



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2020

DELIVERED ON : 11.03.2020

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.2328 of 2019

and

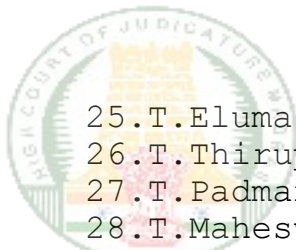
C.M.P. (MD)No.12252 of 2019

1. Moorthy
2. B.Rajesh
3. B.Matcha Raja
4. Sakthi
5. Vasantha
6. Pothum Ponnu @ Anitha
7. Kannan
8. Lakshmi
9. Aruvaham
10. Ponpadi

.. Petitioners/Petitioners/Plaintiffs

Vs.

1. Yasodai Ammal (Died)
2. Thannammal @ Vijaya
3. Macharani
4. Sona
5. Krishna Veni Ammal (Died)
6. Selvam
7. Suganya
8. Rajathi
9. P.Sumathi
10. T.Subramani
11. Panchavarnam
12. Ayyappan
13. Dhanalakshmi
14. Selvaraj
15. Bhuvanendran
16. Nirmala Pandian
17. Arunkumar
18. Devadoss
19. Kayalvili
20. S.Gurusankar
21. Raja
22. Sathish
23. V.S.Kothandaraman



25.T.Elumalai
26.T.Thiruppathi
27.T.Padmanathan
28.T.Maheswaran
29.Solairaja
30.K.Iyyanan
31.Minor Nivas

(Represented through his father and natural guardian K.Iyyanan)

32.K.Venkatesan ... Respondents/Respondents/Defendants

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to direct the learned I Additional District Judge, Madurai to number the interlocutory application filed in (unnumbered) I.A.No.SR18725 of 2019 in O.S.No.406 of 2004, on the file of the I Additional District Judge, Madurai.

For Petitioners	: Mr.P.M.Vishnuvarthanan
For 29 th Respondent	: Mr.K.Jagadeesan
For 24 th Respondent	: Mr.S.J.Chakkaravarthy

ORDER

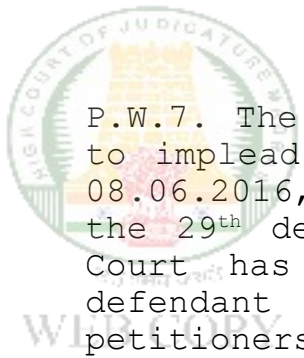
Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed to direct the learned I Additional District Judge, Madurai to number the interlocutory application filed in (unnumbered) I.A.No.SR18725 of 2019 in O.S.No.406 of 2004, on the file of the I Additional District Judge, Madurai.

3.The petitioners herein are the plaintiffs and the respondents herein are the defendants in the suit. The petitioners herein has filed a suit in O.S.No.535 of 2000 before the learned Sub Judge, Madurai, which was later transferred to the learned I Additional District Judge, Madurai and was re-numbered as O.S.No.406 of 2004. The suit was filed for a prayer of partition to divide the suit properties and to allot 8/13th share to the plaintiffs and for permanent injunction against the defendants not to alienate the suit properties to any third parties. In that suit, the petition in I.A.No.SR 18725 of 2019 was filed by the petitioners for conducting DNA test for the 24th respondent, Ponpadi and the 29th respondent, Solairaja.

4.The brief substance of the application in I.A.No.SR18725 of 2019 is as follows:

In that suit, the evidence of plaintiffs' side was over and the defendants were examined as D.W.1 to D.W.6. The 29th defendant was examined as D.W.7 and he marked Exs.B35 to B39 during the chief examination and the suit is pending for the cross examination of



P.W.7. The petitioners have filed a petition in I.A.No.209 of 2014 to implead the 29th defendant as the son of the 24th defendant. On 08.06.2016, the trial Court passed an order that the father name of the 29th defendant is to be recorded as Paramasivam and the trial Court has made an observation that the paternity of the 29th defendant can be decided after the completion of the trial. The petitioners made necessary amendment, as directed by the Court.

