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CRP.(PD).No.2908/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.2908 of 2021
& CMP.No.20915 of 2021

R.Nagarajan (died)

1.Kamala @ Kamalammal
2.Saravanan
3.Vijaya

...Defendants 2 to 4/
Revision Petitioners

Vs

Subramani

... Plaintiff / Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.125 of 2015 on the file of the Subordinate Judge, Uthangarai with exemplary and compensatory costs.

For Petitioners : Mr.D.Shivakumaran



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ORDER

This Revision is filed to strike off the plaint in O.S.No.125 of 2015 on the file of the Subordinate Judge, Uthangarai.

2.The plaintiff has filed the suit seeking partition of the estate of certain Nagarajan. While, the plaintiff is keen to call Nagarajan his father, Nagarajan never wanted to lend his paternity to him. This matter is concluded first by a Judgment of the Division Bench of this Court in LPA.No.101 of 1975 dated 27.02.1979, followed by another Judgment authored by me in S.A.No.1220 of 2010 dated 29.01.2019. Those two Judgments have become final and the issue involved in them is paternity of Nagarajan to the aforesaid respondent/plaintiff.

3.The learned counsel respondent submitted that in none of the earlier proceedings, the Court has ordered DNA test and hence, the paternity to the plaintiff/respondent could not be established but, today there are scientific methods to do that.



4.The learned counsel for the revision petitioner/defendant would submit that it is the development in science that has brought in DNA test to establish paternity of a child but, before the Court of law, it is only an evidence offered and such evidence cannot upset a decree passed in at least two earlier proceedings.

5.Now, the pointed question in both LPA.No.101 of 1975 and S.A.No.1220 of 2010 is whether the plaintiff in O.S.No.125 of 2015 is the son of certain Nagarajan. This precisely was the point in issue in the earlier proceedings. In fact, the learned counsel for the petitioners relied on the Judgment of this Court in ***Subramani and Another Vs. B. Nagarajan and others*** [SA No.1220 of 2010], which was a litigation between the present plaintiff and the one who he claims as his father and laid emphasis on;

"7.The moot point addressed by the rival counsel is whether the judgment of this Court dated 27.02.1979 in L.P.A.No.101 of 1975, a copy of which is available on record as Ext.A.4, declares the status of the 2nd defendant and his relationship to the plaintiff. This Court went through the entire judgment in Ext.A.4 and is satisfied that the Court has stated the 1st



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defendant was not born to the plaintiff through 2nd defendant.

In fact, the earlier matrimonial litigation itself is rooted where the very birth of the 1st defendnt was a testimony of 2nd defendant's adulterous life. This having been concluded, there cannot be an independent finding on the same."

6.This Court considers that the present suit is instituted to reagitate an issue long settled by this Court at least in two earlier instances. Therefore, the suit is an abuse of judicial process and hence, it is struck of the file of the trial Court.

7.This Civil Revision Petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order/Non Speaking Order
Tsg



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To

The Subordinate Court,

Uthangarai.



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N.SESHASAYEE, J.,

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