



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.08.2018

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WEB COPY

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.PD[MD]No.2357 of 2016
and
C.M.P.[MD]No.10973 of 2016

S.Justin Joseph Samuel :Revision Petitioner/Defendant
Vs.
S.Austin Joseph :Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow this Civil Revision Petition and set aside the fair and decreetal order passed by the learned District Judge, Kanyakumari District at Nagercoil dated 20.07.2016 in I.A.No.458 of 2014 in O.S.No.7 of 2012 and allow the said application.

For Petitioner : Mr.N.Dilip Kumar
For Respondent : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi

O R D E R

The defendant in O.S.No.7 of 2012, on the file of the Principal District Judge, Kanyakumari at Nagercoil, is the revision petitioner herein. The said suit was instituted by the respondent herein claiming partition and separate possession. The stand of the revision petitioner was that the plaintiff is only a half brother. In other words, the stand of the revision petitioner is that the respondent was born to a common father but through another mother. However, the plaintiff has asserted that he is the full brother of the defendant and not his half brother. Hence, the revision petitioner filed I.A.No.458 of 2014 for directing the plaintiff to subject himself for DNA profiling. In other words, if the DNA profile of the plaintiff and the defendant are compared, the truth or otherwise of the assertion made by the respective parties would be definitely established. But then, the Court below by order dated 20.07.2016 dismissed the Interlocutory Application. Questioning the same, this Civil Revision Petition has been filed.

2.Heard the learned Counsel on either side.

3.The Court below after referring to the decisions relied upon by the defendant came to the conclusion that a party to a civil



proceeding cannot be forced to undergo DNA test against his or her wish. That is the only reason assigned by the Court below for dismissing the Interlocutory Application filed by the revision petitioner.

4. I am of the view that the issue is no longer *res integra*. A reading of the scientific literature that is available in the internet domain indicates that half siblings having the same father but different mothers will have different mitochondria (mtDNA). The function of any Court is to see that truth is arrived at. The Hon'ble Supreme Court in the decision reported in **AIR 2003 SC 3450** categorically held that a party to a civil litigation is not entitled to constitutional protection under Article 20 of the Constitution of India. It confirmed the power of the civil Court to pass all orders for doing complete justice to the parties to the suit. That apart, under Section 75(e) of the Civil Procedure Code, r/w Order XXVI Rule 10-A, the civil Court has the requisite power to issue a direction to hold a scientific / technical or expert investigation. Therefore, the Court below could not have held that the right of the plaintiff would be infringed if the Interlocutory Application filed by the revision petitioner is allowed.

5. In this view of the matter, the order impugned in this Civil Revision Petition is set aside. The Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS-III)

To
The District Judge,
Kanyakumari District at Nagercoil.

+ 1 CC TO MR.N.DILIP KUMAR, ADVOCATE IN SR NO.80027
+ 1 CC TO MR.D.NALLATHAMBI, ADVOCATE IN SR NO.80160

MR
BU/RSK/SAR-III : 27.10.2018 : 2P/4C