

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CIVIL REVISION No 3517 of 2017
DECIDED ON: MAY 16, 2017

GURWANT KAUR

.....PETITIONER

VERSUS

MANJIT KAUR & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated January 25, 2017 (Annexure P-4) passed by learned Civil Judge (Jr. Division), SBS Nagar, whereby, an application moved by the petitioner in Civil Suit No. CS/19817/13 titled as “Gurwani Kaur vs. Manjit Kaur & others” for directing defendants No.1, 4 and 5 (present respondents) to submit themselves for Deoxyribo Nucleic Acid (for short 'DNA') test to verify the factum of paternity; has been dismissed.

The contention of learned counsel for the petitioner is that Pishora Singh son of Hari Singh breathed his last in the year 1971 leaving behind his legal heirs namely Iqbal Kaur (widow), Gurwant Kaur (present

petitioner/plaintiff), Narinder Kaur, Manjit Kaur and Billo. However, the defendants are denying that petitioner/plaintiff is also the daughter of Pishora Singh just to grab the suit land. Even, in the cross-examination defendant-Manjit Kaur has given vasive replies when a question was put to her whether she is willing to get her subjected to DNA test. Further, learned counsel for the petitioner contends that DNA test is conclusive and in case defendant-Manjit Kaur is subjected to the said test, it would clinch the entire controversy and would enable the Court to pass an effective judgment. The dismissal of application by learned trial Court is absolutely wrong and no cogent or convincing evidence has been assigned for the dismissal thereof. Thus, the impugned order being not sustainable in the eyes of law is liable to be set aside by way of acceptance of instant appeal. Consequently, an application be allowed and defendants/respondents be directed to submit themselves for DNA test.

This Court has given an anxious thought to the afore-said submissions made by learned counsel for the petitioner but find the same to be without any legal and factual substance.

The main question which requires determination in the case in hand is whether defendants/respondents can be directed to submit themselves for DNA analysis. Such a question came up for consideration before the Hon'ble Apex Court in the case of **Goutam Kundu v. State of West Bengal; 1993 (2) RCR (Criminal) 497;** in which certain guidelines were formulated. The relevant portion of which reads as under:

- “1. that courts in India cannot order blood test as matter of course;*
- 2. wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained;*
- 3. There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act;*
- 4. The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman;*
- 5. No one can be compelled to give sample of blood for analysis”;*

In another case **Bhabani Prasad Jena v. Secretary, Orissa State Commission for Women and another; 2010 (4) RCR (Civil) 53;** the Hon'ble Apex has held that when there is a apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interest of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed.

Now in the light of afore-said settled proposition of law, it is to be seen whether impugned order suffers from any infirmity or illegality or not. Petitioner/plaintiff is none else but the daughter of Pishora Singh.

However, the controversy has been created with regard to this relationship

by the other Legal heirs of Pishora Singh. The said controversy can be set at rest by way of other evidence also, to be adduced by the petitioner/plaintiff. DNA is not the only criteria for establishing the paternity of respondents/defendants. Similarly, it also can be said without any hesitation that there is no eminent requirement for such a test, which is otherwise going to infringe the fundamental right of privacy of respondents/defendants.

Otherwise also, an application was moved by the petitioner/plaintiff after the conclusion of her evidence in support of her case. So, taking the case of the petitioner/plaintiff from any of the angles, this Court does not find any merit in the instant revision. As such, it stands dismissed.

No order as to costs.

JASPAL SINGH
JUDGE

MAY 16, 2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>