

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: January 08, 2019

1. C.R.No.6231 of 2014

Jaswinder Pal Kaur

...Petitioner

Versus

Surjit Kaur (deceased) through L.Rs. & others

...Respondents

2. C.R.No.4040 of 2015

Parvinder Kaur & another

...Petitioners

Versus

Jaswinder Pal Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Gurcharan Dass, Advocate,
for the petitioner in CR No.6231 of 2014 &
for respondent No.1 in CR No.4040 of 2015.

Mr. Satinder Khanna, Advocate,
for the petitioners in CR No.4040 of 2015.

Mr. G.S.Pannu, Advocate,
for respondent Nos.2 to 6 in CR No.6231 of 2014.

Mr. Bhup Singh, Advocate,
for respondent Nos.10 & 11 in CR No.6231 of 2014.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Civil Revisions bearing No.6231 of 2014 at the instance of the petitioner-plaintiff against the impugned order, whereby application for conducting Deoxyribo Nucleic Acid (for short "DNA") test of Jaipal Singh with that of the plaintiff has been declined and 4040 of 2015 at the instance of defendant Nos.3 and 6, namely, Parvinder Kaur and Jaipal Singh, whereby plaintiff has been

permitted to lead rebuttal evidence with regard to the genuinity of the Will of Dharam Singh.

Plaintiff Jaswinder Pal Kaur instituted the suit and claimed declaration qua 1/6th share of estate of Dharam Singh on various grounds including Dharam Singh had died intestate. The defendants by denying the averments in the plaint, propounded the Will dated 16.12.2001 whereby Dharam Singh had bequeathed the property in favour of Surjit Kaur widow, who stated to have sold the property to various other defendants vide sale deeds dated 02.08.2005, 15.12.2004 and 22.02.2006.

Mr. Gurcharan Dass, learned counsel appearing on behalf of the petitioner in Civil Revision No.6231 of 2014 submitted that the defendants though propounded the Will and annexed photocopy of the same with the written statement and, therefore, there was no occasion for the plaintiff to lead evidence despite the fact that the suit was amended in 2007 whereby challenge was laid to the aforementioned Will. The original Will came into light only during the testimony of the defendants' witnesses and in view of the order dated 27.04.2015, the trial Court permitted the plaintiff to lead evidence in rebuttal.

Mr. Satinder Khanna, learned counsel appearing for the petitioners in Civil Revision No.4040 of 2015 has impugned the aforementioned order on the ground that the evidence was closed on 07.12.2012, whereas the suit was amended in 2007. The plaintiff moved an application for production of the original Will to lead evidence. Regarding mutation proceedings, plaintiff had suffered an affidavit acknowledging the genuinity of the Will, therefore, the impugned order is not sustainable.

Mr. Gurcharan Dass further laid challenge to the impugned

order denying the DNA test on the ground that this science has been relied upon by various courts to ascertain the truth with regard to the parentage of Jaipal Singh, who alleged himself to be son of Dharam Singh, whereas he was alleged to be son of the plaintiff. No harm and prejudice would be caused to the defendants in case they are so sure about the parentage for performance of the DNA test and in support relied upon two judgments in **Darshan Singh Versus Amarjit Singh @ Surjit Singh @ Kaka Singh & others, 2015(5) R.C.R.(Civil) 630** and **Neelam Rani and others Versus Smt.Mainka @ Maina Devi and another, 2014(2) R.C.R. (Civil) 560** and, thus, urged this Court for setting-aside the impugned order.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gurcharan Dass, whereas plea of Mr. Satinder Khanna is liable to be dismissed.

No doubt, the suit is at the stage of rebuttal evidence. Even in the judgment rendered by the Delhi High Court in **Rohit Shekhar Versus Narayan Dutt Tiwari, 2012 (2) R.C.R. (Civil) 1011** relied upon by this Court, the stage of the suit was similar to the one in the present case. This is science which has been acknowledged/recognized by the courts to ascertain truth with regard to the parentage of a particular person. No harm and prejudice would be caused in case the DNA test of Jaipal Singh is permitted to be conducted. Even he himself admitted to be son of Dharam Singh, for, it is double edged weapon which can go against either of the parties. For the sake of brevity, the findings arrived at in the judgment of **Neelam Rani's case (supra)** read thus:-

“2. After hearing the learned counsel for the petitioners, going

through the record with his valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant petition in this context.

3. Ex facie, the argument of learned counsel that since no ground is made out, so, the trial court committed the legal mistake to direct the parties, to undergo the DNA Test, lacks merit.

