARSI DASS Vs. TEEKU DUTTA (MRS) AND ANOTHER ([4]), CHILUKURI VENKATESWARLU Vs. CHILUKURI VENKATANARAYANA ([5]) AND GOUTAM KUNDU Vs. STATE OF WEST BENGAL AND ANOTHER ([6]).

In answer to the above contention, advocate for respondent submitted that presumption under section 112 of Evidence Act is a rebuttable presumption and when the respondent herein specifically contended that mother of revision petitioner had pre-marital connection with her boy friend by name Ramanayya and the fact that mother of revision petitioner conceived four days after the marriage is a strong circumstance in support of the revision petitioner and only scientific test would clinch the issue therefore for rebutting such legal presumption, the proposed D.N.A. test is very much necessary. He further submitted that Honourable Supreme Court in DIPANWITA ROY Vs. RONOBROTO ROY ([7]) held that presumption under section 112 of the Indian Evidence Act is a rebuttal presumption and sending a party for D.N.A.test for rebutting such presumption is permissible and the Honourable Supreme court had considered all the above decisions referred to by advocate for petitioner and in view of the principle laid down in the DIPANWITA ROY Vs. RONOBROTO ROY (7th-cited) case, the contention of the revision petitioner cannot be accepted.

I have perused decisions of Supreme Court in DIPANWITA ROY Vs. RONOBROTO ROY (7th cited) case wherein the Honourable Supreme Court observed that it is therefore apparent, that despite the consequences of a D.N.A.test, this court has concluded, that it was permissible for a court to permit the holding of a D.N.A. test, if it was eminently needed, after balancing the interests of the parties.

In a similar set of facts, Honourable Supreme Court in the above referred decision (7th cited) observed as follows:

“In our view, but for the D.N.A.test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically protect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal.”

In DIPANWITA ROY Vs. RONO BROTO ROY (1st cited) case, when the family court rejected the request of the husband for D.N.A.test of his wife, High Court of Calcutta in its civil revisional jurisdiction allowed the petition and ordered for D.N.A.test and that was challenged in the Supreme Court and the Supreme Court upheld the order of Calcutta High Court. While directing for D.N.A. Test, Calcutta High Court put some conditions and the Honourable Supreme Court upheld those conditions. As rightly pointed out by advocate for respondent in view of the decision of DIPANWITA ROY Vs. RONO BROTO ROY (1st cited) case, the contention of revision petitioner with regard to Section 112 of Indian Evidence Act cannot be sustained.

The second objection contended by the appellant is that the petition is hit by doctrine of estoppel. Advocate for revision petitioner submitted that mother of revision petitioner filed M.C.No.18 of 1993 and in that M.C. a similar petition was filed by respondent herein and that petition was dismissed on 27-4-1995 and no revision was preferred against the said order by the respondent herein and therefore, he is estopped from again filing of such application. To support the said contention, advocate for revision petitioner relied on decisions of the Honourable Supreme Court in BHANU KUMAR JAIN Vs. ARCHANA KUMAR ([8]), DHANWANTI JOSHI Vs. MADHAV UNDE ([9]), AND PRAHLAD SINGH Vs. SUKHDEV

SINGH (^[10]).

Referring to this objection, advocate for respondent submitted that the decisions relied on by revision petitioner have no application to the facts of this case and simply because the respondent herein has not preferred any revision against dismissal of application in the year 1995 that cannot operate as estoppel particularly when the present application is not by the wife.

Though revision petitioner contended about the earlier order passed in M.C. no such order is filed and no material is produced to show that the said order operates as an estoppel.

I have perused the decisions relied on by the advocate for revision petitioner in *BHANU KUMAR JAIN Vs. ARCHANA KUMAR* (8th cited). In this decision, difference between estoppel and resjudicata was interpreted and held that if an issue is decided against a party that party is estopped from raising the same in a latter proceedings. As rightly pointed out by advocate for respondent, that decision has no application herein and the facts and the parties are entirely different.

So also, facts in other two cases i.e., in *DHANWANTI JOSHI Vs. MADHAV UNDE* (9th cited) AND *PRAHLAD SINGH Vs. SUKHDEV SINGH* (10th cited), are also not applicable to the case on hand and therefore, second objection of the revision petitioner is also not tenable.

As seen from the material, trial court by relying on decision of this court and also considering the fact that mother of revision petitioner gave birth to the petitioner within seven and half months of marriage and that the doctor certified that the revision petitioner was a full term baby, allowed the application for D.N.A.test as it felt that the issue of paternity can be dissolved on the basis of scientific examination.

I do not find any wrong application of law or wrong exercise of judicial discretion by the trial court. On the other hand, it rightly exercised its judicial discretion and he has not committed any illegality nor violated any provisions of law and therefore, I see no grounds to interfere with the order passed by the trial court in I.A.NO.191 OF 2013.

The order of the trial court is upheld subject to the

following conditions.

- (1) The D.N.A.test of revision petitioner and her mother to be conducted at the State/Central Forensic Science Laboratory on the date to be fixed by the trial court.
- (2) The respondent herein shall also present and submit the D.N.A. samples and the laboratory shall obtain the samples of revision petitioner, her mother and respondent in the presence of all the parties.
- (3) The expenses for the D.N.A.test shall be borne by the respondent herein and the D.N.A. result will be forwarded by the Laboratory as expeditiously as possible both to the revision petitioner and respondent and also to the trial court.
- (4) If necessary, trial court may insist the respondent herein to deposit required amount into the court to meet the expenses of D.N.A.test.

For these reasons, this Civil Revision Petition is dismissed as devoid of merits. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI

KUMAR

Dated 30-1-2015.

Note:

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Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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