

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1208 of 2017

Smt. Pramila Sinha wife of Late Krishna Prasad Sinha Resident of Village -
Neya, P.O. Siswan, P.S. Nawada (Muffasil), District - Nawada.

... .. Petitioner

Versus

1. Smt. Sunita Singh, Wife of Anjani Singh, Resident of Village & P.O. Keshopur, P.S. Hilsa, District Nalanda.
2. Smt. Anita Singh wife of Ajay Shankar Singh Resident of village - Parasi, P.O. Bhagwan Bigha, P.S. Noorsarai, District – Nalanda.

... ..Plaintiffs-Respondents 1st Set

3. Kumari Simple
4. Kumari Nidhi
5. Khusboo All daughters of Late Krishna Singh resident of Mohalla Shri Krishna Nagar, Plot No. 89, Road No 21, P.S. Budha Colony, District Patna.
6. Smt. Dimple wife of Ashwini Kumar Resident of P.H.E.D. Colony, Booty More, Bariyatu, P.S. Bariyatu, District - Ranchi, Jharkhand.

... ..Defendants-Respondents 2nd Set

7. Binod Kumar son of Ramanuj Prasad Singh Resident of Village - Neya, P.O. Siswan, P.S. Nawada Muffasil, District – Nawada.
8. Vijay Prasad Singh, Son of Late Ram Rakshay Prasad Singh, Resident of Mohalla Sri Krishna Nagar, Plot No.89, Road No.21, P.S. Budha Colony, District Patna.

... ..Defendants-Respondents 3rd Set

Appearance :

For the Appellant/s : Mr. Jitendra Nath Tiwary
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 10-09-2018

Heard the learned counsel for the petitioner.

2. The petitioner has filed this civil miscellaneous petition under Article 227 of the Constitution of India to set aside the order dated 15.05.2017 passed by Sri Ranjit Kumar, the learned Sub-Judge, 1st, Nawada in Title Suit No.68 of 2006 by which the learned Sub-Judge rejected the prayer of defendant no.1,



the petitioner, to take blood sample for DNA test to determine the issue scientifically about the parentage of plaintiffs.

3. The two plaintiffs filed the suit for partition of the property of Krishna Prasad Sinha on assertions that the plaintiffs are the daughters of late Krishna Prasad Singh from his first wife. After the death of first wife, Krishna Prasad Sinha got married with Smt. Pramila Sinha, the defendant-petitioner. Krishna Prasad Sinha also got four daughters from his second wife. The further case of the plaintiffs is that Ram Raksha Singh died leaving three sons, namely, Ramanuj Prasad Singh, Sri Krishna Prasad Sinha and Sri Vijay Singh. Ram Raksha Singh acquired a piece of land in Sri Krishna Nagar and constructed eight flats over the said piece of land. After death of Ram Raksha Singh, there was oral partition amongst his three sons including late Krishna Prasad Sinha. In family arrangement, the flats no.3, 5, 6 and 7 detailed in Schedule II of the plaint fell in exclusive share of Krishna Prasad Sinha. Krishna Prasad Sinha was in government service as an Assistant Engineer in PHED. Krishna Prasad Sinha died on 26.04.2014 leaving behind his widow, defendant no.1, the second wife, and six daughters, two from first wife who are the plaintiffs and four from second wife (defendant no.1), who are defendants. Accordingly,



plaintiffs claimed 1/7 share in all the property of late Sri Krishna Prasad Sinha.

4. The widow of late Krishna Prasad Sinha appeared and filed WS asserting that Krishna Prasad Sinha died leaving behind his only wife, defendant no.1, and four daughters. Plaintiffs are the daughters of Vijay Prasad Singh, defendant no.7 (respondent no.8), brother of late Krishna Prasad Sinha and plaintiffs have laid falls claim over the property of Krishna Prasad Sinha on assertions that they are daughters of first wife of Krishna Prasad Sinha, in collusion with the other defendants. The further case of the defendant that first wife of Krishna Prasad Sinha and wife of Vijay Prasad Sinha were own sisters. The first wife of Vijay Prasad Singh died leaving behind two daughters. The plaintiffs were hardly 2-3 years old at the time of death of their mother and the first wife of Krishna Prasad Sinha brought them up. After sometime first wife of late Krishna Prasad Sinha also died issueless. During the pendency of the suit, the defendant no.1, petitioner, filed petition for taking blood samples of the plaintiffs and defendant no.7 for DNA test in order to come to a definite finding on the basis of the scientific analysis of the blood whether the plaintiffs are the daughters of Vijay Prasad Singh @ Vijay Kumar Sinha, the defendant no.7 but the plaintiffs protested the



request of the defendant for taking their blood sample and blood sample of defendant no.7.

5. The learned Sub-Judge taking into consideration the law laid down by the Apex Court in the case of Dipanwita Roy Vs Ronobroto Roy, reported in (2015) 1 SCC 365 and in the case of Gautam Kundu Vs The State of West Bengal, reported in AIR 1993 SC 2295 held that the plaintiffs and defendants have produced their evidence and the suit was posted for judgment on 12.07.2016 but the defendant no.1 filed petition on 02.07.2015 for allowing her to adduce further evidence and held that on the basis of the evidence and the materials on record the DNA test of the plaintiffs and defendant no.7 can be avoided and accordingly, rejected the petition of the petitioner, defendant no.1.

