

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

CR No.3707 of 2016

Date of Decision: 18.10.2016

Baby

.....Petitioner

Versus

The Union of India & others

....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashish Yadav, Advocate for the petitioner.

DARSHAN SINGH, J (ORAL)

The present revision petition has been preferred against the order dated 23.02.2016 passed by the learned Civil Judge (Jr. Divn.), Jalandhar, whereby the application moved by the petitioner/plaintiff for directing respondents No.4 and 5 to give their blood samples and to order DNA testing to determine that respondent No.5-Satpal Chawla is the natural/biological father of respondent No.4, has been dismissed.

2. Learned counsel for the petitioner contended that in fact respondent No.5-Satpal Chawla is the biological and natural father of respondent No.4-Tanuj. He contended that the present petitioner/plaintiff was not party to the previous suit i.e. Civil Suit No.229 of 2007 and the findings recorded therein are not binding on the rights of the present petitioner/plaintiff. He contended that defendant/respondent No.4-Tanuj had claimed himself to be the son of deceased-Kulwant Rai and had also claimed his service benefits on the basis of his alleged relationship with Kulwant Rai. He contended that in fact respondent No.4-Tanuj is not the natural son of Kulwant Rai. This fact can be determined by DNA testing of the blood samples of respondents No.4 and 5 as respondent No.5 is

the natural/biological father of defendant/respondent No.4-Tanuj.

3. He further contended that the previous suit has been decided against Smt.Raj Rani @ Kiran Bala as she could not produce the proof regarding her divorce with her previous husband-Nirmal Kumar but now that evidence has become available. He contended that the present petitioner/plaintiff being daughter of Smt. Raj Rani @ Kiran Bala, deceased will be entitled to the service benefits of deceased Kulwant Rai, the husband of Smt. Raj Rani @ Kiran Bala. Thus, he contended that the DNA testing of the blood samples of respondents No.4 and 5 will assist the Court in arriving at just conclusion of the case.

4. I have duly considered the aforesaid contentions.

5. It is pertinent to mention that earlier respondent No.4-Tanuj has filed the suit for declaration claiming the service benefits of deceased-Kulwant Rai being his son. In that suit, Smt. Raj Rani @ Kiran Bala, the mother of the present petitioner/plaintiff was impleaded as defendant No.4. The copy of the judgment of Civil Suit No.229 of 2007 is available at Annexure P-8, which shows that in the previous suit, Smt. Raj Rani @ Kiran Bala, the mother of the present petitioner/plaintiff had admitted defendant/respondent No.4-Tanuj to be the minor son of Kulwant Rai and Smt. Shashi Bala. The Court has also recorded the finding in the previous suit that defendant/respondent No.4-Tanuj is the son of Kulwant Rai. It is not disputed that Smt. Raj Rani @ Kiran Bala has preferred an appeal against the judgment and decree dated 13.12.2010 passed by the learned trial Court but the said appeal was also dismissed by the

learned Additional District Judge, Jalandhar and it was held that defendant/respondent No.4 is the only legal heir of Kulwant Rai.

6. It is pertinent to mention that during the pendency of the said appeal, Smt. Raj Rani @ Kiran Bala has died and the present petitioner/plaintiff and her sister-Jyoti were impleaded as the legal representatives of Raj Rani @ Kiran Bala. So, virtually, they have contested the appeal against the judgment and decree dated 13.12.2010 and in that litigation it was an admitted fact by Smt. Raj Rani @ Kiran Bala, the predecessor-in-interest of the petitioner, that defendant/respondent No.4 is the minor son of Kulwant Rai.

7. In the present suit, the petitioner/plaintiff is claiming the service benefit of Kulwant Rai being a daughter of Smt. Raj Rani @ Kiran Bala, otherwise, she has no independent right to the properties of deceased-Kulwant Rai as she has no relationship with Kulwant Rai. So, she cannot disown the stand of her mother in the previous litigation.

8. Moreover, it is settled principle of law that the DNA testing is not to be directed as a matter of routine. This direction can be issued only in deserving cases. The Court can only exercise this power if the applicant has a strong prima facie case. The Court should exercise this discretion only after balancing the interest of the parties and on due consideration whether for just decision of the matter the DNA testing is eminently needed. The DNA testing in a matter relating to paternity of a child should not be directed by the Court as a matter of course in a routine manner whenever such a

request is made. The Court has to consider the diverse aspects including the presumption under Section 112 of the Indian Evidence Act, 1872. The test of eminent need is, whether it is not possible for the Court to reach the truth without use of such test. To support this view, reference can be made to the observations of Hon'ble Apex Court in case **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women & anr., 2010(4) RCR (Civil) 53.** Similar ratio of law has been laid down by this Court in cases **Naresh Kumar & anr. Vs. Nanu Ram & ors., 2015(1) ICC 387** and **Sube Singh Vs. Smt. Shanti Devi & ors., 2015(5) RCR (Civil) 684.**

9. In view of the consistent ratio of law laid down in the cases mentioned above, the DNA test to determine the paternity of a child can be ordered only in deserving cases where it is eminently required for the just conclusion of the case. It cannot be ordered merely on the asking of a party to the litigation as a matter of routine as the paternity of a child carries the presumption under Section 112 of the Indian Evidence Act. In the instant case, the petitioner/plaintiff is in fact a stranger to the family of defendant/respondent No.4-Tanuj. Moreover, the petitioner/plaintiff has not placed on record any material to satisfy the test of strong prima facie case to seek the DNA testing. As already mentioned, the paternity of defendant/respondent No.4-Tanuj was never in dispute in the previous litigation in which the mother of the petitioner/plaintiff was a party through whom she is claiming the rights in the present suit.

10. Thus, keeping in view my aforesaid discussion, the

petitioner/plaintiff had failed to make out the case for directing respondents No.4 and 5 to supply their blood samples for DNA testing to determine the paternity of defendant/respondent No.4. The said test is also not eminently required in the facts and circumstances of the case to determine the controversy. Consequently, I do not find any illegality in the impugned order passed by the learned trial Court. Resultantly, the present revision petition being devoid of merit is hereby dismissed.

18.10.2016

Vinay

[DARSHAN SINGH]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No