

In the High Court of Punjab and Haryana at Chandigarh

CR-133 of 2017

Date of Decision: 08.11.2017

Surjit Kaur

---Petitioner

versus

Mukta Gajri and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. K.S.Cheema, Advocate
for the petitioner

Mr. S.S.Brar Advocate,
for respondent No. 2

Rekha Mittal, J.

The present petition directs challenge against order dated 8.12.2016 whereby application of the petitioner for directing Mukta Gajri respondent/defendant No. 1 and Vijay Sood son of Bal Krishan for giving blood samples for the purpose of DNA testing, has been dismissed.

Counsel for the petitioner has submitted that the petitioner has filed suit for declaration with regard to property which was originally owned by Amolak Ram. Amolak Ram died on 4.3.1981 and succeeded by his widow Raj Lakshmi who executed Will dated 15.5.1995 in favour of the plaintiff, in lieu of services rendered to Smt. Raj Lakshmi. Raj Lakshmi died on 16.8.1997. Smt. Mukta Gajri has wrongly claimed herself to be daughter of Sh. Amolak Ram and Raj Lakshmi when as a matter of fact, she is the daughter of Bal Krishan and Smt. Saroj Sood. It is further submitted that in case DNA test of Mukta Gajri and Vijay Sood son of Bal Krishan is

conducted, it would advance cause of substantial justice by proving true picture on the basis of scientific analysis. It is argued that the trial court has committed a serious error rather illegality by rejecting plea of the petitioner without taking into consideration judgments of this court **Neelam Rani and others vs. Smt. Mainka @ Maina Devi and another 2014(2) RCR (Civil) 560** and **Rajji @ Rajjo vs. Kapoor Singh and others 2013 (31) RCR (Civil) 798**.

Counsel representing the respondent has supported the impugned order with the submission that as no dispute with regard to paternity of Mukta Gajri is involved in the lis, the trial court has rightly rejected claim of the petitioner. Another submission made by counsel is that Vijay Sood son of Bal Krishan is not a party to the litigation, therefore, there is no occasion for the trial court to direct said Vijay Sood to give blood sample for DNA test.

I have heard counsel for the parties, perused the paper book and the judgments cited by counsel for the petitioner but find that the petition is devoid of merit and liable to be dismissed.

Hon'ble the Supreme Court of India in **Banarsi Dass vs. Teeku Dutta and another, (2005) 4 SCC 449** has held that DNA test is not to be directed as a matter of routine and the same should be directed only in deserving cases. In the case at hand, the petitioner has staked her claim to the suit property on the basis of Will dated 15.5.1995 purported to be executed by Smt. Raj Lakshmi widow of Amolak Ram, original owner of the suit property. The petitioner can be successful in her claim to the suit property only if she is able to prove the Will set up by her, having been executed by Ms. Raj Lakshmi. As has been rightly argued by counsel for

the respondents that in the suit filed by the petitioner, there is no issue with regard to paternity of Mukta Gajri and the petitioner being the plaintiff cannot take advantage of weakness of defence. Vijay Sood with whose blood sample, sample of Mukta Gajri is sought to be compared for the purpose of DNA analysis is not even a party to the case. In view of the facts and circumstances discussed hereinbefore, the petitioner cannot derive any advantage to her contention from the referred authorities wherein there was dispute between the parties with regard to their inter se relationship.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

8.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No