

Civil Revision No. 5146 of 2017(O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Revision No. 5146 of 2017 (O&M)
Date of decision: 4.8.2017**

Navjot Singh and another

...Petitioners

Versus

Ranjodh Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vipin Mahajan, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Defendants have approached this Court by way of present revision petition under Article 227 of the Constitution of India, against the order dated 19.7.2017 (Annexure P-11) and order dated 28.7.2017 (Annexure P-12) passed by the learned trial court, whereby application moved by the plaintiff under Section 151 of the Code of Civil Procedure ('CPC' for short), directing to conduct DNA test of petitioner No.1 and proforma respondent No.3, was allowed.

Heard learned counsel for the petitioners.

Plaintiffs-contesting respondents No.1 and 2 have filed a suit for declaration, vide plaint Annexure P-1, to the effect that plaintiff-respondent No.4 are owners in possession of the suit land on the basis of a valid Will executed by Smt. Amarjit Kaur in favour of her nephews-defendant No.4

Civil Revision No. 5146 of 2017(O&M)

and plaintiffs. They also challenged mutation No. 1681 regarding inheritance of estate of Smt. Amarjit Kaur by defendant No.1 by getting the said mutation sanctioned illegally showing himself as her son in a fraudulent manner in connivance with revenue authorities. It was alleged that defendant No.1 was son of defendants No.2 and 3. During pendency of the suit, plaintiffs moved an application under Section 151 CPC for conducting DNA profile test of defendants No.1 and 3. It was this application which came to be allowed by the learned trial court.

It is not a matrimonial dispute. It was pleaded case of the plaintiffs that no child was born out of the wedlock of Smt. Amarjit Kaur and defendant No.2-Kulwinder Singh. It was also their pleaded case that defendant No.1 is son of defendant No.3-Smt.Kanti from her earlier marriage. It was also the case set up by the plaintiffs that once neither defendant No.1 was born out of wedlock of defendants No.2 and 3, nor he was born out of wedlock of Kulwinder Singh and Smt. Amarjit Kaur, mutation No. 1681 in favour of defendant No.1, illegally and wrongly treating him to be the son of late Smt. Amarjit Kaur, was factually incorrect and based on misrepresentation.

With a view to resolve the abovesaid controversy, the learned trial court rightly examined, considered and appreciated true factual as well as legal aspects of the matter, while allowing the application, directing to conduct of the DNA profile test of defendants No.1 and 3. Since only endeavour of the learned trial court was to ascertain true fact situation, which shall also facilitate the learned trial court to arrive at a judicious conclusion, no fault can be found with the impugned order and the same deserves to be upheld.

So far as following judgments relied upon by learned counsel for

Civil Revision No. 5146 of 2017(O&M)

the petitioners are concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgments, none of them has been found to be of any help to the petitioners, being distinguishable on facts.

Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another, 2010 AIR (SC) 2851 (SC)

Goutam Kundu Vs. State of West Bengal, 1993 AIR (SC) 2295 (SC)

Raghubir Vs. Bharto Devi and others (CR No. 6239 of 2015 decided on 10.1.2017) (P&H)

Maya Vs. Naresh Kumar, 2017 (1) SimLC 244 (H.P. HC).

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Once facility of advance technology of DNA profile test is available, which is very much necessary in the present case, the learned trial court was well within its jurisdiction to allow the application of plaintiffs for directing to conduct DNA profile test of defendants No.1 and 3, so that the controversy is set at rest. It is so said because exercise sought to be carried out by passing the impugned order was only for the purpose of searching the truth.

Civil Revision No. 5146 of 2017(O&M)

Now the question arises, whether any of the litigating parties should even make an attempt to run away from the truth and the answer is and has to be an emphatic no, because our justice delivery system is based on the truth. However, in case defendant No.1 is not found to be son of defendant No.3 after conducting DNA profile test, the learned trial court shall appreciate the evidence accordingly. In either of the situations, no prejudice was likely to be caused to the petitioners. It does not appeal to reason as to why the petitioners were trying to run away from the truth. In this view of the matter, it is unhesitatingly held that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Dipanwita Roy Vs. Ronobroto Roy, 2015 AIR (SC) 418 (SC)

Raji @ Rajjo Vs. Kapoor Singh and others, 2013 (31) RCR (civil) 798 (P&H)

The Hon'ble Supreme Court upheld the order passed by the Calcutta High Court in a matrimonial dispute directing the wife to undergo the DNA profile test. The learned trial court has very rightly followed the law laid down by this Court, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned orders passed by the learned learned courts below, warranting interference at the hands of this court, while exercising its revisional jurisdiction under Article

Civil Revision No. 5146 of 2017(O&M)

227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant civil revision petition stands dismissed, however, with no order as to costs.

4.8.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No