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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.03.2019

DELIVERED ON : 16.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) Nos.1882 and 1883 of 2015

and

M.P. (MD) Nos.1 and 1 of 2015

K. Palanisamy

.. Petitioner/Petitioner/Plaintiff
in both C.R.Ps./

Vs.

1.State of Tamil Nadu,
Rep. By the District Collector,
Collectorate,
Thonthonimalai,
Karur-7.

2.The Tahsildar,
Taluk Office,
Jawahar Bazaar,
Karur.

3.Machammal

4.Paranchothiammal

.. Respondents/Respondents/Defendants
in both C.R.Ps.

Common Prayer: These Civil revision petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.06.2015 made in I.A.Nos.82 and 83 of 2015 in O.S.No.100 of 2012 on the file of the Additional District Munsif Court, Karur.

For Petitioner
(In both C.R.Ps.)

: Mr.P.Dhanasekaran

For Respondents 1 and 2
(in both C.R.Ps.)

: Mr.J.Gunaseelan Muthaiah, AGP

For Respondents 3 and 4
(in both C.R.Ps.)

: Mr.V.Meenakshi Sundaram

**COMMON ORDER**

Heard Mr.P.Dhanasekaran, learned counsel appearing for the petitioner, Mr.J.Gunaseelan Muthaiah, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.V.Meenakshi Sundaram, learned counsel appearing for the respondents 3 and 4.

2.These Civil Revision Petitions have been filed against the order passed in I.A.Nos.82 and 83 of 2015 in O.S.No.100 of 2012 dated 26.06.2015 on the file of the learned Additional District Munsif, Karur.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner has filed a suit in O.S.No.100 of 2012 seeking for a prayer of declaration and for mandatory injunction. In that suit, the petitioner has filed petitions in I.A.Nos.82 and 83 of 2015 to reopen the case and for DNA test respectively. Both the petitions were dismissed by the trial Court and against which, the petitioner herein has filed these present revision petitions.

4.On the side of the petitioner, it is stated that the suit property was purchased by one Kali Naicker in the year 1968 and that he had two wives and the first wife is Muthayammal, the defendants 1 and 2 and one Dhandapani were the children of first wife and that Pitchaiyammal is the second wife and one Bommuraj and Palanisamy are the children of the second wife. Dhandapani and Bommuraj died unmarried and that both Muthayammal and Pitchaiyammal and Kali Naicker were dead now.

5.On the side of the petitioner, it is stated that I.A.No.83 of 2015 was filed for DNA test between the plaintiff and the defendants and that when the paternity of the particular person is disputed, it is the duty of the trial Court to refer the matter for DNA test.

6.The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another** reported in **(2014) 2 Supreme Court Cases 576**, which reads as follows:

"DNA test report provides scientifically correct proof-Report of DNA test stating husband is not biological father of child, if already available, would rebut presumption of legitimacy of child under Section 112 and would prevail over such presumption - Section 112 provides for presumption of a fact, not for a legal fiction - Husband disputed paternity of child on ground of his not having access to wife during period when she could have begotten the child"

7.The learned counsel appearing for the petitioner relied on



the Judgment passed by this Court in the case of **S.Veeralakshmi v. Superintendent of Police, Madurai District, Madurai and others** reported in **(2014) 2 Supreme Court Cases 576**, which reads as follows:

"Court directed DNA test for knowing paternity of child which opined that 4th respondent excluded from paternity of male child"

8.On the side of the respondents, it is stated that parents are no more and the DNA test is sought for between the half brothers and that the DNA test can be only an additional evidence and that the dispute is regarding the validity of the second marriage and DNA test is necessary only to establish a criminal case and in the civil cases, the paternity is to be proved by evidence and documents and there is no necessity for a DNA test and that the case is pending at the stage of arguments and that only to drag on the case, the petitioner has filed these petitions and prayed the petitions to be dismissed.

9.It is seen that there is a property dispute between the plaintiffs and the defendants. The claim of the petitioner is that the petitioner was born to Kali Naicker through Pitchaiyammal and that he want DNA test with the the respondents 3 and 4 to prove the paternity and the respondents 3 and 4 are the children of Kali Naicker through his other wife, Muthayammal Kali Naicker is no more. The petitioner failed to prove that how a DNA test between persons born of different mothers would prove their biological connection with the same father ? In the absence of Kali Naicker, a DNA test between half brothers will not prove their paternity. The petitioner has failed to prove that a DNA test with an alleged half brother will prove their paternity. This is only a civil Case and through evidence and documents, the case can be proved and the trial was already over and the case is pending at the stage of arguments. Though the case is filed in the year 2012, the petitioner came forward with these petitions only in the year 2015 at the stage of arguments. As the petitioner fail to prove that the DNA test between the alleged half brothers will prove their paternity there is no necessity to reopen the case.

10.In the above circumstances, this Court deems it fit to dismiss the petitions. Accordingly, these Civil Revision Petitions are **dismissed** and the order passed in I.A.Nos.82 and 83 of 2015 in O.S.No.100 of 2012 dated 26.06.2015 on the file of the learned Additional District Munsif, Karur is confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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To

The Additional District Munsif, Karur.

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- + 1 CC TO Mr.P.Dhanasekaran, ADVOCATE IN SR No.61154
- + 1 CC TO Mr.D.Nallathambi, ADVOCATE IN SR No.61644
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.61758

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