



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD)No.2444 of 2016 (PD)
and
CMP (MD)No.11539 of 2016

C.Chockalingam

... Petitioner

Vs.

Peri.Shanmugam (died)

1.Peri.Subbaiah

2.Peri.Kasi

... Respondents

Meenal (died)

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.09.2016 passed in I.A No.66 of 2016 in O.S No.89 of 2009 on the file of the District Munsif cum Judicial Magistrate, Thiruppathur.

For Petitioner

: Mr.M.Saravanan
for Mr.R.Subramanian

For Respondents

: Mr.S.Rajasekaran for R1 & R2
No appearance for R3

ORDER

O.S No.89 of 2009 was instituted by one Peri.Shanmugam before the District Munsif Court, Thiruppathur seeking the declaration that the third defendant Muthumanickam is his son born through the second defendant Meenal. The said Peri.shangmugam passed away during the pendency of the suit. Thereafter, the respondents herein filed I.A No.66 of 2016 for impleading themselves in the suit proceedings for continuing the suit proceedings in the place of Peri.Shanmugam. The said I.A was allowed by order dated 27.09.2016. The correctness of the said order is questioned in this civil revision.

3. The learned counsel appearing for the respondents wanted this Court to sustain the order impugned in this civil revision petition and to dismiss this revision petition. It is seen that during his lifetime, the original plaintiff, namely Peri.Shanmugam filed I.A No.138 of 2010 for subjecting the parties to DNA test. The said I.A was dismissed by the court below. It was challenged in CRP PD(MD) No.417 of 2011. The said CRP was dismissed on 26.11.2014 in the following terms :

"The present application has been filed by the plaintiff stating that the third defendant is his son. However, he has not produced any evidence to substantiate the said contention. On the contrary the defendants have produced all the necessary documents to establish that the third defendant is the son of the first and second defendants. Taking into consideration all these aspects, the trial court has rightly found that the present application to conduct DNA test is unnecessary one. I totally agree with the findings given by the trial Court. In these circumstances, I do not find any reason to interfere with the order passed by the trial court."

4. The order passed by this Court dismissing CRP PD (MD) No.417 of 2011 appears to have become final. In any event, the conclusive presumption set out in Section 112 of the Indian Evidence Act, 1872 will 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 it could have been begotten."

5. In this case, the revision petitioner herein has produced all the necessary documents to show that he got married to the 2nd defendant Meenal and that the 3rd defendant was born to Meenal during the subsistence of her marriage with the revision petitioner. Of course, in any matrimonial proceedings between the husband and wife, issue regarding paternity of the child is raised, the parties can be subjected to DNA test. A third party cannot question the paternity of a child. In this case, Muthumanickam was born to Meenal during the subsistence of the marriage between the Chockkalingam and Meenal.

<https://hcservices.courts.gov.in/hcservices> 6. In the view that the very filing of the suit itself is an abuse of legal process and the suit itself ought not to have even numbered. When the Peri.Shanmugam passed away, the matter

should have ended there. It is obvious that his brothers have chosen to file an impleading application for continuing the suit proceedings. It is shocking that the court below has chosen to allow the said application.

7. It appears that there is a dispute with regard to the participation of the parties in a caste function that takes place every year. Therefore, to embarrass the revision petitioner, a person who is taking treatment in a Government Leprosy Home was set up to file this atrocious suit. Since the object is yet to be fulfilled, they want to keep the suit proceedings alive. Peri.Shanmugam is dead. Therefore, the suit also should die a natural death. The order impugned in this civil revision petition is set aside. This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar (CS-II)

To

The District Munsif cum Judicial Magistrate, Thiruppathur.

+1cc to Mr.T.LAJAPATHI ROY, Advocate, SR.No.81084

+1cc to Mr.R.SUBRAMANIAN, Advocate, SR.No.81054

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