6. Mr. Nawal Kishore Singh, the learned counsel appearing on behalf of the petitioner submits that the plaintiffs filed the partition suit claiming 1/7 share each for them on the foundation that they are daughters of first wife of Krishna Prasad Sinha and after death of their mother, Krishna Prasad Sinha solemnized second marriage with Smt. Pramila Sinha, the petitioner, defendant no.1 and got four daughters. Krishna Prasad Sinha died in the year 2004 leaving behind his widow, second wife and six daughters but the defendants, the second wife of Krishna



Prasad Sinha (defendant no.1) contested the suit asserting that Krishna Prasad Sinha had three brothers. The first wife of Krishna Prasad Sinha and the wife of Vijay Prasad Singh, the youngest brother of Krishna Prasad Sinha are own sisters. The wife of Vijay Prasad Singh died leaving behind two daughters, who are the plaintiffs and the plaintiffs who were minor at the time of death of their mother were brought up by the first wife of Krishna Prasad Sinha but later on first wife of Krishna Prasad Sinha died and Krishna Prasad Sinha solemnized second marriage with the petitioner who gave birth to four daughters. The sole contention of the petitioner is that the plaintiffs are the daughters of Vijay Kumar Sinha, defendant no.7. It is further submitted that the learned Sub-Judge considered the case of Dipanwita Roy (supra) and Gautam Kundu (supra) which were decided in other context. In those cases the chastity of a woman and her child was under consideration and on the facts of the aforesaid case, the Hon'ble Apex Court held and laid down certain criteria for ordering for DNA test, after taking into consideration of the presumption of Section 112 of the Evidence Act about the legitimacy of the child born during the subsistence of marriage of the litigating spouses. It is further submitted that in the present case the legitimacy of the child and the chastity of a woman is not under cloud. The suit is for



partition. The plaintiffs claimed that they are the daughters of late Krishna Prasad Sinha but the defendant, second wife and widow of late Krishna Prasad Sinha asserted that in fact the plaintiffs are the daughters of first wife of Vijay Kumar Sinha, the youngest brother of late Krishna Prasad Sinha and, therefore, the question of paternity of the plaintiffs after examination of blood samples of the plaintiffs and Vijay Kumar Sinha, defendant no.7 can easily be resolved on the basis of scientific examination of blood. It is submitted that in the case of *Narayan Dutt Tiwari v. Rohit Shekhar*, reported in (2012) 12 SCC 554, the Hon'ble Apex Court held that the blood samples of the putative father can be taken and the confidentiality be maintained.

7. Per contra Mr. Ram Suresh Rai, the learned Senior counsel for the plaintiffs-respondents controverting the submissions submitted that when the suit was fixed for argument, the petition of the defendant no.1 for DNA test of the blood samples of the plaintiffs with defendant no.7 has rightly been rejected. There are ample materials on record adduced from both sides and on the basis of which the court may come to a definite finding about the paternity of the plaintiffs. The School Leaving Certificates, Adhar Cards and all other documentary evidences show that the plaintiffs are the daughters of late Krishna Prasad



Sinha, therefore, the learned Sub-Judge has rightly rejected the petition of the petitioner and the order does not require any interference.

8. Having considered the submissions of both sides and on perusal of the records as well as the impugned order, the facts are admitted that the plaintiffs claimed that they are the daughters of late Krishna Prasad Sinha. Late Krishna Prasad Sinha after death of his first wife solemnized second marriage with Smt. Pramila Sinha, the defendant no.1-petitioner and Smt. Pramila Sinha also gave birth to four daughters. Later on Krishna Prasad Sinha died leaving behind his widow, defendant no.1 and four daughters from the second wife and two daughters from the first wife. The petitioner-defendant no.1 contested the suit on the facts that the first wife of Krishna Prasad Sinha and the wife of his younger brother Vijay Kumar Sinha, defendant no.7 are own sisters. Vijay Kumar Sinha got two daughters, the plaintiffs from his first wife and the first wife of Vijay Kumar Sinha died immediately after giving birth to her second daughter that is why the first wife of Krishna Prasad Sinha brought up the two daughters of Vijay Kumar Sinha who later on claimed to be the daughters of Krishna Prasad Sinha. The further case of the defendant is that first wife of Krishna Prasad Sinha died issueless



and Krishna Prasad Sinha only got four daughters from his second wife, defendant no.1-petitioner, therefore, the question of chastity of any woman is not under consideration rather the dispute is with regard to fact that the plaintiffs are the daughters of Krishna Prasad Sinha or Vijay Kumar Sinha. The consequence of blood test on the facts has got no effect of branding the child as bastard and the mother as an unchaste woman. The learned Sub-Judge taking into consideration the law laid down in the case of Gautam Kundu (supra) in which the Apex Court has laid down certain conditions to order for blood test. On perusal of the aforesaid two judgments it appears that in the aforesaid two cases the husband and wife were litigating with each other and there was absence of such material that the husband had no access to his wife in order to dispel the presumptions of Section 112 of the Evidence Act and on such the Hon'ble Apex Court has held that the court must carefully examine as to what would be 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 but in the present case these two questions do not arise for consideration.

9. In the present case the only dispute is with regard to the fact that the plaintiffs are the daughters of late Krishna Prasad Sinha from his first wife or daughters of Vijay Kumar Sinha,



defendant no.7 from his first wife, therefore, this question can be decided on the basis of scientific analysis after holding the DNA test of the blood of the plaintiffs and the blood of defendant no.7 and the court will certainly get help from such scientific analysis of blood samples of plaintiffs-defendant no.7 in order to appreciate the documentary as well as oral evidence of the parties. Thus, I find that the learned Sub-Judge has committed jurisdictional error in refusing the prayer of the petitioner, defendant no.1 for taking blood sample of the plaintiffs and defendant no.7 for DNA test. Consequently the order dated 15.05.2017 passed by Sri Ranjit Kumar, the learned Sub-Judge, 1st, Nawada in Title Suit No.68 of 2006 is set aside. The petition of the petitioner-defendant no.1 is allowed with a direction to the plaintiffs and defendant no.7 to give their blood samples for DNA test and the civil miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2018
Transmission Date	NA

