

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP(PD)No.1170 of 2017

and

CMP.No.5589 of 2017

1.V.Vadivel Mudaliar

2.V.Venkataesh

.. Petitioners

Vs.

1.V.Karthiekyan

2.V.Sundararajan

3.Chitra

4.Kamatchi

5.V.Prabakaran

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order, dated 08.12.2016, made in I.A.No.117 of 2016 in O.S.No.97 of 2011 on the file of the Principal District Munsif Court, Sholingur.

For Petitioners : Mr. Sharath Chandran

For Respondents : Mr.A.Gouthaman

ORDER

This Civil Revision Petition has been filed against the order dated 08.12.2016, passed in I.A.No.117 of 2016 in O.S.No.97 of 2011 by the learned Principal District Munsif, Sholingur.

2. The petitioners are the defendants 1 and 2 and the respondents are the plaintiffs 1 and 2 and the defendants 3 to 5 in the suit in O.S.No.97 of 2011. The plaintiffs have filed the said suit for partition. The petitioners and other defendants have denied the averments made in the plaint by filing a written statement wherein, it is stated that the respondents 1 and 2 are the sons of the first petitioner through his second wife, viz., Kanthammal. The respondents 1 and 2 filed I.A.No.135 of 2014 under Order XXVI Rule 10(A) of C.P.C. and Section 11 of the Indian Evidence Act, to direct the plaintiffs and the 1st defendant to undergo DNA test and to get the scientific report. The said application was allowed on 02.08.2014. Challenging the same, the petitioners have filed CRP.No.4974 of 2014 before this Court. In the said civil revision petition, this Court has held that there was no reason to interfere with the order of the Trial Court as DNA test was the only way to determine the veracity of accusation levelled against the respondents 1 and 2.

3. Thereafter, the respondents 1 and 2 filed I.A.No.117 of 2016 in O.S.No.97 of 2011 to appoint an Advocate Commissioner for the purpose of taking the blood samples of the plaintiffs and the 1st defendant and to hand over the same to the Dean of Adukkambarai Government Hospital or any other medical expert in the field of DNA test. The second petitioner has filed counter, denying all the averments made in the petition. According to the

second petitioner, the trial Court has no power to appoint an Advocate Commissioner to take blood samples from the first petitioner and cannot force the first petitioner to undergo DNA Test.

4. The learned Judge, considering the averments made in the petition as well as in the counter affidavit, allowed the application, against which, the present Civil Revision Petition has been filed.

5. The learned counsel for the petitioners relied upon the Judgment reported of the Hon'ble Supreme Court reported in **2015(1) SCC 365 (Dipanwita Roy vs. Ronobroto Roy)** and the Judgment of this court reported in **1999-1-LW.717 (M.R.Manoharan v.Selvi)** and submitted that the first petitioner cannot be subjected to DNA test against his Will, when he is aged about 74 years and the Advocate Commissioner is not a competent person to take the blood samples of the first petitioner for DNA Test.

6. Heard both sides and perused the materials placed before this Court.

7. On earlier occasion, the Trial Court has allowed the application I.A.No.135 of 2014 and the same was also confirmed by this Court in CRP.PD.No.4974 of 2014. It is not disputed by the petitioners that an earlier

order of the trial Court dated 02/08/2014 as confirmed by this Court in CRP.No.4374 of 2014. Hence, the respondents 1 and 2 filed an application for appointment of Advocate Commissioner to take blood samples of the first petitioner for DNA test and the learned Judge has allowed the said application. This Court finds no error in the order, so passed by the trial Court. Hence, the order dated 08.12.2016 in I.A.No.117 of 2016 in O.S.No.97 of 2011 passed by the learned Principal District Munsif, Sholingur, is confirmed.

8. However, it is made clear that if the first petitioner refuses to undergo for DNA Test, as ordered by the trial Court, can draw presumption of the nature, as contemplated in Section 114 of the Evidence Act as held by the Hon'ble Apex Court Judgment in 2015 (1) SCC 365 .

9. With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2017

Index :Yes/No
Internet :Yes/No
kkd

V.M.VELUMANI,J

kkd

To

The Principal District Munsif,
Sholingur.

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