

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2579-2016 (O&M)

Date of decision : 07.02.2020

Bibly Monica

...Petitioner

Versus

Vir Vikram Kumar @ Jason Victor Steele and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Avnish Mittal, Advocate for the petitioner.

Mr. Animesh Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J.

The defendant-petitioner has filed the present revision petition under Article 227 of the Constitution of India assailing the order dated 17.07.2014 passed by the Civil Judge (Junior Division), Chandigarh, dismissing an application filed for seeking direction to the plaintiff to submit himself for taking blood sample to conduct DNA profiling test for determining the paternity and biological father of defendant No.1.

It is well known that objective of the Courts is to ensure that “truth must triumph”. With this objective in mind, I now proceed to decide the present revision petition.

In nutshell, the facts are that Vir Vikram Kumar, the plaintiff,

has filed the present suit claiming himself to be the sole surviving heir of late Sh. Paramjit Kumar, his father. Various prayers in the suit are as under:-

“It is, therefore, respectfully prayed that the :-

I. A decree for DECLARATION to the effect that the plaintiff is absolute owner of residential house No. 108, Sector 8-A, Chandigarh, Industrial Plot No.366, Phase 2, Industrial Area, Panchkula and all movable properties left by late Paramjit Kumar, being only son of late Paramjit Kumar and alleged Will dated 23.11.1993 and will dated 8.2.1991 alleged to have been executed by late Sh. Paramjit Kumar as well as Adoption Deed, if any, mentioned in the alleged will dated 23.11.1993 are illegal, null and void may kindly be passed in favour of plaintiff and against the defendants.

II. Further a decree for permanent Injunction, restraining the defendant no.1 to sell, alienate, gift, mortgage or dispose of the property i.e. House No.108, Sector 8-A, Chandigarh, Industrial Plot No.366, Phase 2, Industrial Area, Panchkula, to any third person and further restraining the defendant no. 2 to handover the possession of entire ground floor of House No. 108, Sector 8-A, Chandigarh, to the defendant no.1 may also be passed in favour of the plaintiff and against the defendants.

III. A decree for Permanent Injunction restraining the defendant no. 2 to pay the license fee/amount mentioned in the License Deed dated 10.4.2006 in respect of House No.108, Sector 8-A, Chandigarh, to defendant no. 1 may also be passed in favour of the plaintiff and against the defendants.

IV. A decree for Mandatory Injunction, directing the defendant no. 2 to make the payment of license amount/fee in respect of House No. 108, Sector 8-A, Chandigarh, to the plaintiff as mentioned in the License Deed/Agreement dated 10.4.2006 may also be passed in favour of the plaintiff and against the defendants.

V. A decree for recovery/mesne profit/damages against the defendant no. 1 for illegal use and occupation of the entire first and second floor of House No. 108, Sector 8-A, Chandigarh and Industrial Plot No. 366, Industrial Area, Phase 2, Panchkula, w.e.f. 15.12.2007 to 14.12.2008 @ Rs.1,00,000/- per month amounting to Rs. 12 lacs and future damages/mesne profits @ Rs. 1 lacs per month from the date of filing the present suit, till the final realization of the amount, as the defendant no. 1 is illegally occupying the above said properties may also be passed in favour of the plaintiff and against the defendants.

VI. A decree for possession of first and second floor House No. 108, Sector 8-A, Chandigarh and Industrial Plot No. 366, Phase 2, Industrial Area, Panchkula may also be passed in favour of the plaintiff and against the defendant no. 1.

Any other relief which this Hon'ble court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff."

The defendant No.1 in the suit, is Bibly Monica, the petitioner herein. She has taken a stand that she is born to and brought up by Paramjit Kumar. She has further stated that she was also adopted on 23.11.1993 by executing an adoption deed. She is the sole surviving heir because late Sh. Paramjit Kumar had executed a registered Will in her

favour on 23.11.1993. She has pleaded that Paramjit Kumar had disinherited the plaintiff and his mother.

When the plaintiff appeared in evidence, he stated as under:-

*“During this period Smt. Balwinder Kaur came in contact with Sh. Paramjit Kumar. Balwinder Kaur was residing at the house of Paramjit Kumar at Sector 8A, House No. 108, as maid in the servant quarter. It is wrong to suggest that Paramjit Kumar and Balwinder Kaur were living together as husband and wife under one roof at house no.108, Sector 8-A, Chandigarh. I am son of Paramjit Kumar and Joan Steele. I do not know whether Bibly Monika is daughter of Paramjit Kumar and Balwinder Kaur. Volunteered no one knows whether Bibly Monika is daughter of Paramjit Kumar and even Bibly Monika does not know who her father is. **I am ready to give my DNA test to compare with the same with Bibly Monika.** I and Bibly Monika are not brother and sister. It is wrong to suggest that Paramjit Kumar is father of myself and Monika Bibly. My mother took divorce in the year 1995 at New Zealand from Sh. Paramjit Kumar.”*

It is apparent that the plaintiff agreed to undergo DNA test to compare the same with Bibly Monica, defendant No.1, the petitioner herein. The plaintiff was cross-examined by learned counsel for the defendant on 11.07.2014. However, when defendant No.1 filed application on 16.07.2014, the plaintiff chose to contest the application. It may be significant to note that in the application, Bibly Monica has pleaded that Paramjit Kumar was her biological father and she was born from cohabitation of Paramjit Kumar and her mother Balwinder Kaur.