4. As is evident from the record that initially, respondent-plaintiff Smt.Mainka alias Maina Devi d/o Rai Sahab son of Shishpal (for short “the plaintiff”), has instituted the civil suit (Annexure P1) for a decree of declaration to the effect that she is joint owner and in possession of the land in litigation, being the daughter and only legal representative of Rai Sahab, who had died on 5.4.1986 and the mutation No.1470 regarding transfer of the suit land in favour of defendants, on the basis of any alleged civil court decree passed in case No.16 dated 25.2.2008, is a result of fraud, illegal, null, void and not binding on her rights. That means, the plaintiff is claiming her right in the property in dispute, being the daughter/LR of Rai Sahab s/o Shishpal, whereas the defendants have stoutly denied her claim and pleaded themselves to be his LRs. Thus, the grand parents of plaintiff and defendant Nos.2 to 4 are common. The blood relationship between the indicated parties, inter-alia, would be a moot point to be decided after receiving the evidence of the parties during the course of trial by the trial Court. In that eventuality, in order to prove their relationship, the scientific DNA Test is very much essential to arrive at the truth and to decide the real controversy between them to effectively adjudicate the present suit. Moreover, no prejudice is going to be caused to the defendants in this regard.

5. Therefore, the trial Court has correctly allowed the application (Annexure P4) for DNA Test of plaintiff & defendants No.2 to 4, in view of ratio of law laid down by Andhra Pradesh High Court in cases Soma Rama Chandram v. State of Andhra Pradesh and others 2013 (3) RCR (Civil) 707;

Buridhi Vanajakshmi v. Buridhi Venkata Satya Varaha Prasad Gangadhar Rao and another **2010(4) Civil Court Cases 130**; *Delhi High Court in case Rohit Shekhar v. Narayan Dutt Tiwari and another* **2012(2) RCR (Civil) 1011**; *Kerala High Court in cases Sathya Raj v. Jayaprakash* **2009(1) RCR (Civil) 516**; *Joseph v. State of Kerala and Others* **2006(2) RCR (Civil) 801** and *Madhya Pradesh High Court in case Smt. Savitabai w/o Chandrabhan v. Chandrabhan Dubey* **2006 AIR (M.P.) 135**, through the medium of impugned order (Annexure P6), which, in substance, is as under (para 6):-

“Presently, the suit is at the stage of rebuttal evidence and argument. Both the parties have led their evidence. Defendants have categorically denied the fact that applicant/plaintiff is daughter of deceased Rai Sahab, who was real brother of Rajender Prasad (husband of defendant no.1 and father of defendants no.2 to 4). The main contention of learned counsel for the respondents/defendants is that plaintiff is to prove her case by leading evidence and defendants cannot be forced to undergo the D.N.A. Test. It is correct that plaintiff is to stand on his/her own legs, but, when a fact can be ascertained conclusively by making use of modern scientific technique, then, merely on this ground instant application cannot be dismissed. There is no harm in using advanced scientific technique when they are going to help the court in adjudication of the case in better way. It is well known that the first cousin D.N.A. Test will establish whether two individuals share a common ancestor- which in the case of first cousins will be their grandparents. Secondly, learned counsel for the respondents/defendants has argued that first, applicant/plaintiff is to prove marriage of her mother with the Rai Sahab and her relationship with Rai Sahab comes into picture after proof this fact. The court is of view that if applicant/plaintiff successfully proves

marriage of her mother with Rai Sahab, then also, she has to prove her relationship with the Rai Sahab because proof of marriage of her mother with Rai Sahab will not automatically prove her relationship with Rai Sahab as two marriages were solemnized by her mother. After D.N.A. Test, relationship of applicant/plaintiff will be crystal clear with Rai Sahab without any if and but. It has also been argued by learned counsel for respondents/defendants that in view of the judgment of Hon'ble Supreme Court pronounced in the case titled as Shri Banarsi Dass Versus Mrs. Teeku Dutta and Anr. D.N.A. Test is not to be directed as a matter of routine and only in deserving cases. Keeping in view the facts and circumstances of the present case the court is of considered view that it is a proper case where D.N.A. Test should be conducted for proper adjudication of the matter in dispute.”

6. Meaning thereby, the trial Court has examined the matter in the right perspective and recorded the cogent grounds in this relevant direction. Such order, containing valid reasons, cannot legally be set aside, in exercise of superintendence power of this Court, as envisaged under Article 227 of the Constitution of India, unless the same is perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioners, so, the impugned order (Annexure P-6) deserves to be and is hereby maintained in the obtaining circumstances of the case.

7. No other point, worth consideration, has either been urged or pressed by the counsel for the petitioners.

8. In the light of aforesaid reasons, as there is no merit, therefore, the instant petition filed by the petitioners-defendants is hereby dismissed as such.”

The impugned order dated 20.05.2014 is set-aside. Application

for conducting DNA test is allowed. Revision No.6231 of 2014 is allowed.

As per order dated 20.05.2014, right was reserved to lead evidence in rebuttal particularly when the original Will came to light only during the testimony of the defendants' witnesses. Plaintiff had no occasion to lead evidence in affirmative as onus heavily relied upon the propounder of the Will. The factum of original Will brought on the record at the stage of defendants' evidence is not in dispute. It is in such circumstances, the trial court permitted the plaintiff to lead evidence in rebuttal. No fault can be found with the findings. Resultantly, impugned order dated 27.04.2015 is upheld and Civil Revision No.4040 of 2015 is dismissed.

January 08, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No