



C.R.P.No.2158 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.2158 of 2019

and

C.M.P.No.13895 of 2019

1.Sanam Parvathy
2.Sanam Varada Ananda Kumar Reddy
(Rep. By his mother and first petitioner)

.. Petitioners

Versus

Rajasekara Reddy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the orders passed in I.A.No.1 of 2019 in H.M.O.P.No.6 of 2016 on the file of the Family Court, Tiruvallur, dated 25.03.2019.

For Petitioners : Mr.S.Prabhu

For Respondent : Mr.A.S.Mujibur Rahman



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ORDER

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The revision petitioner is challenging the order passed by the learned Judge, Family Court, Tiruvallur, in I.A.No.1 of 2019 in H.M.O.P.No.6 of 2016 dated 25.03.2019.

2. Heard Mr.S.Prabhu, learned counsel for the petitioners and Mr.A.S.Mujibur Rahman, learned counsel appearing on behalf of the respondent.

3. The Revision petitioners herein are the wife and minor son of the respondent. According to the contention of the 1st petitioner, she married the respondent and begotten a male child/2nd petitioner herein. But due to the conduct of the respondent/husband, she was forced to send out of matrimonial home. Hence, she filed a petition for Restitution of Conjugal Rights (RCOP) in HMOP No.6 of 2016 on the file of the Family Court at Tiruvallur and the respondent / husband also contested the said application. In his counter statement, he denied the paternity of the child, by contending that both the parties have entered into an agreement with Donor and Donee,



apart from that, there is no other relationship between them. Thereafter, the wife was constrained to file an application in I.A.No.1 of 2019, under Section 45 of the Indian Evidence Act r/w Section 151 C.P.C., praying to issue notice to the respondent and to the Dean, Rajiv Gandhi Hospital, Chennai, to take Deoxyribo Nucleic Acid Test (DNA test) and to file an expert opinion's report. But the said application was also contested by the Husband by filing his objections.

4. On hearing both sides, the learned trial Judge concluded that,

“...the reason stated in the petition for DNA test is not clear. Further this application for DNA test is unnecessary in the HMOP for restitution of Conjugal rights. The respondent is working in the Central Industrial Security Force, Arakkonam. He gave a petition before the Hon'ble High Court and in turn the Principal District Judge gave a written instruction to complete the enquiry of HMOP expeditiously. Therefore if this application is very much essential to conclude facts in issue then necessarily this petition has to be ordered, but it is not so. Since the HMOP is only for restitution of conjugal rights, the paternity of the child is not at all required and will not improve



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the claim of the petitioner for restitution of conjugal rights. Absolutely no necessity to order for DNA test of the child. Therefore, this application is unnecessary at present". Accordingly, the same was dismissed, aggrieved that the wife has preferred the revision before this Court.

5. At the time of arguments, the learned counsel for the revision petitioners submitted that from the year 2016 onwards, she was dragged on from pillar to post by the husband without maintaining herself and the child and she also wanted to meet her husband. Hence, she filed HMOP No.6 of 2016. Subsequently, he denied the paternity of the child. According to law, to prove the paternity of the child, there shall be DNA test report, but without considering legal remedy to the wife and child, the learned trial Judge erroneously dismissed the petition. Hence, he prayed to allow the revision by permitting the husband to undergo for DNA test.

6. The learned counsel for the respondent/husband vehemently opposed that, by submitting the false application, the 1st petitioner has filed the HMOP and the same was contested by him, by filing



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his counter objections. He also contended that there was no husband and wife relationship between himself and the 1st petitioner, and there is only Donor and Donee agreement between them, thereby, he denied the paternity of the child. Even in the counter affidavit, the respondent/ husband has totally denied the marital relationship between the 1st petitioner and the paternity of the child.

7. To prove the paternity of the child, only course available to the wife is to commit the husband undergo DNA test, and about the relationship between them as Donor and Donee is to be proved only at the time of the trial. Furthermore, the paternity of the child also be concluded based upon the oral and documentary evidence and not based upon the assumption and presumption. As rightly pointed out by the learned counsel for the revision petitioners, to prove the paternity of the child, it is just and necessary that the revision petitioners are permitted to approach the Court for conducting DNA test for respondent. Without considering the legal aspect, the learned trial Judge erroneously dismissed the application in I.A.No.1 of 2019 in HMOP.No.6 of 2016.



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8. Hence, this Court allows this revision petition by setting

aside the order passed by the learned trial Judge in I.A.No.1 of 2019 in HMOP.No.6 of 2016 and a direction is given to the learned trial Judge to conduct DNA test for respondent as per manner known to law, within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

27.10.2021

Index : Yes / No

Speaking Order: Yes/No

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To

1.The Family Court,
Tiruvallur,

2.The Section Officer,
V.R.Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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