

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020

PRONOUNCED ON : 08.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.80 of 2017
CMP.No.429 of 2017

(Through Video Conferencing)

Palanisamy

Petitioner

Vs

1. Vijayakumar
2. Abaramoorthi

3. The Sub Registrar, P.Puliampatti
Avinashi

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.08.2015 made in IA.No.836 of 2015 in IA.No.583 of 2010 in OS.No.193 of 2008, by the District Munsif Court, Avinashi.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.P.Tamilvel

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order dated 24.08.2015 made in IA.No.836 of 2015 in IA.No.583 of 2010 in OS.No.193 of 2008, by the District Munsif Court, Avinashi.
2. The facts of the case, in a nutshell, are that the 1st Defendant is the Petitioner and the Respondents 1 to 3 are the Plaintiff and the Defendants 2

and 3 respectively. The suit was filed for partition and separate possession. The Plaintiff has filed IA.No.583 of 2010 for subjecting himself and the 1st Defendant to DNA test and the said application was closed on 22.10.2010, observing that after completion of the evidence on both sides, if it is not able to be established that the Plaintiff is not the son of the 1st Defendant, appropriate orders would be passed for paternity test in the said IA. The Plaintiff has filed the petition to reopen IA.No.583 of 2010 and pass necessary orders and the said petition was allowed by the impugned order. Aggrieved against the same, this Civil Revision Petition has been filed by the 1st Defendant.

3. The learned counsel for the Petitioner/1st Defendant has submitted that the Plaintiff cannot be allowed to collect evidence through DNA test at the fag end of the trial and that the present application has been filed with a delay of 7 years, for which no valid explanation was given and that only to harass the Plaintiff, who is very old aged person, having bad health condition, the present application has been filed. The learned counsel has relied on **2015 1 SCC 365 (Dipanwita Roy Vs. Ronobroto Roy)** and **CDJ 2018 APHC 756 (Medida Veeraiah Vs. Meddida Vijaya Narasimha Rao)**.
4. The learned counsel for the Respondent/ Plaintiff has submitted that since the suit is for partition and the 1st Defendant has disputed the paternity of the Plaintiff, it is necessary to prove that the Plaintiff is the son of the 1st Defendant, for which, DNA test is required. The learned counsel has relied on an **unreported judgement dated 04.09.2017 made in CRP(PD)No.3160**

of 2011, by this Court.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.

6. In this case, the Plaintiff has alleged that he is the son of the 1st Defendant.

The 1st Defendant has denied that the Plaintiff is his son. Thus, dispute arose with regard to paternity of the Plaintiff for claiming his rights in the suit properties. Hence, the Plaintiff has filed IA.No.583 of 2010 for conducting DNA profiling for himself and the 1st Defendant to prove his paternity. The said application was closed on 22.10.2010, observing that after completion of the evidence on both sides, if it is not able to be established that the Plaintiff is not the son of the 1st Defendant, appropriate orders would be passed for paternity test in the said IA. When the matter was at the part heard stage, the Plaintiff has filed the present application to reopen IA.No.583 of 2010 and pass necessary orders and the same was allowed.

7. Now, the question that arises for consideration is as to whether the impugned order, ordering for DNA test for the Plaintiff and the 1st Defendant will serve the ends of justice.

8. Time and again, it has been held in a catena of decisions of various High Courts and the Honourable Supreme Court that a DNA profiling can be ordered in appropriate cases where there is necessity, but at the same time, it cannot also be ordered in a routine manner and no one can be compelled to give sample of blood for analysis. The Court must carefully examine as to what would be the consequence of ordering the blood test and the facts and

circumstances of each and every case have to be taken into consideration for ordering DNA profiling.

9. In **2010 8 SCC 633 (Bhabani Prasad Jena Vs. Orissa State Commission for Women)**, the Honourable Supreme Court, while referring to its various decisions, has held that despite the consequences of a DNA test, this Court has concluded that it was permissible for a Court to permit the holding of a DNA test, if it was eminently needed after balancing the interests of the parties.

