

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

CR No.5662 of 2017

Date of decision:24.8.2017

Jhuthar

...Petitioner

Versus

Sube Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vikas Mohan Gupta, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 21.7.2017 passed by the learned trial court, whereby on the application moved by defendant No.1, DNA profile test was ordered to be conducted of the plaintiff as well as defendant No.1, plaintiff has approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

Placing reliance on the following judgments of the Hon'ble Supreme Court as well as this Court in **Goutam Kundu Vs. State of West Bengal, 1993(2) RCR (CrI.) 497, Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women & Anr, 2010 AIR (SC) 2851, Hawa Singh and others Vs. Maiperson and another, 2017(2) PLR 518, Ragbir Vs. Bharto Devi and others, 2017 AIR (Punjab) 55, Baby**

Vs. The Union of India & others, 2017(1) PLR 425 and CR No.4344 of 2014, 2015(4) PLR 166, learned counsel for the petitioner-plaintiff submits that the impugned order passed by the learned trial court suffers from patent illegality and the same is liable to be set aside. He further submits that DNA profile test cannot be ordered in a routine manner. He prays for setting aside the impugned order, by allowing the instant revision petition.

Having heard the learned counsel for the petitioner at considerable length and after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the present revision petition is without any merit, the impugned order passed by the learned trial court does not suffer from any patent illegality or perversity and the same deserves to be upheld, for the following more than one reasons.

It is a matter of record that the plaintiff has approached the court by filing a suit for declaration to the effect that he is son of defendant No.1. The entire controversy between the parties revolves around this very basic fact, whether plaintiff is son of defendant No.1 or not. When defendant No.1 moved an application before the learned trial court for conducting his DNA profile test and that of the plaintiff so as to ascertain paternity of the plaintiff, said application was allowed by the learned trial court, by passing the impugned order. The only endeavour made by the learned trial court, while passing the impugned order, was to reach close to the truth.

The moment DNA profile test is conducted of the plaintiff as well as defendant No.1, the entire controversy would stand resolved. Once

this advance technology is available, the learned trial court was well within its jurisdiction to pass the impugned order with a view to arrive at a judicious conclusion with the help of report of DNA profile test so as to do substantial justice between the parties. Having said that, this Court feels no hesitation to conclude 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.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. 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 **Padmasundara Rao (Dead) 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.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: *State of Orissa v. Sudhansu Sekhar Misra and Ors.* (AIR 1968 SC 647) and *Union of India and Ors. v. Dhanwanti Devi and Ors.* (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In *Quinn v. Leathem* (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found

there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

*Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See *State of Orissa Vs. Mohd. Illiyas*, (2006) 1 SCC 275 at p.282, para 12.*

*12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)*

"The matter cannot, of course, be settled merely

by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in *Shepherd Homes Ltd. V. Sandham* (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR 1962 SC 680)

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such

cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

It is own pleaded case of the plaintiff-petitioner that he is son of defendant No.1. Said fact was being denied by defendant No.1. Under these peculiar facts and circumstances of the case, defendant No.1 made a very fair offer to the learned trial court offering himself for conducting his own DNA profile test as well as that of the plaintiff. It does not appeal to reason as to why the plaintiff was taking any exception to such an offer made by defendant No.1 and why the plaintiff is shying away from presenting himself for conducting DNA profile test.

If the case of the petitioner-plaintiff is based on truth, the result of DNA profile test shall be of great help to the petitioner-plaintiff himself so as to prove his own pleaded case. If, as a result of DNA profile test, the above-said material facts strongly pleaded by the plaintiff-respondent are found to be incorrect, even then the said report shall facilitate the learned trial court to arrive at a judicious conclusion. Thus, in either of the situations, plaintiff must not run away from the truth. His very opposition of the impugned order shows that the plaintiff was either trying to conceal the material fact from the notice of the learned trial court or he was intending to

misrepresent the true facts of the case.

This attempt being made on behalf of the petitioner is not permissible in law. In fact, petitioner-plaintiff is supposed to assist the learned trial court by presenting his case in truthful manner so that the learned trial court may come closer to the truth as far as possible and the suit between the parties is decided accordingly. It is so said because our justice delivery system is based on the cardinal principle of truthfulness. In this view of the matter, it can be safely concluded 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 as well.

A bare reading of the impugned order passed by the learned trial court would show that each and every relevant aspect of the matter was duly considered and appreciated in correct perspective. The impugned order has been found based on sound reasons. The relevant observations made by the learned trial court in paras 20 to 22 of the impugned order, which deserve to be noticed here, read as under:-

“Otherwise also, it is a matter of common prudence that at the time of enactment of Indian evidence Act 1872, it was not in the wisdom of legislature that such a perfect and accurate test of paternity would be possible in near future. Moreover, Our Hon'ble High has held in Rajli @ Rajo Vs. Kapoor Singh and others 2014(3) law Herlad (P&H) 2214 wherein it has been held in paragraph 19 that scientific investigations are need of the hour and must be carried out. DNA test is a scientific test and its accuracy is 99.99% and as such this must be used as evidence not only in sexual/assault and violent crimes, but also in civil cases involving special of paternity and consequent question of succession.

Our Hon'ble High Court has further held in paragraph no.27 of this judgment that it is a known fact that in the past

proving paternity was impossible. It was considered difficult for a women to mistakenly believe that the child was hers, whereas it was not too difficult for a man to claim or deny parentage. During the subsistence of marriage between the parties under Section 112 of Indian Evidence Act, presumption is raised that child is from the subsisting relationship of marriage between the husband and wife. In the old days, nothing could be done to prove parentage. Today things have changed, paternity can be proved ,disproved conclusively with DNA test. The party can be absolutely sure if the child is of his or not and it can be established by blood test performed to determine the paternity that the man tested was not actually the biologically father of the child in question, as a result of which ethical issue arises and it is also not uncommon that to usurp the land of others, paternity frauds are committed. Where there is a serious breach of trust and honesty with regard to a birth of a child, the fundamental question of awareness arises. It does not matter that some one is going to lose certainly, DNA Test for establishing paternity is necessary.

So far as the plea of learned counsel for plaintiff/respondent that the question of paternity by DNA Test should not be allowed because it is matter of right to privacy and would also result to lose of reputation of the lady who has already left for heavenly abode is concerned, this court is unable to agree with this argument. Because, it is immaterial whether the question of paternity is proved by DNA Test or by leading oral evidence. Even if the defendant no.1 proves that plaintiff's mother Bhanti had not entered into Kareva Marriage with Mr. Sube, the same results like lose of reputation, right to privacy and so on would ensue. Rather, if the court takes retrograde steps by not adopting scientifically advanced and accurate techniques and burdens both the parties to lead huge evidence to prove a fact, it would result into wastage of time, money of the court as well as of the parties and even then the

weight and reliability of evidence would be much lesser than that of the DNA testing which is universally admit by the whole world community with full conviction without an iota of doubt. Then keeping in view the fact that the defendant no.1 was not legally married to the lady, whose sons paternity is question, the could should take a step forward by adopting scientifically accepted and tested technique giving 99.99% result.”

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the abovesaid findings recorded in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on true facts of the case and it has also been passed, strictly in accordance with law. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

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 instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

24.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No