

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3160 of 2011

M.P.No.1 of 2011

A.Settu

.. Petitioner

Vs.

V.Anitha

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.06.2011 made in I.A.No.158 of 2010 in O.S.No.70 of 2007 on the file of the Principal Sub-Court, Tiruvannamalai.

For Petitioner : Mr.R.Venkata varathan

For Respondent : Mr.S.Ganesh

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 27.06.2011 made in I.A.No.158 of 2010 in O.S.No.70 of 2007 on the file of the Principal Sub-Court, Tiruvannamalai.

2. The petitioner is first defendant and respondent is plaintiff in O.S.No.70 of 2007 on the file of the Principal Sub-Court, Tiruvannamalai. The respondent filed the said suit for partition; allotment of $\frac{1}{2}$ shares to her and for a declaration to declare that she is an indigent person and permitting her to file the suit in forma pauperies.

3. According to the respondent, she is the daughter of petitioner and his wife Koothal. Being the legitimate daughter of petitioner, she is entitled to $\frac{1}{2}$ share in the suit property. The petitioner filed written statement on 11.03.2008 and denied all the averments made by the respondent. According to the petitioner, he never married Koothal, the mother of the respondent and respondent was not born to him. Based on the pleadings, the respondent was examined as PW1 and at that stage petitioner filed an application in I.A.No.158 of 2010 for a direction to petitioner and respondent to subject both of them for a DNA test (Paternity test) in the Forensic Scientific Laboratory Mylapore, Chennai and also to direct the Forensic Scientific Laboratory, Chennai to submit a report to the Court after conducting the DNA test to the petitioner and respondent.

4. The respondent filed counter affidavit and submitted that the respondent was born to petitioner and Koothal in the valid marriage that subsist between them. As per the presumption contemplated under Section 112 of Indian Evidence Act, the respondent is the legitimate daughter of the petitioner and Koothal. The petitioner has no right to seek permission to subject the respondent as well as the petitioner to undergo DNA test. As per the judgment of this Court and Hon'ble Supreme Court, the DNA test is not reliable and conclusive scientific test to find out whether respondent was born to the petitioner or not. In all the documents, the petitioner has admitted that the respondent is his daughter.

5. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, dismissed the application holding that it is for the respondent to prove that she is a legitimate daughter of petitioner and it is not necessary to subject the respondent to DNA test and petitioner can prove through medical test that he cannot procure child.

6. Against the said order of dismissal dated 27.06.2011 made in I.A.No.158 of 2010 in O.S.No.70 of 2007, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel appearing for petitioner and respondent and perused the materials available on record.

8. **The point for consideration** in this civil revision petition is whether the petitioner has right to insist for a direction to subject the respondent to undergo DNA test.

9. The respondent is claiming partition on the ground that she is the legitimate daughter of the petitioner. The learned Judge also rightly held that it is for the respondent to prove the said contention. But the learned Judge erred in holding that whether the respondent is legitimate daughter of the petitioner or not is not relevant to decide the issue. The learned Judge also failed to see that basis of the respondent's claim is that she is the legitimate daughter of the petitioner. The learned Judge failed to see that whether the petitioner is legitimate daughter of the petitioner or not is the first issue to be decided in the suit. The two judgments reported in **1993 (3) SCC 418 (Goutam Kundu V. State of West Bengal and another)** and **1998 (1) MLJ 454 (Minor Shanmugam rep. By next friend and mother valliammal V. Karuppiyah alias Karuppannn)**, relied on by the learned counsel for the respondent are not applicable to the facts of the

present case as subsequent to the above two judgments, it has been held that in view of the improvement in scientific technology, the result of the DNA test will assist the Court in deciding the issue properly. The judgment of this Court relied on by the learned counsel for the petitioner reported in **2009 (2) TLNJ 209** before the learned Judge is squarely applicable to the facts of the present case.

10. In view of the above, the order of the learned Judge is set aside and the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The learned Judge is directed to fix the time limit for conducting DNA Test for both petitioner and respondent and to file report by concerned authority. The suit is of the year 2007, the learned Principal Sub-Judge, Tiruvannamalai, is directed to dispose of the suit on receipt of the report, within a period of three months thereafter.

Index: Yes/No
gsa

To

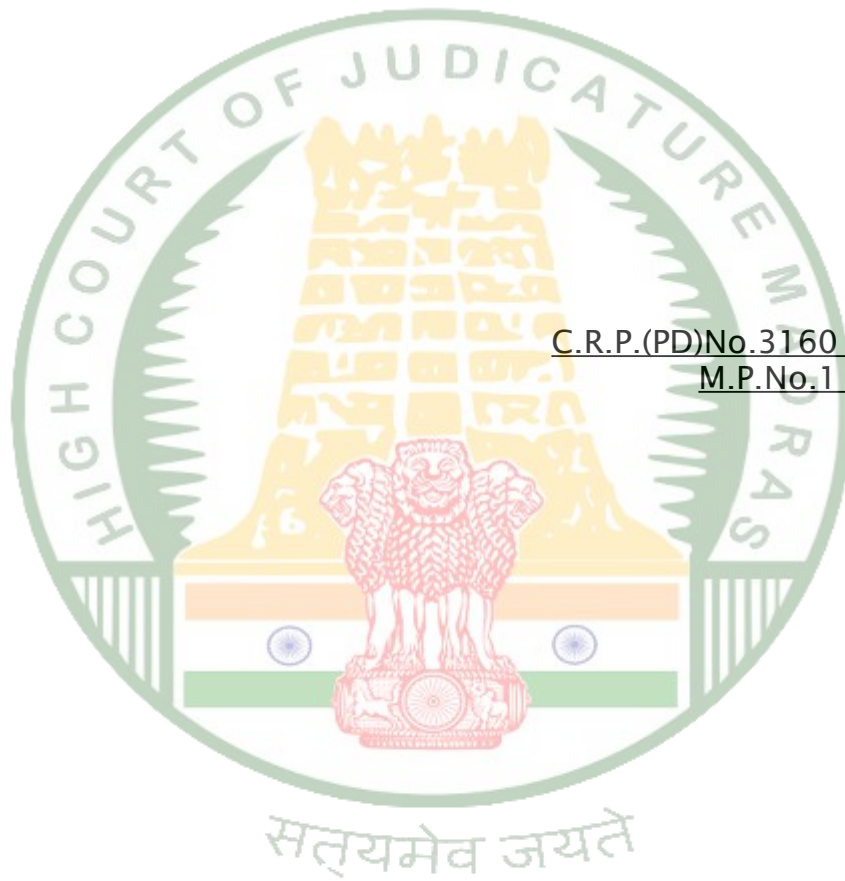
The Principal Sub-Judge,
Tiruvannamalai.

04.09.2017

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V.M.VELUMANI,J.

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