

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.3360 of 2016
Decided on: 12.05.2016**

Gurdeep Kaur

....Petitioner

Versus

Rajvir Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjay Majithia, Sr. Advocate
with Mr. Inderjeet Singh, Advocate
for the petitioner.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present petition has been directed against order dated 23.03.2016 passed by the Civil Judge (Jr. Division), Barnala, dismissing the application for grant of permission to conduct DNA test of Harjot Singh – minor/respondent No.2.

Gurdeep Kaur – petitioner has filed a suit for declaration claiming that she and defendants No.3 and 4 (proforma) are owner in possession in equal share of land detailed in headnote of the plaint being the legal heirs of Niranjana Singh. She has further challenged sale deeds bearing No.1302 dated 24.05.2007, No.1010 dated 15.05.2002, No.2167 dated 24.04.2010 pertaining to suit land and mutation No.5625, 5963, 5727, 6061 and the judgments dated 27.01.2009, 03.08.2009, 09.06.2005 and 25.10.2005 in favour of defendants No.1

and 2 being null and void, having no effect on right of the plaintiff. It has also been pleaded that Niranjn Singh had no right to bequeath the land by virtue of Will bearing No.355 dated 18.09.2003 executed in favour of defendant No.1 as the suit land is ancestral property of Joint Hindu Family.

An application was filed by the petitioner that Harjot Singh – defendant No.2 has no relation with Niranjn Singh and Rajvir Kaur – defendant No.1 is not the wife of Niranjn Singh. It is further averred that in order to find out whether Harjot Singh – defendant No.1 was born from the loins of Niranjn Singh or not, it is necessary to obtain a report of DNA test by taking sample of defendant No.2 and matching the same with sample of defendant No.2 (sic).

The learned trial Court after reply filed by Rajvir Kaur and having heard counsel for the parties dismissed the application vide impugned order dated 23.03.2016. A relevant extract therefrom, reads as follows:-

“.....The plaintiff though present suit has basically challenged the will and the transfer of the property deeds executed by Naranjan Singh in favour of defendant No.1 and defendant No.2. The plea of the plaintiff is that the properties which have been dispose off by Naranjan Singh by these documents were ancestral property. So he had no right to dispose off the same. This is the only point raised by the plaintiff to challenge these deeds. It has also been alleged that defendant No.2 is not biological son of Naranjan Singh. However, the interesting fact of the present case is that said Naranjan Singh in transfer of property deed which has been challenged in the present case has himself described defendant No.2 as his son. Said

*Naranjan Singh during his lifetime never challenged these deeds nor did he ever dispute the paternity of defendant No.2. Since the father himself never challenge the paternity of defendant No.2, so there is no strong case made out in favour of plaintiff/applicant to doubt the paternity of this child. Since no such case is made out so as per the guidelines laid down by the Supreme Court no such test can be ordered by the Court. Moreover, in those very guidelines it was also directed that the best interest of the child is to be seen by Court and if the only purpose of ordering the test is to bastardise the child then no such test can be ordered in the present case. The mute question before the Court is whether Naranjan Singh had the right to dispose off the property or not. The question whether defendant No.2 was biological child of Naranjan Singh or not at issue. The paternity of defendant No.2 is not the main issue before this Court so in these circumstances no such test can be allowed. Accordingly, the application is dismissed. As far as the law relied upon counsel for the applicant titled as **Neelam Rani vs. Smt Menka @ Mona Devi reported in 2014(3) CCC Page No.317 (P&H)** is concerned and the same is not applicable in the present case because in that case the plaintiff was claiming right in the property being natural heirs and daughter which was denied by the defendant. Since the claim was made on the basis of natural inheritance so in that case the question of paternity was involved which is not so in the present case.”*

Counsel for the petitioner would contend that despite the petitioner having fought a protracted litigation to save her status as wife of Sh. Niranjan Singh, she has not been successful to inherit any property owned by her late husband Sh. Niranjan Singh. It is further submitted that the poor and hapless petitioner has been brought on road

due to misdeeds of Sh. Niranjana Singh who has disposed of his entire land and other property one way or the other in favour of defendants No.1 and 2. It is further argued that in case defendant No.2 who is alleged to be son of Sh. Niranjana Singh and Rajvir Kaur as per recital in the Will dated 18.09.2003, is subject to DNA test, it would facilitate just decision of the case as the truth would come on the surface.

I have heard counsel for the petitioner and perused the records.

As has been rightly held by the learned trial Court, the paternity of minor Harjot Singh is not the subject-matter of litigation before the trial Court. On the contrary, the petitioner has staked her claim to the suit property by giving challenge to various sale deeds, judgments and decrees and the Will dated 18.09.2003, purported to be executed by the deceased either in favour of Smt. Rajvir Kaur or Harjot Singh or both. Keeping in view the disputed questions of fact and law involved in the suit when examined in the light of judgment referred to in the order passed by the trial Court, I do not find any error much less illegality in the impugned order as would call for intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed.

12.05.2016
yakub

(REKHA MITTAL)
JUDGE