

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM

THE HONOURABLE **Ms. JUSTICE P.T. ASHA**

CRP.(PD).No.1170 of 2019

and

CMP.No.7507 of 2019

G.Ethiraj Naidu ... Petitioner/Defendant

Vs

E.Suresh ... Respondent/Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the learned Subordinate Judge, Arni, in I.A.No. 83 of 2016 in O.S.No.17 of 2012 dated 31.01.2019.

For Petitioner : Mr.D.Rajagopal

सत्यमेव जयते

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Sub Judge, Arni, in I.A.No. 83 of 2016 in O.S.No.17 of 2012, in and by which, the revision petitioner/defendant has been directed to undergo DNA test.

2.The facts preceding the filing of the above petition by the respondent/plaintiff are as follows:

The revision petitioner had married one Maniammai, mother of the plaintiff in the year 1970, against the wishes of his elders and therefore, they had stayed in a thatched house, situated in Sirumor. After the revision petitioner/defendant family came to know about the marriage, respondent/plaintiff's mother was dragged away by the revision petitioner's mother and relatives and severely beaten her and she was driven out from the village. The revision petitioner was thereafter untraceable for over a year. By the cohabitation between the revision petitioner/defendant and said Maniammai, the respondent/plaintiff was born on 24.02.1971, at the Government Hospital at Arni and the records shows that the father was the revision petitioner. After the plaintiff's mother was driven away, the revision petitioner/defendant's family ensured that he remarried and he was made to settle in Chennai permanently. Out of marriage between the revision petitioner/defendant and second defendant, the defendants 3 & 4 were born to them. When the revision petitioner/defendant had returned to the village, the respondent/plaintiff's mother

had questioned him about his unlawful marriage with the second defendant and the revision petitioner/defendant informed the plaintiff's mother that he was not able to withstand the pressure given by his family members.

3.The revision petitioner/defendant assured the plaintiff's mother that he would give two acres of land and the thatched house to the plaintiff so that she would be taken care of, the offer was refused by Maniammai. In the year 1980, the plaintiff's mother died and thereafter, he was admitted into a hostel, where he studied up to 11th standard and thereafter he has been eking out his livelihood by working in a vegetable shop as a labourer. Whenever the first defendant used to come over to Sirumoor Village, the plaintiff used to question the revision petitioner/defendant about his desertion and betrayal and oflate, the revision petitioner had started avoiding the respondent/plaintiff.

4.The plaintiff submits that he is also entitled to the properties, which are ancestral properties of the revision petitioner and therefore, he has come forward with the present

suit for a partition and separate possession. The revision petitioner has denied the paternity. The revision petitioner had filed a written statement *inter alia* contending that respondent/plaintiff was not his son and in view of this categorical stand taken by the revision petitioner which in fact illegitimises him the respondent/plaintiff had taken out the impugned application to direct the revision petitioner/defendant to undergo the paternity test. In the said application, the revision petitioner/defendant had submitted that he never knew the plaintiff's mother, nor did he know the plaintiff. He further submitted that the respondent/plaintiff is taking advantage of his name, which has been placed in the birth certificate next to the father's name. However, the learned Sub Judge, Arni had allowed the application and challenging the same the revision petitioner is before this Court.

5. Heard Mr.D.Rajagopal, learned counsel appearing on behalf of the revision petitioner/defendant, who would argue that no one can be compelled to submit themselves to DNA test and further that the onus is upon defendant to prove that he is not the father and that upon the plaintiff to show that the

revision petitioner is the father. He would rely upon the Judgment reported in **2010 (8) SCC 633 – Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another**, referring to paragraph No.23 in particular, which reads thus:

"23. There is no conflict in the two decisions of this Court, namely, Goutam Kundu 1 and Sharda 2. In Goutam Kundu 1 it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and the court must carefully examine as to what would be the consequence of ordering the blood test. In Sharda 2 while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong

prima facie case is made out for such a course."

On hearing the petitioner and on perusal of the documents and the Judgment, this Court is proceeding to pass the following order.

6. In the case, which has been relied upon by the learned counsel for the revision petitioner/respondent, it has been said that in the event of their being strong *prima facie* case being made out, then it is well within powers of this Court to direct parties undergo paternity test. In the instant case when the birth certificate of respondent/plaintiff was issued, his mother was not aware that the father/defendant was going to desert her and at a later point of time going to deny the paternity of her child. Therefore, the revision petitioner has made out a *prima facie* case to show that the revision petitioner is his father. Considering the fact that the revision petitioner/defendant has denied not only the knowledge about the plaintiff but he has also denied total ignorance about his mother, the respondent/plaintiff is therefore, left with no other alternative except to exercise his right to direct the revision

petitioner to undergo the Test. This test is imperative for the plaintiff inasmuch as he is seeking to remove the stigma of being termed an illegitimate son as also the reputation of his mother. Once the Court is satisfied with the relevance of the evidence on the basis of showing *prima facie* case and the reliability of the scientific technique in question the Civil Court can issue an order to a person directing him to give bodily sample for DNA profiling. This is nothing but a legal compulsion.

