

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.2020 of 2017 and 2541 of 2017

COMMON ORDER:

Heard the learned counsel for petitioner and Sri S.Srinivasa Sarma, learned counsel for 1st respondent.

2. These two Revisions arise out of the same suit in O.S.No.133 of 2012 on the file of the I Additional Junior Civil Judge, Eluru between the same parties and hence, they are being disposed of by this common order.

3. The petitioner in C.R.P.No.2020 of 2017 is the 3rd defendant in the above suit and petitioner in C.R.P.No.2541 of 2017 is the 1st defendant in the said suit.

4. The said suit was filed by the plaintiff/1st respondent in the Revisions to declare that 1st defendant is his father and that 2nd defendant is his mother on account of their long cohabitation as husband and wife and for costs.

5. I.A.No.318 of 2012 was filed by 1st respondent/plaintiff under Section 45 of the Indian Evidence Act, 1872 to subject both plaintiff and 1st defendant in the suit to a DNA Test at Centre for Cellular and Molecular Biology (CCMB), Tarnaka, Hyderabad or at any other reputed Government Testing Laboratory-cum-Hospital to ascertain the factum of his paternity.

6. The said application was allowed by the Court below on 07-06-2013.

7. Challenging the same, C.R.P.No.2961 of 2013 was filed by the 1st respondent. The 1st defendant also filed C.R.P.No.2980 of 2013 to strike off the suit from the file of the I Additional Junior Civil Judge, Eluru on the ground that the said Court suffers inherent lack of jurisdiction for trying the same in view of the provisions contained in Section 7(1) clauses (b) and (e) of the Family Courts Act, 1984, proviso to Sections 34 and 35 of the Specific Relief Act, 1963 r/w Order II Rule 2 C.P.C. and Sections 40 to 42 and 112 of the Evidence Act, 1872.

8. By a common order dt.09-12-2013, C.R.P.No.2961 of 2013 was allowed and C.R.P.No.2980 of 2013 was dismissed. This Court held that the Court below erred in exercising its discretion at that point of time in ordering for DNA test on the 1st defendant and it should have waited till such time the 1st respondent/plaintiff produces necessary evidence to convince the Court that 1st defendant in the suit did the really marry 2nd defendant/plaintiff's mother and gained access to her before ordering the DNA test, and that at the stage of the said suit at that point of time, there is no scope for ordering for the DNA test. It also held that there were no valid or tenable grounds to hold that the suit was liable to be struck off as sought in the C.R.P.No.2980 of 2013, that the Civil Court would have jurisdiction to entertain the

suit and the suit filed by plaintiff before the I Additional Junior Civil Judge, Eluru was not barred under Section 8 of the Family Courts Act, 1984 since the explanation (e) to sub-Section (1) of Section 7 of the said Act is not attracted.

9. No further challenge was made to this order.

10. Thereafter 1st defendant filed I.A.No.458 of 2014 to implead the 3rd defendant as a party to the suit on the ground that she is the legally wedded wife and would be the really affected party. This application was opposed by 1st respondent. On 15-12-2014, the trial Court dismissed I.A.No.458 of 2014.

11. Assailing the same, C.R.P.No.1113 of 2015 was filed by the 3rd defendant.

12. By order dt.07-07-2015, C.R.P.No.1113 of 2015 was allowed and I.A.No.458 of 2014 was also allowed and it was held that 3rd defendant is a necessary party since the question as to whether she was a lawfully wedded wife would arise in view of the contention of 2nd respondent/2nd defendant that she had married the 1st defendant in 1982 after the alleged marriage between defendant Nos.1 and 3 in 1974.

13. Thereafter the 3rd defendant filed a written statement wherein she also contended that the suit is not maintainable once she is impleaded and that it should be tried only by the Family Court

constituted under the Family Courts Act, 1984. So the following issues were framed:

- “ 1. Whether the declaration of paternity can be granted as prayed by the plaintiff by this Court or this Court has to direct the plaintiff to go to the Family Court in the light of Sections 7 and 8 of the Family Courts Act?
2. Whether this Court has got jurisdiction to entertain the suit in the light of Sections 7 and 8 of the Family Courts Act?
3. Whether, the plaintiff is the legitimate son of the 1st respondent through the 2nd defendant?
4. To what relief?”

14. The 1st defendant then filed I.A.No.278 of 2016 and 277 of 2016 for a direction to the Court to decide the issues relating to maintainability of the suit as preliminary issues.

15. By separate orders dt.21-03-2017 and 07-03-2017, the Court below dismissed both I.As. The Court below held that the High Court had already adjudicated in C.R.P.No.2980 of 2013 that the Court of I Additional Junior Civil Judge, Eluru had jurisdiction to entertain the suit and to try it, that the said order is binding on the Court below and the issue about the maintainability of the suit cannot be reconsidered again even if 3rd defendant was not a party in C.R.P.No.2980 of 2013. It also observed that the plaintiff had only confined his relief in the suit to his paternity and did not ask to decide the marital status of the 1st defendant with that of the 2nd defendant in his prayer and the

marriage of the 1st defendant with the 3rd defendant is not in question in the suit.

16. Challenging the same, these Revisions are filed.

17. Learned counsel for petitioners contended that the marriage between 1st defendant and the 3rd defendant had taken place in 1974 and the marriage alleged between the 1st defendant and 2nd defendant was in 1982; therefore the validity of the alleged marriage between 1st defendant and 2nd defendant is directly in issue; and the said issue has to be decided only by the Family Court and not by the Civil Court; that 3rd defendant is not bound by the finding in C.R.P.No.2980 of 2013 about the maintainability of the suit in Civil Court; and the Court below therefore ought to have treated the above two issues as preliminary issues and decide the same.

18. I am unable to agree with the said contention. This Court had already held in its order dt.09-12-2013 in C.R.P.No.2980 of 2013 that the Court of I Additional Junior Civil Judge, Eluru has jurisdiction to entertain the suit and that the Family Court had no jurisdiction to entertain the suit. It based the said finding on the ground that under explanation (e) to Section 7(1) of the Family Courts Act, 1984, the Family Court cannot entertain any suit or proceeding for a declaration as to the legitimacy of any person without any claim of marital relationship of the parents. It observed that in the face of a denial by 1st defendant of marital relationship between him and 2nd defendant,

he cannot suggest that the Family Court should try the suit brought out by the plaintiff for declaration about his legitimacy.

19. Also, the marital relationship between the petitioner and 3rd defendant as wife and husband is not in dispute in the suit. Therefore merely because 3rd defendant is impleaded in the suit, since there is no dispute about her marital status and the existence of marriage between 1st defendant and 2nd defendant is not in issue (as there is no such plea by plaintiff), both 1st defendant and 3rd defendant are bound by the order dt.19-12-2013 in C.R.P.No.2980 of 2013 and they cannot now seek to again reopen the issue about the jurisdiction of the Civil Court to entertain the suit and to try it since the said issue attained finality by virtue of the order in C.R.P.No.2980 of 2013.

20. It is obvious that these applications have been filed only to delay the suit which has been filed more than 5 years back and the intention of petitioners in these Revisions is not *bona fide*.

21. Therefore, these two Civil Revision Petitions are dismissed with costs of Rs.2,000/- (Rupees Two Thousand only) to be paid by petitioners herein separately to the 1st respondent.

22. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-07-2017

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