

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5421 of 2017 (O&M)
Date of Decision: August 17, 2017

Sheela

... Appellant

Versus

Rajesh Kumar

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mahender Singh Chahal, Advocate,
for the petitioner.

ANIL KSHETARPAL, J. (ORAL).

Defendant-petitioner has filed the present revision petition under Article 227 of the Constitution of India.

Defendant-petitioner had filed an application to conduct DNA test of the child, namely, Dushyant Kumar @ Akshay to ascertain the birth of the child and his parentage.

The learned trial Court after appreciating the submissions of the parties passed the order dismissing the application. The relevant extract of the order reads as under: –

5. The plaintiff has filed present suit seeking declaration that defendant is not wife and mandatory injunction directing the defendant not to proclaim herself as wife of plaintiff. It is the stand of defendant that after the death of -her husband, she was married to plaintiff who is brother of her deceased husband by karewa marriage and a child namely, Dushyant @

Akshay was born out of marriage of plaintiff and defendant.

6. By way of present application, the defendant has sought direction to plaintiff to get his D.N.A. test conducted in order to prove that he is father of Dushyant @ Akshay son of defendant Sheela and to prove that defendant is married to plaintiff Rajesh. The D.N.A test is conducted to ascertain the relation of two persons e.g. the paternity of a child. But the question involved in present suit is not of paternity of a child rather the question is regarding the existence of relationship of marriage between plaintiff and defendant. However, if D.N.A. Test of Dushyant @ Akshay and Rajesh is conducted and it is proved that Rajesh is biological father of Dushyant @ Akshay, even then it cannot be taken as a proof of marriage of Rajesh and Sheela. Merely, because a child is born out of relationship of a woman and man it does not necessarily prove the existence of marriage between those persons. The defendant is required to prove the existence of marriage between her and plaintiff by independent evidence. Even if for the sake of arguments, it is presumed that Akshay is son of plaintiff even 'then, it cannot be taken as a proof of marriage of plaintiff with defendant. Rather, if the result comes otherwise, there would be greater hardship for Dushyant @ Akshay and serious social repercussions would be there. Thus, there is no requirement to get the D.N.A. Test of plaintiff and Akshay to be conducted in order to prove the marriage of plaintiff and defendant and the

stand of each party has to be proved by leading evidence.

7. Keeping in view of the above-discussion, I the application to conduct DNA test to ascertain the birth of child and its parents filed applicant/defendant Sheela is hereby dismissed being devoid of merits.”

Learned counsel for the petitioner has submitted that DNA test is necessary for proving that the plaintiff is father of the child.

I have considered the submission of the learned counsel. The learned trial Court has held that in the present case the dispute is only with regard to whether defendant-petitioner is the wife of the respondent or not. Therefore, the parentage of Dushyant Kumar @ Akshay is totally alien to the suit.

In view of the above, I do not find any reason to interfere with the order passed by the learned trial Court.

Revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

17.08.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No