



C.R.P. No.970 of 2020
C.M.P.No.5615 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. No.970 of 2020

&

CMP No.5615 of 2020

N. Thandavarayan Gounder

... Petitioner

Vs.

1. C. Pavazhamalli
2. E. Shenbagam
3. S. Shakthi Roja
4. B. Loganayagi
5. T. Gunaseelan
6. T. Loganathan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 06.02.2018 passed in I.A. No.305 of 2016 in O.S. No.295 of 2014 on the file of the Principal Subordinate Court, Tindivanam.

For Petitioner : Mr.M. Arumugam

For R1 to R6 : Mr.R. Karunagaran



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ORDER

The present Civil Revision Petition is filed against the fair and decretal orders dated 06.02.2018 passed in I.A. No.305 of 2016 in O.S.No.295 of 2014 on the file of the Principal Subordinate Court, Tindivanam.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court in the Original Suit.

3.The revision petitioner is the 1st defendant in O.S. No.295 of 2014 on the file of the Principal Subordinate Court, Tindivanam. The respondents/plaintiffs filed the suit for partition of the suit properties into 7 equal shares and to allot one such share to each of the plaintiffs. The 1st defendant filed his written statement and thereafter filed an application in I.A.No.305 of 2016 in O.S.No.295 of 2014 under Section 151 CPC to subject himself and the 6th plaintiff to undergo DNA test. He also further prayed for dismissing the suit as regards the 6th plaintiff as he has been wrongly impleaded in the suit.



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4. The main contention of the revision petitioner/1st defendant is that the 6th plaintiff was not born to him through his wife Jagathambal. According to him, his wife Jagathambal left him 30 years back and got married to another person and that the DNA test would clearly prove that the 6th plaintiff is not the son of the revision petitioner/ 1st defendant. The respondents 5 and 6 filed their counter and after full contest, the learned principal subordinate judge, Tindivanam, dismissed the application vide her orders dated 06.02.2018, by observing thus:

"Upon hearing the rival submissions putforth by both sides and perusal of records, it shows that the petitioner himself filed divorce petition against his wife Jagadambal and the same was dismissed and further it has been found that the 6th plaintiff is the son of the petitioner and thus during the trial only the court can decide whether the 6th plaintiff is the son of the petitioner or not. Apart from that mere denial of the petitioner that the 6th plaintiff is not born to the petitioner and he was born to some other person is not sufficient for the examination of DNA test for the petitioner and 6th plaintiff unless concrete oral and documentary evidence adduced by the petitioner. Though the petitioner contend that the 6th



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plaintiff was born to Jagadambal through some other person, but none of the documents filed by the petitioner to show that the 6th plaintiff was born to Jagadambal and other person. Furthermore the cases pending between the parties elicited in the counter are all suppressed by the petitioner and thus at the time of trial only through oral and documentary evidence, the court can decide whether the 6th plaintiff was not born to the petitioner. In this situation, there is no sufficient reason and no merit in this petition for DNA examination and the petition is dismissed.

5. Aggrieved over the same, the present Civil Revision petition is filed by the 1st defendant.

6. Heard Mr.M. Arumugam, learned counsel appearing for the revision petitioner and Mr.R. Karunakaran, learned counsel appearing for the respondents.

7. The learned counsel for the revision petitioner contended that the revision petitioner even in his written statement has specifically averred that the 6th plaintiff was not born to him and that he was born to one Rajaram, S/o. Subbu Iyer of Venganthur. His further contention is that the



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trial court has wrongly dismissed the petition filed by the revision petitioner on the ground that only after the trial, the court can decide whether the 6th plaintiff was born to the petitioner or not and therefore there is no sufficient reason to direct the revision petitioner and the 6th plaintiff to undergo DNA test. He also relied on the decision in *Veeran vs. Veeravarmalle and another* reported in **2009 (2) TLNJ 209 (civil)** and contended that by directing the petitioner to undergo DNA test to prove the paternity of the 6th plaintiff would not affect the fundamental rights of the 6th plaintiff and it is not also in violation of his personal liberty guaranteed under Article 21 of the Constitution of India. He further relied on the decision of this court in CRP No. 3160 of 2011 wherein a single Judge of this Court had categorically held that the result of DNA test would assist the court in deciding the issue properly. According to the counsel for the revision petitioner conducting DNA test for both the petitioner and the 6th plaintiff is absolutely necessary as far as the present case is concerned.

