

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

104

CR No.6870 of 2018 (O&M)
Date of decision:21.5.2019

Priya

... Petitioner

versus

Bhagwani and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.S.R.Hooda, Advocate,
Mr.Badal Malik, Advocate, and
Mr.Lalit Kumar Yadav, Advocate,
for the petitioner
...

AMOL RATTAN SINGH, J. (Oral)

CM No.10474-CII of 2019

1. By the accompanying petition, the petitioner has challenged the order passed by the learned Additional Civil Judge (Senior Division), Siwani, on 6.7.2018, by which an application seeking that a DNA test be conducted on the petitioner, i.e. Priya, as also on respondent no.1, i.e. the plaintiff, Bhagwani, has been dismissed.

When the accompanying petition had initially come up for hearing on 9.10.2018, the following order had been passed by this Court:-

“Learned counsel for the petitioner would place on record the judgment and decree passed in the suit earlier filed by the present petitioner, shown to be titled in the impugned order as Priya and others vs. Smt.Bhagwani etc.

Adjourned to 22.10.2018.”

On 22.10.2018, learned counsel had sought further time to comply with the said order, with the matter adjourned to 30.11.2018.

By that date, CM No.25923-CII of 2018 had also been filed, by which the applicant (petitioner) had sought to place on record copies of her Aadhar Card, Voter Identity Card and a judgment and decree earlier passed by the learned Additional Civil Judge (Senior Division), Siwani, on 5.2.2018, in a case titled as Priya and others vs. Smt.Bhagwani etc., i.e. the same parties as are parties to the present *lis*.

That application was allowed, with the aforesaid documents having been taken on record with the main petition, but the petition itself, on the request of learned counsel then appearing, i.e. Mr.Badal Malik (with the name stated to be erroneously recorded in the order dated 30.11.2018 as Mr.Balbir Malik), had been adjourned to 14.12.2018.

On that date, the following order was passed:-

“Upon being asked to point out from the judgment in the previous suit instituted by the petitioner, against respondent no.1 herein, that she had been found by that Court to be the daughter of respondent no.1 and one Balwant Singh, learned counsel seeks more time to do the needful.

Adjourned to 20.12.2018.”

On the next date of hearing, i.e. 20.12.2018, the following order was passed:-

“On the previous dates the petition came up for hearing and the following orders had been passed:

'Learned counsel for the petitioner would place on

record the judgment and decree passed in the suit earlier filed by the present petitioner, shown to be titled in the impugned order as **Priya and others vs Smt. Bhagwani etc.**

Adjourned to 22.10.2018.

October 09, 2018'

XXXX XXXX XXXX XXXX

'Learned counsel for the petitioner seeks further time to comply with the order dated 09.10.2018.

Adjourned for the last time to 30.11.2018.

October 22, 2018'

XXXX XXXX XXXX XXXX

'CM no.25923-CII of 2018

On October 09, 2018, the following order had been passed in the accompanying petition:-

“Learned counsel for the petitioner would place on record the judgment and decree passed in the suit earlier filed by the present petitioner, shown to be titled in the impugned order as Priya and others v.Smt. Bhagwani etc.

Adjourned to 22.10.2018.”

This application has been filed seeking to place on record copies of the Aadhar Card and Voter Id Card of the petitioner, as also a copy of the judgment and decree passed by the Addl. Civil Judge (Sr. Divn.), Siwani, dated 05.02.2018, in an earlier litigation between the

same parties, titled as 'Priya and others v. Smt. Bhagwani etc'.

The application is allowed subject to all just exceptions and the copies of the aforesaid documents are ordered to be taken on record as Annexures P-5, P-6 and P-7 respectively with the accompanying petition, without making any comment on the merits of the contentions raised by the petitioner in the accompanying petition.

Main case

On a request made by the learned counsel for the petitioner, on the ground that the arguing counsel is in personal difficulty, adjourned to 14.12.2018.

November 30, 2018"

XXXX XXXX XXXX XXXX

'Upon being asked to point out from the judgment in the previous suit instituted by the petitioner, against respondent no.1 herein, that she had been found by that Court to be the daughter of respondent no.1 and one Balwant Singh, learned counsel seeks more time to do the needful.

Adjourned to 20.12.2018.

December 14, 2018'

XXXX XXXX XXXX XXXX

Today, learned counsel for the petitioner wishes to withdraw the petition.

Dismissed as withdrawn, as prayed for.”

It is again stated that the name of the counsel has been erroneously recorded even in the above order as Mr.Balbir Malik whereas it was actually Mr.Badal Malik who had appeared.

Thereafter the present application has been filed, stating to the effect that the statement made on 20.12.2018, withdrawing the petition, had been made without the authority of the petitioner and that therefore the order recording the aforesaid statement of counsel be recalled and the petition be heard on merits.

