

THE HON'BLE SRI JUSTICE V.SURI APPA RAO

CIVIL REVISION PETITION NO.1881 OF 2010

ORDER:

This revision petition is directed against the order dated 27.10.2009 passed in F.C.O.P.No.945 of 2007 on the file of the Judge, Family Court, Hyderabad, whereby, the learned Judge, Family Court, dismissed the F.C.O.P. filed by the revision petitioner under Order VII Rule 1 read with Section 26 of the Code of Civil Procedure, 1908 (CPC), seeking to direct respondent Nos.1 and 2 to undergo D.N.A. Test and to declare that the petitioner is not the father of the second respondent. Aggrieved by the order of dismissal passed by the Judge, Family Court, the petitioner filed this revision.

None appears for the petitioner.

Heard the counsel for the respondents.

The admitted facts are hereunder.

The first respondent, claiming to be the wife of the petitioner, filed M.C.No.6 of 2000 on the file of the Judicial Magistrate of First Class, Zaheerabad, Medak District, seeking maintenance for herself and for the second respondent on the ground that the revision petitioner neglected to maintain them and therefore, the first respondent along with the second respondent has been staying with her parents at Jadimalkapour Village, Zaheerabad, Medak District. The said M.C.No.6 of 2000, after enquiry, was allowed awarding maintenance at the rate of Rs.700/- per month each to respondent Nos.1 and 2 respectively. Thereafter, the revision petitioner filed Crl.M.P.No.983 of 2004 before the learned Judicial Magistrate of First Class, Zaheerabad, to direct respondent Nos.1 and 2 to undergo D.N.A. Test. The said Crl.M.P. was dismissed by the learned Magistrate on 04.12.2004. The revision petitioner, therefore, filed Criminal Review Petition No.46 of 2005 before the Principal Sessions Judge, Medak at Sangareddy, which was also dismissed confirming the order of the Judicial Magistrate of First Class, Zaheerabad, in

Crl.M.P.No.983 of 2004. Consequently, M.C.No.6 of 2000 filed by the respondents herein was allowed declaring them as wife and legitimate child of the petitioner respectively. The petitioner filed F.C.O.P.No.945 of 2007 before the Judge, Family Court, Hyderabad, for the very same relief i.e., to direct respondent Nos.1 and 2 to undergo D.N.A. Test on the ground that the second respondent is an illegitimate child.

Learned counsel for the respondents submitted that before filing M.C.No.6 of 2000, the first respondent got issued a legal notice to the petitioner claiming maintenance on the ground that she was deserted by the petitioner and not providing any maintenance to herself and to the legitimate child, for which the revision petitioner gave a reply specifically admitting the relationship between the petitioner and respondent Nos.1 and 2 and that the second respondent as his daughter.

Learned Judge, Family Court, Hyderabad, dismissed F.C.O.P.No.945 of 2007 on the sole ground that the petition filed by the petitioner under Order VII Rule 1 CPC is hit by Section 11 CPC and in view of the dismissal order passed by the learned Judicial Magistrate of First Class, Zaheerabad in Crl.M.P.No.983 of 2004 and in view of the orders of the learned Principal Sessions Judge, Medak at Sangareddy in Criminal Review Petition No.46 of 2005 holding that the first respondent is the wife and the second respondent is the legitimate child of the revision petitioner and both the petitions were disposed of on merits, the revision petitioner cannot maintain the petition again under Order VII Rule 1 CPC.

Learned Judge, Family Court, Hyderabad, has rightly dismissed the petition filed on the ground that the earlier orders passed by the learned Judicial Magistrate of First Class, Zaheerabad, confirmed by the learned Principal Sessions Judge, Medak at Sangareddy, for the same relief of declaration, are hit by Section 11 CPC. Therefore, I do not see any ground to interfere with the impugned order passed by the learned Judge, Family Court, Hyderabad.

The Civil Revision Petition is, therefore, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(V.SURI APPA RAO, J)

17th February 2014
RRB