The aforesaid application has been dismissed by the Court on the ground that the main dispute between the parties is whether Paramjit Kumar executed a Will in favour of defendant No.1 or not. The Court also noticed that the Court is not to determine the paternity of defendant No.1.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents brought for consideration.

On the one hand, learned counsel for the petitioner has submitted that in the present case, the Court should have allowed the application particularly when plaintiff-respondent had agreed thereto, whereas on the other hand, learned counsel for the respondents has submitted that the DNA test should not be allowed in the facts and circumstances of the present case.

On 27.01.2020, following order was passed by this Court:-

“Arguments have been heard at length.

Learned counsel for the respondents prays for time to seek instructions as to whether the plaintiff-respondent is ready to give his blood sample or not.

Adjourned to 28.01.2020.

To be listed in the urgent.”

On 28.01.2020, learned counsel appearing for the respondents after taking instructions, had made a statement that the plaintiff is not ready to give his blood sample for conduct of DNA profiling even if the arrangement is made for drawing sample from the

place where he resides (New Zealand).

The question, whether DNA test should be permitted has been drawing attention of the Courts for quite sometime. In the case of **Goutam Kundu Vs. State of West Bengal and another, (1993) 3 SCC 418**, the Court was examining the conduct of blood test in the context of presumptions under Section 112 of the Indian Evidence Act, 1872. The Supreme Court while concluding, has observed as under:-

“26. From the above discussion it emerges:-

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

(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.”

Thereafter, once again this question was came up for consideration before a Three Judge Bench of the Supreme Court in the case of **Sharda Vs. Dharmpal, (2003) 4 SCC 493**. In the aforesaid case, matrimonial Court had permitted the DNA test. Hon'ble the Supreme Court in para 39, observed as under:-

“39. Goutam Kundu is, therefore, not an authority for the

proposition that under no circumstances the Court can direct that blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regards mechanical passing of such order. In some other jurisdictions, it has been held that such directions should ordinarily be made if it is in the interest of the child.”

Thereafter, once again, this question was raised in the case of **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and another, (2010) 8 SCC 633.** Again, the Supreme Court examined the question in the context of Section 112 of the Indian Evidence Act, 1872. Once again, the matter was considered in the case of **Nand Lal Wasudeo Badwaik Vs. Lata Nand Lal Badwaik, (2014) 2 SCC 576.**

There is another judgment of Hon'ble the Supreme Court in the case of **Dipan Wita Roy Vs. Ronobroto Roy, (2015) 1 SCC 365.** In this judgment, the Supreme Court has permitted the DNA test. There is another famous judgment of Delhi High Court in the case of **Rohit Shekhar Vs. Shri Narayan Dutt Tiwari and another, 2011 (4) RCR (Civil) 459.**

After careful reading of the aforesaid judgments, this Court has come to the conclusion that as rightly observed by the Supreme Court in the case of Goutam Kundu (Supra), DNA profiling should not be allowed in routine and the Court must evaluate as to whether it will have the effect of branding a child as a bastard and a mother as an unchaste woman.

In that context, let us now examine as to whether the test should be permitted or not. In the considered view of this Court, the factors which are in favour of defendant No.1-petitioner are as under:-

- 1) She is herself offering to undergo the blood test. There is no dispute with regard to paternity of the plaintiff. In other words, she is running the risk of being declared bastard or her mother as an unchaste woman.
- 2) The plaintiff has already accepted the offer and agreed to undergo the blood test, when he appeared in evidence.
- 3) There are documents available on the file which prove that Bibly Monica, the petitioner, when got admitted in the School, the name of Paramjit Kumar was recorded as her father.

On the other hand, if this Court analyzes reasons for disallowing the application, it comes to the mind of the Court that the suit is for the property and, therefore, DNA profiling test should not be allowed.

On analysis of the reasons extracted above, this Court has come to the conclusion that DNA profiling test is a scientific test, chances of correctness whereof are very high. With the advancement of science, a scientific method has been evolved to almost conclusively ascertain the actual parentage of a child. There are umpteen number of judgments passed by the Courts holding that normally it should not be permitted, however, facts in all these cases are different. Here is a case where the defendant herself is ready to undergo the test and the plaintiff also agreed

at one stage. Still further, if the report of DNA test is received, it would help the Court in adjudication of the case properly. The stand of the defendant is that she is born to Paramjit Kumar and thereafter she was subsequently adopted because her mother and Paramjit Kumar were not married when she was born. Still further, later on, it is the allegation of the defendants that adoption deed was also executed, correctness whereof has been challenged by the plaintiff in the suit. Apart from that, there are two testamentary dispositions allegedly executed by late Sh. Paramjit Kumar on 23.11.1993 and 08.02.1991.

Keeping in view the aforesaid facts, it is considered appropriate to allow the application and set aside the order passed by the Civil Judge (Junior Division), Chandigarh. However, it is pertinent to note that if the plaintiff does not come forward to give his blood sample as has been stated by learned counsel for the plaintiff, the learned trial Court would be at liberty to draw an adverse inference, in accordance with law.

In view of the above, the present revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

07.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No