8. Per contra, the learned counsel appearing for the respondents contended that the present revision petitioner already filed a petition for



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divorce against his wife Jagadambal (mother of the 6th plaintiff) in HMOP No.54/1988 and the same was dismissed after full contest. In the said HMOP, it was clearly held that the 6th plaintiff is the son of the revision petitioner and the present revision petitioner did not file any appeal against the said orders. He also pointed out that in O.S. No.172/2002 on the file of the District Munsif, Tindivanam, the present revision petitioner, in the plaint had categorically stated that the 6th plaintiff is his son. He drew the attention of this court to the various suits between the same parties in O.S. No. 872/1995, O.S. No.507/2007, O.S. No.62/2015 and O.S. No.105/2015 on the file of the District Munsif, Tindivanam, wherein the 6th plaintiff has been described as the son of the revision petitioner and that nowhere the revision petitioner/1st defendant had contended that the 6th plaintiff was not born to him.

9. There cannot be any second opinion that directing the parties to the suit to undergo DNA test would not be in violation of their personal



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liberty guaranteed under Article 21 of the Constitution of India. However, in the instant case, it is seen from the earlier suits between the same parties that the 6th plaintiff was described as the son of the 1st defendant and this has been clearly observed by the learned trial court judge in her orders, which is extracted hereunder.

"The 6th respondent/6th plaintiff contend that the petitioner has already filed petition for divorce against his wife Jagadambal mother of the 6th plaintiff in HMOP No.54/1988 on the same ground and the petition was dismissed after full contest and it has been found that the 6th plaintiff is the son of petitioner and no appeal preferred against the said order. Further in reply notice sent by the petitioner he has not stated all those facts mentioned in the petition. Apart from that, the petitioner has filed a suit before the District Munsif Court, Tindivanam in O.S.No.172/2002 and the petitioner stated that the 6th respondent is the son of petitioner. It is further argued that the respondents and other daughter of petitioner also filed suit against the petitioner in O.S.No.872/1995 for maintenance wherein also, it has been found that the 6th plaintiff is the son of petitioner and no appeal has been preferred against the



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decree and judgment in the said suit. Furthermore, the suit filed by one Munusamy and others in O.S.No.507/2007 before the District Munsif Court, Tindivanam and another suit filed by Santhi in O.S.No.62/2015 and suit filed by Duraimurugan in O.S.No.105/2015, the 6th plaintiff has been described as son of petitioner. Further in the above said suits the petitioner has not denied that the 6th plaintiff relationship with the petitioner. It is argued that this petition is filed only to protract the suit and further the petitioner has no right to compel a person for the DNA test as he wish and thus respondents prays to dismiss the petition."

10. I do not find any infirmity in the orders passed by the trial court and therefore the present Civil Revision Petition is liable to be dismissed.

11. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently



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connected miscellaneous petition is dismissed.

ii. the fair and decretal orders dated 06.02.2018 passed in I.A. No.305 of 2016 in O.S. No.295 of 2014 on the file of the Principal Subordinate Court, Tindivanam, is upheld

iii. Since the suit is of the year 2014, the learned Principal Subordinate Judge, Tindivanam, is directed to dispose of the suit as expeditiously as possible.

19.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/non speaking
bga

R.HEMALATHA, J.,
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To

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1. The Principal Subordinate Judge, Tindivanam,
2. The Section Officer, VR Section, High Court, Madras.

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