

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 114 of 2017

ORDER:

1) Aggrieved by the docket order, dated 29.02.2016, wherein I.A.No.7 of 2014 was re-opened and notice was issued to Ramyashree for sending her blood along with the blood of respondent No.6 therein and her husband for D.N.A.test, the present revision is filed.

2) The facts in issue are as under:

1st respondent herein filed O.P.No.1 of 2013 on the file of the Election Tribunal-cum-Junior Civil Judge, Kuppam, questioning the election of the petitioner as Sarpanch of Unisiganipalli Grampanchayat, Ramakuppam Mandal as null and void. Pending the said O.P., I.A.No.7 of 2014 came to be filed requesting the Court to order for D.N.A. Test of Ramyashree with the blood of the petitioner and her husband, S.Jayashankar, to prove the paternity of Ramyashree. On 14.10.2015, the trial Court heard the I.A. and posted the matter to 03.11.2015 for orders. On 03.11.2015, the Court suo-moto re-opened the matter and directed the 1st respondent herein to furnish the address of the guardian of Ramyashree so as to issue notice to her. Later, the matter underwent number of adjournments. On 29.02.2016 the trial Court ordered fresh notice to Ramyashree. Challenging the same, the present revision came to be filed.

3) The averments in the affidavit filed in support of the I.A. would show that the 1st respondent herein filed O.P. to declare the election of the petitioner as null and void on the ground that one Ramyashree was the third child of the petitioner and since there is a bar to contest, if the parties are having more than two children.

4) A counter came to be filed by the petitioner herein opposing the same stating that Ramyashree is daughter of S. Ramakrishna and Adilakshmi. The said Ramakrishna is the brother-in-law of the petitioner and brother of her husband. Documents came to be filed by the petitioner to show that Ramyashree is the daughter of Ramakrishna. It is further stated that oral and documentary evidence adduced by the 1st respondent is false and fabricated.

5) After hearing the I.A. at length, the Court re-opened the matter and issued notice to Ramyashri for the purpose of sending her blood along with the blood of the petitioner and her husband for D.N.A. Test.

6) Learned counsel for the petitioner mainly submits that the trial Court has no jurisdiction to issue notice to the persons, who is not party to the O.P. It is his case that the Court has traversed the pleading in the petition. It is further urged that issuing of a notice to third party in an election petition for the purpose of collecting evidence is un-warranted. He further submits that the Court should be initially satisfied as to whether there is any

material to show that the said Ramyashree is the daughter of the petitioner or Ramakrishna and then only it can take further steps. Without deciding the said issue he submits that the Court cannot order appearance of Ramyashree.

7) On the other hand, learned counsel for the 1st respondent submits that the C.R.P. itself is not maintainable against a docket order issuing notice to Ramyashree. It is his case that if any order is passed, directing the implead party to give blood for conducting D.N.A. test, then the same has to be challenged. Since the revision is premature, he pleads for dismissal of the same. Apart from that he further submits that Exs.A1 to A17 amply establish that Ramyashree is the daughter of the petitioner and since *prima facie* case is made out there is nothing wrong in issuing notice to the said person.

8) It is to be noted that the trial in the O.P. is almost concluded. About six witnesses are said to have been examined on behalf of the election petitioner and number of documents came to be marked on both sides. Learned counsel for the petitioner placed reliance on the ration card, Study-cum-Conduct Certificate and Community, Nativity and Date of Birth Certificate issued by the Government of Andhra Pradesh and Aadhar Card to show that Ramyashree is the daughter of Ramakrishna.

9) A reading of the said document shows that Ramyashree is the daughter of Ramakrishna. At the same time, 1st respondent herein also placed on record Exs.A1 to A17 to show that

Ramyashree is the daughter of the petitioner and Jayashankar. The delivery certificate-Ex.A3 shows the name of the father of the child as Jayashankar and mother as Mahadevi. Similarly, Ex.A4 which is the Birth Certificate issued by the authorities show that the father of Ramyashree is Jayashankar. Ex.A11 which is a copy of the admission certificate also shown the same. The entries in the hospital register which are marked as Ex.A14 also show that Ramyashree is the daughter of Jayashankar and Mahadevi.

10) As seen from the above, there are two versions with regard to paternity of Ramyashree. This circumstance coupled with the oral evidence of PWs.1 to 6 must have weighed with the Court below to issue notice to Ramyashree.

11) It is also to be noted the case was suo-moto re-opened and notice was issued to Ramyashree on 03.11.2015. Thereafter the matter underwent number of adjournments. S.Ramakrishna, who claims to be guardian of Ramyashree, engaged his advocate and sought time for filing counter. The docket order, dated 24.03.2016 reads as under:

“S.Ramakrishna, guardian of Chi. Ramyashree called absent. Sri K.Udaya Kumar, Advocate filed vakalath for the said S.Ramakrishna and requested time for counter. Hence, for counter of Chi.Ramyashree. Posted to 06.04.2016.”

12) Though notice was issued on 03.11.2015 the petitioner did not challenge the same immediately. He gave addresses of the guardian of Ramyashree, who on service of notice filed Vakalath

in the month of March, 2016. Though the I.A. was re-opened on 03.11.2015 the petitioner is now challenging the order dated 29.02.2016, wherein the Court ordered issuance of fresh notice to the guardian of Ramyashree. No reasons are forthcoming as to why the petitioner did not challenge the docket order, dated 03.11.2015 wherein the trial Court issued first notice. Even otherwise, the Court has not yet passed any order as to whether the blood of said Ramyashree has to be taken or not. It has only issued notice to said Ramyashree and also to her guardian with a view to give them an opportunity to contest the I.A. before passing any orders.

13) Insofar as the argument of the learned counsel for the petitioner that there was no *prima facie* material before the Court to issue notice to Ramyashree, is concerned, it is to be noted that in para No.9 of the election O.P. it has been specifically stated that the petitioner is dis-qualified under Section 19 (3) of the Andhra Pradesh Panchayat Raj Act, as she is having three children, whose particulars are mentioned in the said election petition. The name of the third child was shown as Ramyashree and her date of birth was mentioned as 30.11.2002. In support of the same, documents namely Exs.A1 to A17 came to be placed on record. It is also true that the petitioner herein also filed documents to show that Ramyashree is not her daughter. Therefore, it cannot be said that no *prima facie* case is made out for ordering notice to Ramyashree and Ramakrishna. Having regard to the above, the argument of the learned counsel for the

petitioner that the trial Court exceeded his jurisdiction in issuing notice cannot be accepted. Viewed from any angle, this Court is of the opinion that there are no merits in the revision and the same is liable to be dismissed. It is needless to mention that the trial Court shall dispose of the election petition un-influenced by the observations, if any, made by this Court in this revision.

14) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

21.03.2017
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JUSTICE C. PRAVEEN KUMAR