When this application came up for hearing on 14.5.2019, with Mr.Lalit Kumar Yadav appearing for the applicant (petitioner in the accompanying petition), in his presence, the following order had been dictated:-

“By this application, the order passed by this Court on 20.12.2018 is sought to be recalled, which order reads as follows:-

On the previous dates the petition came up for hearing and the following orders had been passed:

'Learned counsel for the petitioner would place on record the judgment and decree passed in the suit earlier filed by the present petitioner, shown to be titled in the impugned order as **Priya and others vs Smt. Bhagwani etc.**

Adjourned to 22.10.2018.

October 09, 2018'

XXXX XXXX XXXX XXXX

'Learned counsel for the petitioner seeks further time to comply with the order dated 09.10.2018.

Adjourned for the last time to 30.11.2018.

October 22, 2018'

XXXX XXXX XXXX XXXX

'CM no.25923-CII of 2018

On October 09, 2018, the following order had been passed in the accompanying petition:-

“Learned counsel for the petitioner would place on record the judgment and decree passed in the suit earlier filed by the present petitioner, shown to be titled in the impugned order as Priya and others v.Smt. Bhagwani etc.

Adjourned to 22.10.2018.”

This application has been filed seeking to place on record copies of the Aadhar Card and Voter Id Card of the petitioner, as also a copy of the judgment and decree passed by the Addl. Civil Judge (Sr. Divn.), Siwani, dated 05.02.2018, in an earlier litigation between the same parties, titled as 'Priya and others v. Smt. Bhagwani etc'.

The application is allowed subject to all just exceptions and the copies of the aforesaid documents are ordered to be taken on record as Annexures P-5, P-6 and P-7 respectively with the accompanying petition, without

making any comment on the merits of the contentions raised by the petitioner in the accompanying petition.

Main case

On a request made by the learned counsel for the petitioner, on the ground that the arguing counsel is in personal difficulty, adjourned to 14.12.2018.

November 30, 2018"

XXXX XXXX XXXX XXXX

'Upon being asked to point out from the judgment in the previous suit instituted by the petitioner, against respondent no.1 herein, that she had been found by that Court to be the daughter of respondent no.1 and one Balwant Singh, learned counsel seeks more time to do the needful.

Adjourned to 20.12.2018.

December 14, 2018'

XXXX XXXX XXXX XXXX

Today, learned counsel for the petitioner wishes to withdraw the petition.

Dismissed as withdrawn, as prayed for."

It is stated in the application (accompanied by the affidavit of the petitioner), that counsel who was earlier appearing for her had no authority to withdraw the petition.

It is seen that at the time when the petition was withdrawn, Mr.Balbir Malik, Advocate, was shown to be counsel for the petitioner, whereas the power of attorney

('Vakalatnama'), executed by the petitioner is in favour of Sh. Shilak Ram Hooda and Shri Badal Malik, Advocates.

That being so, without making any comment at this stage on the actual conduct of either the petitioner or the counsel who had appeared on the last date of hearing, or those counsel whose power of attorney is on record, the order dated 20.12.2018 is recalled and the petition is ordered to be listed for hearing on 21.05.2019.

To be shown in the urgent motion list.

However, counsel for the petitioner will address arguments, in terms of the order passed by this Court on 09.10.2018, i.e. he would place on record the judgment and decree passed in the suit earlier filed by the present petitioner shown to be titled as **Priya and others vs. Smt. Bhagwani etc.**

If the said judgment and decree is not placed on record, this appeal shall be treated to have been dismissed because it would be inferred by this Court that the petitioner is simply trying to get out of placing that decree on record.”

Thereafter when the order was put up for signatures, it was noticed that in fact the *Vakalatnama* accompanying the application was that of Mr. Lalit Kumar Yadav, with 'clearance' not having been obtained from the counsel who had filed the accompanying petition, i.e. “No Objection” was not endorsed thereupon by either Mr. Shilak Ram Hooda or Mr. Badal Malik, whose *Vakalatnama* was on record with the petition.

Noticing that, in the order dated 14.5.2019, the following was

observed by this Court:-

“After the above order was passed, it was noticed by this Court that the '*Vakalatnama*' accompanying this application is of Mr. Lalit Kumar Yadav, i.e. the counsel who has appeared today in this application, with a “no objection” not endorsed upon it by the counsel who had filed the accompanying petition, i.e. Sh. Shilak Ram Hooda and Sh. Badal Malik, Advocates.

Consequently, counsel who had made the statement, as also who had filed the accompanying petition, have both been called to Court, with learned counsel who had made the statement submitting that as a matter of fact, in the order dated December 20, 2018, his name has been erroneously recorded as “Balbir Malik”, whereas actually he is Mr. Badal Malik himself.

In view of the fact that Mr. Badal Malik, Advocate, submits that it is he who had made that statement on December 20, 2018, that part of this order, by which it was observed that the order dated 20.12.2018 is recalled, is kept in abeyance till the next date of hearing.

Mr. Badal Malik has specifically stated that he had taken instructions from the petitioner that the petition is to be withdrawn.

The applicant, i.e. the petitioner in the accompanying petition, is directed to be personally present in Court, to

determine as to whether any proceedings are required to be taken against either her or her counsel.

