

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.2758 of 2015

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ORDER:

The petitioner herein is the husband, who filed H.M.O.P.No.7/2012 on the file of the Court of the learned Senior Civil Judge, Pithapuram, seeking a decree for annulment of marriage dated 11.03.2009 between the petitioner and respondent. In the said petition, the petitioner alleged that there was no consummation of marriage and in spite of the same a male child was born to them on 13.01.2010. In the said petition, I.A.No.199/2013 was filed by the petitioner seeking a direction of the Court to send both the petitioner and the son of respondent for D.N.A. test. The respondent filed a counter stating as follows:

“The prayer mentioned in the petition is not correct. The petitioner mention that send himself and respondent for DNA test is not proper prayer. If the petitioner having real interest to bring the real facts before the Hon'ble Court. The petitioner must ask for send himself and son of the petitioner and respondent. The respondent have no objection to brought their son for DNA test. In view of the prayer respondent mentioned in the petition is not maintainable.”

The application of petitioner was dismissed by the learned Senior Civil Judge on 03.09.2014 holding that the marriage took place between the parties on 11.03.2009 and the respondent gave birth to a male child on 13.01.2010 during the subsistence of marriage. In view of the presumption engrafted under Section 112 of the Indian Evidence Act, the petitioner cannot ask for any D.N.A. test of the son of the respondent without adducing any *prima facie* evidence. The lower Court has not seen the above averment of the respondent in her counter.

In the circumstances, this Court feels that the order passed by the learned Senior Civil Judge, Pithapuram, in I.A.No.199/2013 dated 03.09.2014 needs reconsideration, and, accordingly, the impugned order is set aside and the matter is remanded to the learned Senior Civil Judge, Pithapuram, East Godavari District, for passing appropriate orders afresh in accordance with law.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

23.11.2015

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Date: 23.11.2015

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