

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Civil Revision Petition No.2829 of 2018

Vinod

... Petitioner/Defendant

Vs.

Minor Dhakshan,
rep.by his mother and natural
guardian Ms.A.Meena.

...Respondent/plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.06.2016 passed in I.A.No.2878 of 2012 in O.S.No.265 of 2012 on the file of the II Additional Judge, Family Court, Chennai, by allowing the above Civil Revision Petition with cost and thus render justice.

For Petitioner :Mr.K.Gajendiran

For Respondent:Mr.T.Nagaru Pillai

O R D E R

I do not find any infirmity in the order passed by the trial Court for the following reasons : The case of the petitioner herein is that the petitioner herein is not the biological father. The respondent was married to one Mr.Dinesh Madheswaran and during her wedlock with that person the mother of the minor child had consummated and as such, it is the submission of the learned counsel for the petitioner that the petitioner is not the biological father of the respondent.

2. The learned Counsel for the respondent on the other hand, submitted that, even during the course of her matrimonial life with one Dinesh Madheswaran, she was forced to have a relationship with the petitioner herein and the respondent/minor child was born through such a relationship with the petitioner

herein. After dissolution of her marriage, the petitioner herein had refused to marry the respondent's mother and has also denied his parentage of the minor child. Considering the welfare of the child, it necessitated her to file a suit seeking for declaration of the parentage of the minor child.

3. The Court below on consideration of the facts and circumstances, the relief sought by the minor child had come to the conclusion that there is a necessity for conducting the DNA test to determine the parentage of the minor boy.

4. It is the specific stand of the petitioner herein that he is not the biological father of the minor son. While that being so, the only basis on which the relief sought for by the respondent for declaration and to declare the petitioner herein as the biological father can only be determined through the DNA test. It is no doubt true, that DNA test cannot be ordered on a routine basis and such powers can be exercised only on compelling circumstances.

5. In the instant case, the minor boy represented by his mother has come forward seeking for the relief to declare the petitioner herein as his biological father. Since, it is alleged that there was no marital relationship between the parties when the child was consummated, the only mode in which the parentage can be ascertained could only be through a DNA test.

6. The averments in the plaint reveals that the husband of the respondent's mother found that he was not the father of minor child, through a DNA test and therefore had obtained divorce. Subsequently, when the mother of the minor requested the petitioner to marry her for the welfare of the child, he had refused and denied his paternity. Hence, there was no option for the mother, but to file the suit. In a suit of this nature, the purpose of determining the paternity could be helpfully resolved by subjecting the parties to a DNA test, which recourse the trial Court had rightfully resorted to. As such, I do not find any illegality or infirmity in the order passed by the trial Court, subjecting the petitioner to undergo the DNA test. As a matter of fact, if the petitioner herein is confident that he is not the father as alleged, it would also be appropriate for him to undergo the DNA test to disprove the claim of the respondent herein.

7. In the light of the above discussions, the Civil Revision Petition stands dismissed. No costs. Since, the impugned order came to be passed in the year of 2016. The learned II Additional Family Court Judge, Chennai, shall endeavor to ensure that the petitioner herein undergoes the DNA test, atleast

within a period of two weeks from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The II Additional Judge, Family Court,
Chennai.

+1cc to Mr.K.Gajendiran, Advocate, S.R.No.3716

+1cc to Mr.T.Nagaru Pillai, Advocate, S.R.No.3921

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GSP(22/01/2019)



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