

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No. 4741 OF 2016

ORDER:

1. This Civil Revision Petition is arising out of the order, dated 18.07.2016, in I.A. No.1177 of 2012 in O.S No.39 of 2011 on the file of the Judge, Family Court-cum-III Additional District Judge, Vizianagaram.

2. The revision petitioner herein is the plaintiff, who filed a Petition under Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act') read with Section 151 of C.P.C. to direct the 1st respondent to give his blood samples for comparison with the blood samples of the petitioner for D.N.A. test.

3. The brief facts of the petition are that the petitioner has filed a suit against the 1st respondent, who is the alleged foster son of late Lekkala Smhachalam Naidu, and the 2nd respondent, who is the son of 1st respondent, for declaration and possession of plaint A and B schedule lands and for granting permanent injunction in respect of C schedule lands.

4. The revision petitioner has taken a plea in the plaint that the 1st respondent is the foster son of her parents and he used to look after the cultivation of the lands and properties of her parents covered under plaint A and B schedule lands.

5. The petitioner filed an application for appointment of receiver. In that application, the 1st respondent herein filed his counter contending that he is the natural son of late Smhachalam

Naidu. Therefore, the petitioner sought for sending the blood samples of herself and the 1st respondent for D.N.A. test to prove the paternity of 1st respondent.

6. Learned counsel appearing for the revision petitioner submits that in a case like declaration of title and possession and permanent injunction, to prove the relationship between the parties, D.N.A. test can be ordered. In support of his contentions placed reliance on a decision of this Court in *Shaik Fakruddin Vs. Shaik Mohammed Hasan and another*¹ and a decision of the Apex Court in *Banarsi Dass Vs. Teeku Dutta and another*².

7. Learned counsel for the respondents submits that to prove the relationship there are two ways. Firstly, to prove the legitimacy one has to resort to Section 112 of the Act and to prove the paternity, it is necessary to go for D.N.A. test. The parents of the petitioner and 1st respondent are not alive for taking their D.N.A. for testing with the D.N.A. of the 1st respondent.

8. Learned counsel for the petitioner further submits that in the light of the recent decision of this Court in *K. Sugandha Kumar Vs. K. Vijaya Laxmi*³, D.N.A. test can be permitted.

9. Admittedly, the revision petitioner filed the suit for declaration of title and permanent injunction against the respondents. She had filed the instant petition under Section 45 of the Act and Section 151 of C.P.C. to direct the 1st respondent to give his blood samples for

¹ AIR 2006 AP 48

² 2005 (4) SCC 449

³ 2016 (2) ALD 101

sending the same to D.N.A. test; so that, she could prove that the 1st respondent was not born to her parents. It is the plea of the revision petitioner that the 1st respondent was the adopted son of her parents and he was not their natural son. To resolve the dispute, whether the 1st respondent is the natural son of the parents of the petitioner or not, D.N.A. test is required in this case.

10. Learned counsel for the revision petitioner placing reliance on the decision of this Court in *Shaik Fakruddin*¹, and a decision of the Apex Court in *Banarsi Das*², submits that this is a fit case where D.N.A. test can be ordered to determine the paternity of the 1st respondent. In *Sugandha Kumar*³, this Court referring to the decisions of the Apex Court in *Dipanwita Roy Vs. Ronobroto Roy*⁴ and *Narayan Dutt Tiwari Vs. Rohit Shekhar and another*⁵ came to the conclusion that the respondent-wife and her child were directed to submit blood samples for conducting D.N.A. test, and it was held as follows in Para 21:

“21. In this view of the matter, I am of the opinion that the order passed by the court below cannot be sustained. It is accordingly set aside and I.A. No.1115 of 2010 is allowed. The respondent is directed to submit blood samples of herself as well as that of her child for a D.N.A. Test at C.C.M.B. Hyderabad for conducting scientific investigation to decide about the paternity of the child at the cost of petitioner. This exercise shall be completed within a period of eight (08) weeks from the date of receipt of a copy of this order.”

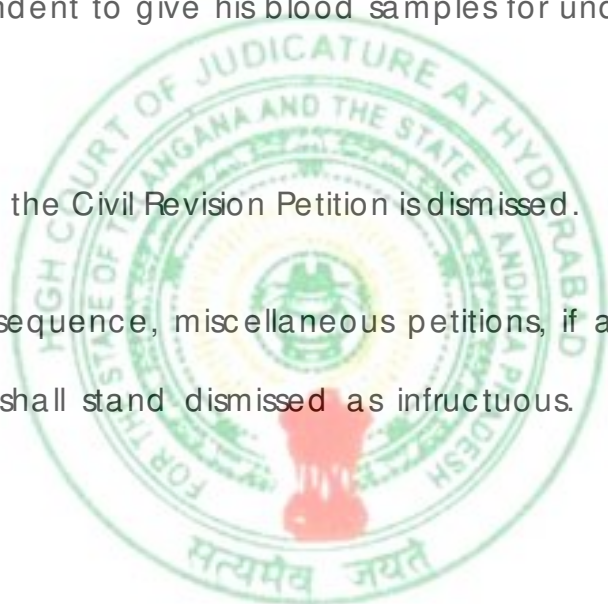
⁴ 2014 (9) SCJ 461

⁵ 2012 (12) SCC 554

11. No doubt, in the light of the decisions of the Apex Court in *Dipanwita Roy*⁴ and *Narayan Dutt Tiwari*⁵, the 1st respondent herein can be directed to undergo D.N.A. test but, in the instant case, the alleged parents of the petitioner are no more. In this case, the question of paternity of 1st respondent is in dispute. Unless the parents are there, the D.N.A. test cannot be ordered. As there is no possibility of taking the blood samples of the parents of the petitioner, for testing with the blood samples of the 1st respondent, I do not see any valid ground to consider this petition for directing the 1st respondent to give his blood samples for undergoing D.N.A. test.

12. Hence, the Civil Revision Petition is dismissed.

13. In consequence, miscellaneous petitions, if any, pending in this Revision shall stand dismissed as infructuous. No order as to costs.



G. SHYAM PRASAD, J

Date: 20-12-2016.
Dsh

HON'BLE SRI JUSTICE G. SHYAM PRASAD

100



20122016

CIVIL REVISION PETITION No.4741 OF 2016

Date. 20-12-2016

DSH