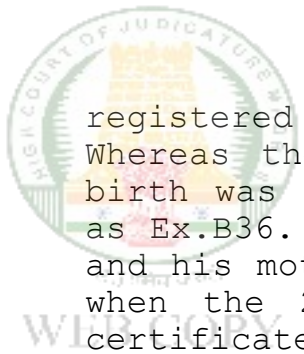
5.The 29th defendant Solairajan is not the son of Paramasivam and Umadevi. The 29th defendant is the son of the 24th defendant, Ponpadi and Umadevi. The 29th defendant is the paternal grandson of Solaimalai. The suit was filed by the mother Umadevi on behalf of minor Solairaja stating that minor Solairaja was the legal heir of Solaimalai Konar. Only to grab the property of Paramasivam, it is wrongly stated that the 29th defendant is the son of Paramasivam. Hence, DNA test is necessary. The petitioners are ready to bear the charges for the same.

6.The petition was not numbered by the learned I Additional District Judge and the learned I Additional District Judge returned the petition with an endorsement that **"one party cannot compel the other party to undergo the DNA test. If the party fails to undergo the test, the petitioner can seek for drawing adverse inference. Hence, petition returned."** Against which, the petitioners have come forward with this revision petition.

7.On the side of the petitioners, it is stated that the respondents 24 and 29 at the stage of arguments, reopened the defendants side evidence and marked Exs.B35 to B39. Ex.B36 is the birth certificate, as if the 29th respondent is born to late Paramasivam. That document is after the suit to defeat the case of the petitioners. All the documents in Exs.B35 to B39 are obtained in the year 2017 - 2019 and they are after the suit. The ratio of share may also change, since the documents were produced belatedly. The petitioners were not given an opportunity to say anything against the document. It is absolutely necessary to decide the entire issue through DNA test.

8.The counter filed by the 24th respondent is as follows:

Originally the suit was filed by the plaintiffs for partition. During the pendency, several amendments were made and several interlocutory applications were filed for the past 20 years. The 24th respondent was impleaded as a party to the proceedings in the year 2016. The 24th defendant is an unnecessary party, since no right title or interest is vested with him. The respondents are not claiming any share in the property. Under such circumstances, the petitioners have filed a petition for DNA test against this respondent and the 29th respondent. At the time of marriage of the 24th respondent with Umadevi, the 29th respondent was four years old and their marriage was held on 14.06.1993 and the same was

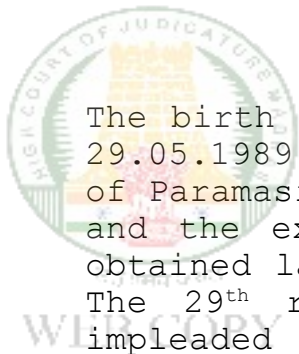


registered and the marriage certificate was marked as Ex.B38. Whereas the 29th respondent Solairaja was born on 29.05.1989. The birth was also duly registered. The birth certificate was marked as Ex.B36. The 29th respondent Solairaja's father is one Paramasivam and his mother is Umadevi. The said Paramasivam died on 04.10.1988, when the 29th respondent was in the womb of Umadevi. The death certificate of Paramasivam was marked as Ex.B35. Only to prolong the case, interlocutory applications are filed. The duty of the petitioners is to lead oral and documentary evidence not through a DNA test.

9.The counter filed by the 29th respondent is as follows:

This petition is filed only with an intention to prolong the case at the stage of arguments. The original suit was posted 'for arguments' on 10.12.2019 and was adjourned to 13.12.2019 and 19.12.2019. Without commencing the arguments, the petitioners preferred the interlocutory application for DNA test. The respondents 24 and 29 were impleaded as parties to the proceedings. But they have not claimed any right or share over the property. The petitioners themselves admitted that the father of the 29th respondent is Paramasivam, which is reflected in the cause title. In I.A.No.209 of 2014, the petitioners impleaded the 29th respondent by mentioning the father named as Ponpadi and the same was agitated by way of filing a counter. The Court has passed an order that the issue of paternity of the 29th respondent can be decided after the completion of the trial. In the suit, it has been determined that the 29th respondent is the son of Paramasivam as per the order in O.S.No.329 of 2004. Ex.R1 is the judgment dated 09.04.2008 in O.S.No.329 of 2004. An appeal against that suit was pending and the Court has directed the petitioners to mention the 29th respondent as son of Paramasivam (father's name subject to the decision in A.S.No.326 of 2009). The petitioners have not challenged that order and impleaded the 29th respondent by mentioning his name as son of Paramasivam. The petitioners marked the death certificate of Paramasivam, birth certificate of 29th respondent, legal heirship certificate of late Paramasivam and the marriage certificate of the 24th respondent with the mother of 29th respondent as documents, Ex.B35 to B39. The petitioners are claiming that the 29th respondent is born to the 24th respondent and it is the duty of the petitioners to produce documentary evidence for the same. The present petition is filed only with a motive to assassinate the character of Umadevi. A person cannot be subjected to scientific investigation against his will.

10.On the side of the petitioners, it is stated that originally the suit was filed by Yasoda. The defendants 1 to 6 are the original parties. The respondents are subsequent purchasers. The property is developed by the subsequent purchasers. It is further stated that the 29th defendant filed petitions to reopen and to recall and to mark the documents, namely birth certificate, marriage certificate, etc. The death certificate belong to one Paramasivam whose biological father of 29th defendant is only Solairaja.



The birth certificate contains no name. The birth certificate dated 29.05.1989 was issued only on 10.10.2019. The legal heir certificate of Paramasivam was issued only by the Deputy Tahsildar on 05.09.2019 and the extract of the marriage certificate dated 14.08.1993 was obtained later. All the documents are after the filing of the suit. The 29th respondent is not the son of Paramasivam. He was not impleaded as the legal heir of Paramasivam. He was impleaded as vendor of the 20th defendant in the capacity of subsequent purchaser. Paramasivam was the direct legal heir of late Bose. The said Paramasivam died suspiciously in his house and he was poisoned to death. His wife Umadevi, eloped with Ponpadi and on that date Paramasivam committed suicide and Umadevi subsequently married Ponpadi on 04.06.1993 and later she gave birth to two sons and one of her sons is Solaimalai.

11.On the side of the petitioners, it is stated that without numbering the petition, the trial Court returned the petition without deciding the issue on merits. In support of his contention, the judgment passed by this Court in the case of **Sathyam Wood Industries v. Adoniss and another** in **C.R.P. (MD)No.804 of 2019** is cited, wherein it is stated as follows:

"7.In view of the above, this Court, without advertng to the merits of the case, is inclined to direct the learned District Judge, Tuticorin to number the plaint, consider the interim application if there is any real urgency in the matter and decide the same on merits and in accordance with law and if necessary refer the parties for mediation."

12.On the side of the petitioners, it is stated that the trial Court has to decide the interlocutory applications on merits and the trial Court cannot return them without deciding the issue on merits. In support of his contention, the judgment passed by this Court in the case of **V.Ravichandran v. D.Purushothaman** in **C.R.P. (MD) No.506 of 2010** is cited.

13.In support of his contention, the judgment passed by the Hon'ble Supreme Court in the case of **Sita Ram Bhama v. Ramvatar Bhama** in **SLP (C)No.11067 of 2017** is cited.

14.The learned counsel for the petitioners would rely upon the judgment passed by this Court in the case of **P.Arockiyasamy v. D.Santra and others** in **C.R.P. (MD)No.1786 of 2019**, wherein it is stated as follows:

"6.For the aforesaid, this Court directs the learned Principal Subordinate Judge, Madurai to number the suit and after hearing both sides, dispose of the suit, on merits and in accordance with law, as expeditiously as possible."



15.The learned counsel for the petitioners would rely upon the judgment passed by this Court in the case of **Rajeswari v. Subramanian and others** in **C.R.P. (MD)No.1551 of 2015**, wherein it is stated as follows:

"6.I am of the view, the Court ought to have numbered the suit and not rejected the same. Therefore, the learned Principal District Munsif, Dharmapuri is directed to number the suit and take up the suit and dispose the same within a period of nine months from the date of receipt of a copy of this order."