Adjourned to 21.05.2019.”

(Of course what had been dictated in Court, was also kept as a part of the said order and thereafter the aforesaid observation made).

2. Today, Mr.S.R.Hooda, Mr.Badal Malik and Mr.Lalit Kumar Yadav, Advocates, are all present in Court, with the petitioner also present, who, on query, states that she has no identity card with her.

However, Mr.Lalit Kumar Yadav has produced in court today a coloured photocopy of a voter identity card shown to be issued in the name of Priya daughter of Balwant Singh, with her date of birth seen to be 13.8.1992 as per the said photocopy, which however is not attested by any person.

However, as regards the person standing in Court today, the photograph seems to be matching her appearance.

Mr.S.R.Hooda, Mr.Badal Malik and Mr.Lalit Kumar Yadav, all three also identify her today as the petitioner, on a specific query put to each of them.

3. Without making any further ado about the matter, with this Court having thoroughly admonished all counsel appearing for making an irresponsible statement in Court, the application is allowed, because the applicant on specific query has stated that she wishes to continue with the case and seeks that it may be decided on merit.

Consequently, the application is allowed, with the order dated 20.12.2018 recalled, upon the statement withdrawing the accompanying

petition itself having been withdrawn by the petitioner.

Though actually, in such a situation, this application should have been dismissed, yet in the interest of justice, it has been allowed.

CR No.6870 of 2018

4. As regards the petition itself, today Mr.Lalit Kumar Yadav, learned counsel for the petitioner, again upon query as to the finding recorded in the previous *lis* between the parties, points to the judgment passed by the learned Additional Civil Judge (Senior Division), Siwani, on 5.2.2018 (a copy of which is annexed as Annexure P-7 herewith), in Civil Suit no.169 of 2014 instituted on 30.7.2014.

In that judgment, it has been recorded (reference paragraph 13 thereof), that the petitioners' mother, i.e. respondent no.2 herein, Bimla, had started living with one Ranbir Sangwan after the death of Balwant Singh, to whom her mother was married, "as she was never happy with her marriage with late Shri Balwant".

It was further recorded that there was no birth certificate of the petitioner (plaintiff no.1 in that suit) and that, strangely, her mother, i.e. Bimla, had shown her (own) year of birth to be 1982, thereafter claiming that her daughter, i.e. the petitioner, was born in the year 1992.

Yet further, it was recorded that though the record of the school that the petitioner was then studying in, i.e. Cosmos Public School, Hisar, showed that she was the daughter of Balwant Singh, a complaint had been registered by the Principal of the school, to the effect that the petitioners' mother had produced forged documents at the time of her admission and that in the record of the school that the petitioner was earlier studying in, i.e.

Bharti Vidya Mandir, she was shown to be the daughter of Ranbir Sangwan.

Other facts to similar effect have also been recorded in that judgment.

It is also pertinent to notice that the following was also observed by the Court in that *lis*:-

“However, it is not out of place to mention here that during the time of arguments, learned counsel for the plaintiffs time and again stressed upon the facts that a DNA test of plaintiff no.1 could have cleared the circumstances, had the court allowed the application but this is needless to say here that this argument does not hold any value as the application was dismissed vide a detailed order dated 23.01.2018 as the plaintiffs already had the opportunity to file this application at the time of their evidence because the defence taken by the defendants has already been in their knowledge since the filing of their written statement. Hence, in my opinion, the plaintiffs have failed to discharge the onus put upon them. Hence, these issues are decided against the plaintiffs and in favour of the defendants.”

5. Very obviously, in the previous *lis*, i.e. in the suit filed by the petitioner and her mother, (respondent no.2 herein), against respondent no.1, who is stated to be the mother of Balwant Singh whom the petitioner claims to be daughter of, the petitioner had filed a similar application seeking that a DNA test be conducted upon her and respondent no.1, which application had been dismissed, and thereafter a finding recorded that it could not be proved that the petitioner was the daughter of Balwant Singh.

Upon query, learned counsel submits that the said judgment and decree dated 5.2.2018, passed in Civil Suit no.169 of 2014, has been appealed against, with the appeal still pending before the learned District Judge/Additional District Judge, Bhiwani.

That being so, in any case the application filed in the present *lis* would be wholly misplaced in my opinion, an identical application having already been dismissed in a previous *lis* between the same parties, (though with the defendant in that suit being the plaintiff in the present suit).

Naturally, if the petitioner is aggrieved of any order passed or any observation made, or any finding recorded in the judgment in that *lis*, her remedy is by way of the appeal that she has already filed before the learned District Judge.

6. Consequently, without making any comment at all on the merits of the contentions of the petitioner, either on her essential contention in the suit that she is daughter of Balwant Singh, or with regard to the merits of the application seeking that a DNA test be conducted, this petition is dismissed, with the petitioner naturally at liberty to pursue her remedy qua all aspects in the appeal that is stated to be pending before the learned District Judge.

21.5.2019
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No