10. In **2014 2 SCC 576 (Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik)**, it was held by the Honourable Supreme Court that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination to determine the veracity of the allegation which constitutes one of the grounds, on which the party concerned would either succeed or lose.

11. In **2015 1 SCC 365 (Dipanwita Roy Vs. Ronobroto Roy)**, the Honourable Supreme Court has held thus:-

12. "We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof."

13. Applying the ratio laid down by the Honourable Supreme Court in the above

said cases to the case on hand, since the paternity of the Plaintiff herein is disputed by the 1st Defendant herein, it becomes necessary to decide whether the Plaintiff is the son of the 1st Defendant or not, for which DNA test is essential. In view of the scientific technology, the result of DNA test will assist the Court in deciding the whole issue properly. However, liberty is given to the 1st Defendant to comply with or disregard the impugned order passed by the court below, requiring the parties to undergo the DNA test. In case, the 1st Defendant accepts the direction issued by the court below, the DNA test will determine conclusively the issue of paternity in one way or the other. In case, the 1st Defendant declines to comply with the direction issued by the court below, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h).

14. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, the connected MP is closed.

Index: Yes/No
Web: Yes/No
Speaking/Non Speaking
Srcm

To

1. The District Munsif Court, Avinashi

08.01.2021

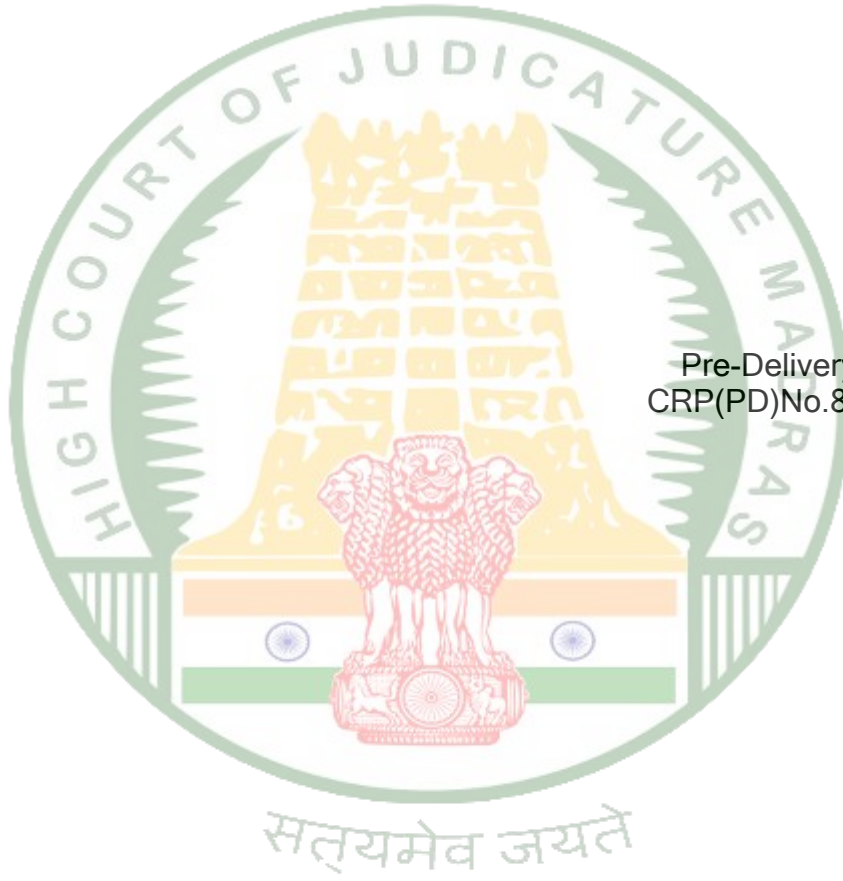
सत्यमेव जयते

WEB COPY

CRP(PD)No.80 of 2017

A.A.NAKKIRAN, J.

Srcm



Pre-Delivery Order in
CRP(PD)No.80 of 2017

WEB COPY

08.01.2021