7.A single Judge of the Delhi High Court in the matter of **Rohit Shekhar v. Narayan Dutt Tiwari and another** by order dated 23.12.2010 was pleased to order the DNA test to establish the paternity of the petitioner and while passing the order had observed:

"that the rationale laid down in decisions, where it was the father who was resisting parenthood at the cost of bastardizing the child does not apply where the child on attaining adulthood moves the Court to determine his parentage – the question of "protective

jurisdiction” of the Court or applicability of Section 112 of the Evidence Act then does not arise: the appellant being over 29 years of age, capable of taking his decisions, the question of his welfare being adversely affected did not arise;”

8.This order was not only upheld by the Division Bench of the Delhi High Court on appeal but the Bench also went on to observe that the protective jurisdiction of the Court under Section 112 of the Evidence Act was not imperilled since a declaration was sought by the child about his true paternity.

9.This order was ultimately approved with a modification by the Hon'ble Supreme Court in the Judgment which is reported in **2012 (12) SCC 554 – Narayan Dutt Tiwari v. Rohit Shekhar and another.**

10.The instant case also runs a parallel to the case cited supra inasmuch as the son at the age of 40 years seeks to have his paternity proved.

11.Considering the above factors and also considering the fact that the plaintiff even at the age of 40 seeks to have his paternity confirmed this court is inclined to accept the view taken by the learned Sub Judge, Arni.

12.In the result, the Civil Revision Petition is dismissed and the order passed by the learned Subordinate Judge, Arni in I.A.No. 83 of 2016 in O.S.No.17 of 2012, dated 31.01.2019 is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

02.04.2019

mps/dua

Index: Yes/No

Internet: Yes/No

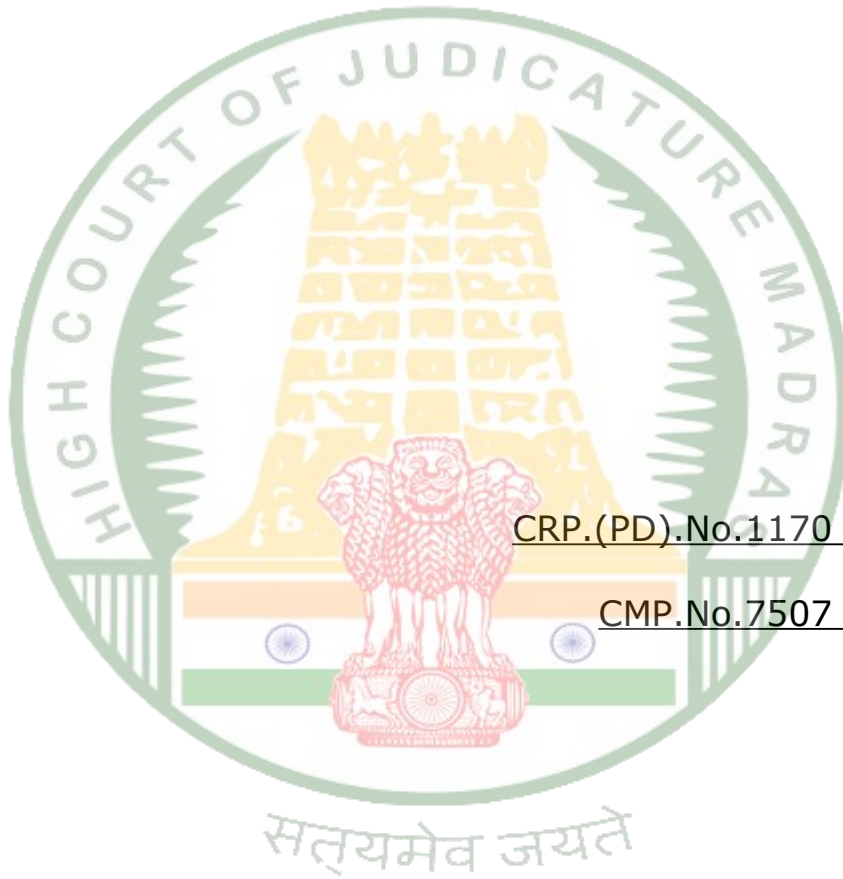
Speaking order / Non-speaking order

To

The Subordinate Judge,
Arni,
Thiruvannamalai District.

P.T.ASHA, J,

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