



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (PD) (MD) No.2188 of 2018
and
CMP(MD)No.9740 of 2018

Aruna

... Petitioner

Vs.

Sarathy

... Respondent

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair order and final order in I.A No.75 of 2016 in HMOP No.121 of 2015 on the file of the Additional Subordinate Judge, Thanjavur, dated 07.08.2018.

For Petitioner	: Mr.V.P.Chamuraj for Mrs.P.T.Ramadevi
For Respondent	: Mr.V.Chandrasekar

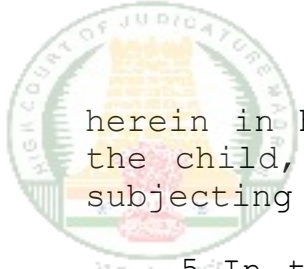
ORDER

HMOP No.121 of 2015 on the file of the Additional Sub Court, Thanjavur was instituted by the respondent herein seeking divorce on the ground of mental cruelty and desertion. In the said HMOP, the respondent herein filed I.A No.75 of 2016 for subjecting the parties herein and the child born to the petitioner for DNA test. The court below by order dated 07.08.2018 had allowed the said I.A. Challenging the same, the wife has filed this civil revision petition.

2.Heard the learned counsel on either side.

3.The power of the court to direct the parties to undergo DNA test where the paternity of the child is challenged is no longer res integra. (Sharda v. Dharmpal) (2003) 4 SCC 493.

4.But, in this case, even though the respondent/husband had alleged that the petitioner herein is having illicit intimacy with one Gopinath, he chose to file the HMOP for divorce under Section 13 ((1 (i-a) (i-b) of the Hindu Marriage Act, 1955, on grounds of cruelty and desertion. Adultery has not been challenged as a ground for dissolving the marriage. Likewise, the paternity of the child has also not been disputed in the main HMOP. When the respondent



herein in his original petition has not challenged the paternity of the child, he cannot be subsequently permitted to file an I.A for subjecting the parties and the child to DNA test.

5. In this view of the matter, the order impugned in this civil revision petition is set aside and this civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Additional Subordinate Judge,
Thanjavur.

+ 1 CC TO Mr.V.CHANDRASEKAR, ADVOCATE IN SR No. 89697

SKM

TE/SV/SAR-1 : 12/12/2018 : 2P/3C

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