

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8695 of 2017
Date of Decision: March 8, 2019

Smt.Raj Gupta & another

...Petitioners

Versus

Ashok Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Akshay Jindal, Advocate,
for the petitioners.

Mr. R.P.Singh Ahluwalia, Advocate,
for respondent No.1.

Ms. Surabhi Kaushik, Advocate for
Mr. Prateek Mahajan, Advocate,
for respondent No.3.

AMIT RAWAL, J.

The present revision petition is preferred against the order dated 28.11.2017 (Annexure P-5), whereby the application preferred by the petitioner-defendants for conducting Deoxyribo Nucleic Acid (for short “DNA”) test of the respondent-plaintiff, in a suit preferred by him for declaration to be owner in possession of the property No.496, Pahari Bazar Upper Chowk Kalka and Property No.738 Main Bazar, Kalka and with consequential relief of permanent restraint, has been dismissed.

Mr. Akshay Jindal, learned counsel appearing on behalf of the petitioner-defendants submitted that the respondent-plaintiff claimed to be coparcener in the family of his father Trilok Chand and sought the

declaration in the aforementioned manner.

Petitioners in the written statement denied the plaintiff to be son of Trilok Chand and laid claim on the property subsequently inherited by their mother Smt.Sona Devi on the basis of the Will dated 16.04.1982 registered on 25.04.1982 and defendants are the only rightful owners of the suit property.

Plaintiff examined many witnesses and when the suit was slated for defendants' evidence, an application (Annexure P-3) for conducting DNA test was submitted which was opposed by the other side. The importance of DNA test and admissibility as evidence has been examined by various Court as the aforementioned test establishes the relationship between the parties. It is a double edged weapon, which can always go against either of the side. Sufficient evidence has been brought on record to establish that plaintiff was not the son of Trilok Chand. Maternal uncle, i.e., Mama DW-5 Maya Ram in this regard has also been examined. In support of the aforementioned submissions, relied upon the following case law:-

- “1) **Rajli @ Rajjo Versus Kapoor Singh and others, 2013**
(31) R.C.R. (Civil) 798;
- 2) **Sube Singh Versus Smt. Shanti Devi and others, 2015**
(5) R.C.R. (Civil) 684; and
- 3) **Harjinder Kaur Versus State of Punjab and others,**
2013(2) Cri.CC 459.”

Per contra, Mr. R.P.Singh Ahluwalia, learned counsel for respondent No.1 and Ms.Surabhi Kaushik, Advocate for Mr.Prateek Mahajan, learned counsel for respondent No.3 submitted that it is not a matter of right that the aforementioned science can be pressed into service as the Court has no authority or power to order DNA test. Such test impinges the personal life and it is to be done only in deserving cases.

Section 50 of the Indian Evidence Act envisages proving the relationship with the deceased and the testator and evidence in such circumstances has already been led. The Court can always render the decision on the basis of the evidence and, therefore, the application is nothing but an abuse of the process of law and, thus, prayed for dismissal of the revision petition by upholding the impugned order.

I have heard the learned counsel for the parties and appraised the paper book.

Both the parties, concededly, have led extensive evidence in support of the pleadings. In **Neelam Rani and others Versus Smt.Mainka @ Maina Devi and another, 2014(2) R.C.R. (Civil) 540**, the Court held as under:-

“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 judgment in **Bhabani Prasad Jena Versus Convenor**

Secretary, Orissa State Commission for Women & Anr., 2010 AIR (SC)

2851 was pertaining to an order passed by the Commission, wherein

Hon'ble the Supreme Court held regarding the jurisdiction. Further, in **Shri**

Banarsi Dass Versus Mrs. Teeku Dutta and Anr., 2005(2) R.C.R. (Civil)

666, it was held that in deserving cases, the DNA test can be directed.

Mr. Ahluwalia relied upon the affidavit of Smt.Sona Devi @ Swaran Lata, wherein she had admitted not only three daughters but plaintiff as son. No doubt, the aforementioned evidence may have some relevance, but if at all the plaintiff is so sure about his parentage, should not shy or shirk in not taking the DNA test as it is a double edged weapon. Since the property is at stake and both the parties are at loggerheads with regard to the status of Trilok Chand, thus, impugned order does not stand the touchstone of justifiability and accordingly it suffers from illegality and perversity. The same is set-aside. The application for conducting DNA test

of the plaintiff is allowed.

Revision petition stands allowed.

March 8, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No