16.The learned counsel for the petitioners would rely upon the following judgments passed by this Court:

(i) **C.R.P.No.2262 of 2019 (Maragatham v. Sumathi and others)**.

(ii) **C.R.P. (MD)No.552 of 2014 (P.Vijayakrishnan v. M.Ochammal and others)**.

17.The aforesaid citations are regarding the permitting to amend the petitions or to amend the suit. The facts of those case are different from the facts of the present case.

18.On the side of the 29th respondent, it is stated that the petition was only returned but in the revision petition, it is stated that the petition was rejected. Exs.B35 to B39 were marked by the 29th defendant, who was examined as P.W.7. The death certificate of the father of 29th defendant, marriage certificate and birth certificate were marked. Already there were endorsements in the registers. Only copy was obtained after the filing of the suit. The death certificate was registered in register on 08.10.1988. The date of death is 04.10.1988. The copy of the death certificate is obtained only on 21.04.2017. The date of birth as per birth certificate is 30.05.1989 and the same is registered on the next date itself. The copies are received and obtained after the suit. The legal heir certificate was issued on 13.08.2002 and the copy was obtained on 05.08.2019. The marriage with Ponpadi took place on 14.06.1993. The copy of certificate was issued on 22.08.2002. At the time of marriage, the 29th defendant was five years old. Umadevi was pregnant on the date of death of her first husband Paramasivam. The 29th defendant was impleaded only as per the order in I.A.No.209 of 2014 and that order was not questioned. No appeal was filed against that order. The suit is pending from the year 2000. Only to drag on the case, this petition is filed.

19.On the side of the 24th respondent, it is stated that at the time of marriage with widow Umadevi, the 29th respondent was a child approximately at the age of 4 to 5 years old. There is no blood relationship between the respondents 24 and 29. Already five amendments were taken place. The original case was pending for



arguments on 20.01.2019. Only with the motive to drag on the case, the petitioners have come forward with the petition.

20. It is seen that the petition for DNA test was returned by the trial Court on question of maintainability. The case is filed by the petitioners as plaintiffs and it is the duty of the plaintiffs to prove the case. The petitioners can ask the Court to draw adverse inference against the defendants. A party to suit cannot compel the other party to give evidence against themselves. Moreover the civil suit is different from a criminal case and a person cannot be compelled to undergo DNA test to disprove paternity. The claim of the 24th defendant is that he is not having any share in the property. Moreover the petition for DNA test was filed at a belated stage of trial at the time of arguments. A person with due diligence should have claimed a relief much earlier. Even at the time of filing the interlocutory application to implead the 29th respondent, the 29th respondent contested his paternity and the 29th respondent was impleaded in the suit only as the son of Paramasivam. It is seen that in O.S.No.329 of 2004 dated 09.04.2008 it was determined that the 29th respondent is the son of Paramasivam and an appeal is pending against that judgment.

21. The contention of the petitioners is that the respondents filed documents such as birth certificate, marriage certificate and death certificate of Paramasivam, which are issued only after the filing of the suit. The contention of the respondents is that these documents are already registered documents and only copies are obtained after the filing of the suit.

22. It is the bounden duty of the petitioners to prove the case and the plaintiffs cannot compel the defendants to undergo DNA test to prove the case of the plaintiffs.

23. The original suit is pending from the year 2000. Allowing the petition will cause further delay in the suit proceedings and the reason for filing this petition at a belated stage is not explained. There is nothing sufficient enough to interfere in the order passed by the trial Court.

24. In the above circumstances, this Civil Revision Petition is dismissed and the order passed in I.A.No.SR18725 of 2019 in O.S.No.406 of 2004, on the file of the I Additional District Judge, Madurai is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



To

The I Additional District Judge, Madurai.

+1 CC to M/s.S.J.CHAKKKARAVARTHY, Advocate (SR-10961[F] dated 11/03/2020)

+1 CC to M/s.K.JEGADEESAN, Advocate (SR-10960[F] dated 11/03/2020)

+1 CC to M/s.P.M.VISHNU VARTHANAN, Advocate (SR-11383[F] dated 12/03/2020)

MRN

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11.03.2020