



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD).No.820 of 2018 and
C.M.P.(MD)No.3634 of 2018

Nambi

... Petitioner/Petitioner/
Petitioner

Vs.

Muthulakshmi

... Respondent/Respondent/
Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to I.A. No.175 of 2017 in H.M.O.P.No.71 of 2012 and set aside the fair and decreetal order dated 06.12.2017 on the file of the learned Subordinate Judge, Valliyoor as illegal and allow the Revision.

For Petitioner : Mr.S.R.Anbarasu
For Respondent : Mr.S.Malaikani

ORDER

The Revision petitioner got married to the respondent herein on 13.12.2011. A male child was born to the respondent herein. The relationship between the parties appears to have come under strain thereafter. The petitioner filed H.M.O.P.No.71 of 2012 before the Sub Court, Valliyur, for dissolving his marriage with the respondent. The case is still pending. While so, I.A.No.175 of 2017 was filed for subjecting the parties to D.N.A.Test to verify the paternity of the child. The same was dismissed by the Court below on 06.12.2017. The correctness of the said order is under challenge in this Civil Revision petition.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the Revision petitioner reiterated the contentions set out in the memorandum.

4. I am unable to agree with the said submissions of the learned counsel appearing for the Revision petitioner.



5. It is true that the parties to a matrimonial litigation can ask for subjecting himself or herself to D.N.A. Test. But there must be a sufficient basis for making such a request. This Court went through the contents of the H.M.O.P. The paternity of the child has not at all been questioned. In fact till the filing of I.A.No.175 of 2017, the Revision petitioner has not raised any issue in this regard. Therefore, the Revision petitioner cannot take a stand that is not in consonance with his original pleadings.

6. Section 112 of the Indian Evidence Act would definitely come into play. Section 112 of the Indian Evidence Act reads as under:-

"112. Birth during marriage, conclusive proof of legitimacy - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

7. Therefore, the Court below was right in dismissing I.A.No.175 of 2017 in H.M.O.P.No.71 of 2012 filed by the Revision petitioner. Affirming the reasons set out in the impugned order, the Civil Revision petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Subordinate Judge,
Valliyoor.

+1cc to Mr.S.Malaikani, Advocate SR.No.80921
Pmu
MK/RSK/SAR 2/17.09.2018/2P/3C