

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CIVIL REVISION PETITION No. 1715 OF 2016

-
-

ORDER:

The petitioner in this civil revision petition is the 1st defendant in O.S.No. 27 of 2014 on the file of the Court of Principal District Judge, Vizianagaram (for short, 'the trial Court'), filed by the 1st respondent claiming herself as the daughter of the petitioner and the 2nd respondent and claiming share in suit schedule property.

2. The plaintiff filed the suit against the 1st defendant, her father, and the 2nd defendant, her mother, and defendant Nos. 3 to 8 claiming share in suit schedule property.

3. The petitioner filed written statement as the 1st defendant in the suit and contended that the plaintiff is not his daughter and the 2nd defendant is not his wife. As such, she is not entitled to claim any share in the property. In order to prove that the plaintiff is not his daughter, he filed I.A.No. 2225 of 2015 seeking permission of the Court for conducting deoxyribonucleic acid (for short, 'D.N.A.') test for determination of paternity of the plaintiff. The petitioner has also sought for stay of all further proceedings in the suit O.S.No. 27 of 2014 during pendency of the revision petition.

4. The 1st respondent-plaintiff filed her counter contending that the petition is pre-mature and she has not commenced her evidence so far and that she has got sufficient documentary proof to prove her paternity and, therefore, she has raised an objection for conducting of D.N.A. test.

5. The point for consideration in this matter is:

"Whether the revision petitioner is entitled for the relief of getting D.N.A. test done to disprove paternity of the plaintiff?"

6. The trial Court, on consideration of the plaint and written statement of

the parties and the material available on record and on hearing arguments of both sides, dismissed the I.A. with some observations. The observations of the trial Court are that D.N.A. test is pre-mature at the stage of trial and the petitioner can move this petition at appropriate stage after recording evidence of the plaintiff.

7. It is obvious from the order of the trial Court that the trial Court intended to give an opportunity to the 1st respondent to prove her paternity after recording evidence and for that, the trial Court had given liberty to the petitioner to move an application for paternity test.

8. Learned counsel for the revision petitioner vehemently contended that the order passed by the trial Court rejecting his application for D.N.A. test is not in accordance with law and, therefore, it is liable to be set aside and an opportunity to be given for conducting of the test as the petitioner had taken the plea at the earliest point of time so that he can prove that the 1st respondent is not his daughter which is a material fact for deciding allotment of shares in partition suit.

9. Learned counsel for the 1st respondent contended that the order of the trial Court does not require any interference as the rights of the revision petitioner are not prejudiced by that order.

10. Considering the facts and circumstances of the case, in the light of the arguments of both sides and as the trial Court has not totally rejected the claim of the petitioner who sought for D.N.A. test to prove paternity of the plaintiff, no prejudice will be caused to the petitioner in following the direction of the trial Court. The order of the trial Court is not suffering from any grave illegality or irregularity. The petitioner is at liberty to move an application after recording evidence on behalf of the plaintiff. The trial Court is directed to give an opportunity to the petitioner to prefer an application after completing recording evidence of the plaintiff and on such application, necessary orders can be passed in accordance with law for conducting D.N.A. test as sought by the petitioner.

11. In the result, the petition is disposed of with a direction to the trial Court to consider the application of the petitioner with regard to conducting D.N.A. test after recording evidence on behalf of the 1st respondent. Pending miscellaneous petitions, if any, in this revision petition shall stand closed in consequence. No order as to costs.

G.SHYAM PRASAD, J.

Date: 08-07-2016.

JSK