

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.715 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.27-09-2018 in I.A.No.512 of 2018 in FCOP No.347 of 2014 of the Judge, Family Court at L.B. Nagar, Ranga Reddy District.

2. Petitioners herein are respondents in the said FCOP.
3. The said FCOP was filed under Section 7(1)(a) of the Family Courts Act, 1984 and Section 12 of the Hindu Marriage Act, 1955 by respondents herein against petitioners to declare that they are the natural, biological and legitimate children of the deceased 1st petitioner.
4. The respondents contended that they are born out of the marital relationship between the deceased 1st petitioner and their mother Smt.N.Ratnamma; and that petitioner Nos.2 to 6 are the children of deceased 1st petitioner with his second wife China Narsamma. They contended that 1st petitioner acquired several properties in the name of his children 'benami' and he gave one house to the mother of the respondents in Uppal, Hyderabad. They also contended that petitioners started denying the relationship of respondents and their mother with the 1st petitioner and so they i.e., the respondents even got

DNA Test done to prove that they are the biological children of 1st petitioner.

5. Counter-affidavit was filed by petitioners opposing the said application and denying that respondents were born out of marital relationship between 1st petitioner and the mother of respondents Smt.N.Ratnamma. However, relationship of the 1st petitioner with the other petitioners is admitted.

6. It is alleged that the parents of respondents came from Maharashtra State and had worked in a brick kiln owned by 1st petitioner; mother of 2nd petitioner purchased a house in Uppal and the parents of the respondents were allowed to stay as tenants in the said house on monthly rent.

7. After the O.P., was filed, the 1st petitioner died on 26-04-2017.

8. Thereafter during the course of trial, P.Ws.1 and 2 and R.W.1 were examined.

9. Subsequent thereto, respondents filed I.A.No.512 of 2018 under Section 45 of the Evidence Act, 1872 to direct the petitioner Nos.2 to 6 to undergo DNA test along with them before the DNA Analyst Expert, Forensic Science Laboratory, Erramanjil, Hyderabad.

10. In the said application, they contended that it is necessary to compare the DNA profiles of petitioner Nos.2 to 6 and their sisters with the respondents, since 1st petitioner is claimed by respondents to

be also their parent and R.W.1 in his cross-examination stated that he was ready for a DNA Test with respondents and sisters of petitioner Nos.2 to 6. It is stated that the said reports, after submission of blood samples by petitioner Nos.2 to 6 may be compared with the admitted reports filed along with the profiles of petitioners' sisters, by sending them to the DNA Expert in the above laboratory.

11. Counter-affidavit was filed by petitioners opposing the said application. They contended that during the lifetime of 1st petitioner, the respondents ought to have taken steps to get the DNA Test done on him but they failed to do so. They continued to deny that respondents were the children of 1st petitioner. They also alleged that whatever DNA reports were procured by respondents, they were managed ones and have no sanctity in the eye of law. They also contended that only with an ulterior motive to extract money from the petitioners, this application is filed to blackmail them.

12. By order dt.27-09-2018, the Court below allowed the said application. It took note of the evidence of P.W.2, sister of petitioners, that 1st petitioner had married the mother of respondents and respondents were born to the 1st petitioner; since relief in the O.P. is for declaration of status of respondents, it is just and essential to direct the respondents and petitioner Nos.2 to 6 to undergo DNA profile test to put an end to the litigation. It also referred to the date of birth certificates etc. filed by respondents, which showed that the deceased 1st petitioner was their father.

13. Challenging the same, this Revision is filed.

14. Learned counsel for petitioners contended that the Court below erred in allowing the said application filed one and half years after the death of the 1st petitioner, that too after completion of evidence of both parties. It is contended that respondents did not file I.A.No.512 of 2018 during the lifetime of 1st petitioner and there is no explanation being offered why they did not do so. Reliance is also placed on the judgments of the Supreme Court in **Goutam Kundu Vs. State of West Bengal and another**¹, **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and another**² and **Dipanwita Roy Vs. Ronobroto Roy**³.

15. **Goutam Kundu** (1 supra) was a case where there was a dispute between a husband and wife as to whether the child born to the lady was conceived through the husband. The Supreme Court held that blood grouping test is a useful test to determine the question of disputed paternity and can be relied upon by Courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child, but no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal. The Supreme Court held:

“26. From the above discussion it emerges:

(1) that courts in India cannot order blood test as a matter of course;

¹ (1993) 3 SCC 418

² AIR 2010 SC 2851

³ AIR 2015 SC 418

(2) *wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.*

(3) *There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.*

(4) *The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.*

(5) *No one can be compelled to give sample of blood for analysis.”*

This decision did not real with the DNA profiling and therefore has no application.

16. In **Bhabani Prasad Jena** (2 supra), the Orissa State Commission for Women issued a direction to conduct DNA test of a child and the person who was alleged by the child's mother to be the father of the child. The order of the State Commissioner for Women directing DNA test was challenged in the High Court, but the High Court permitted the test to be proceeded with. On appeal to the Supreme Court, it referred to it's earlier judgment in **Sharda Vs. Dharmpal**⁴ and held that a matrimonial court has the power to order a person to undergo medical test such as DNA test and passing of such an order by the Court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution. It observed 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. The Court observed that the Orissa State Commission for

⁴ AIR 2003 SC 2450

Women Act did not authorize the Commissioner to decide any complaints or to direct conduct of DNA test and observed:

“13. In a matter where paternity of a child is in issue before the court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test.”

17. In a situation where the respondents are claiming to be the children of the deceased 1st petitioner, and they are adults, the anxiety expressed by the Supreme Court about bastardizing a child through DNA Test would not arise because in the instant case, it is the alleged children of the 1st petitioner who want to know whether they are children of the 1st petitioner.

18. In Dipanwita **Roy** (3 supra), the Supreme Court again held that it would be permissible for a Court to direct the holding of a DNA examination to determine the veracity of the allegations which constitute one of the grounds, on which the concerned party would either succeed or lose.

19. Since in the instant case, it is the respondents who wish to ascertain whether the 1st petitioner was their father or not, and since 1st petitioner is no more, and since sister of petitioner Nos.2 to 6 has already deposed that respondents are born to 1st petitioner and Smt.N.Ratnamma, there is a strong *prima facie* case in favour of respondents and the Court below cannot be said to have committed any error of jurisdiction in directing the petitioner Nos.2 to 6 as well as respondents to undergo DNA Test.

20. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-04-2019

Vsv