



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	14.02.2022
DELIVERED ON	21.02.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1654 of 2017

and

C.M.P. (MD)No.9239 of 2017

1.Palaniraj

2.Jeevarathinam

...Petitioners/Petitioners/Defendants-1 & 3

Vs.

1.Vellaichamy

2.Thangaraj

3.Jeyachandran

...Respondents/Respondents/Plaintiffs 1 & 2

...Respondent/Respondent/2nd Defendant

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and exorder dated 22.06.2017 passed in I.A.No.251 of 2016 in O.S.No.50 of 2014 on the file of the learned Subordinate Judge, Virudhunagar and allowing this Civil Revision Petition and grant such other reliefs.

For Petitioners :M/s.P.Malini

For R-1 & R-2

:Mr.P.Aathimoola Pandian, for

:Mr.S.Jawahar

R-3

:Given up

ORDER

This Civil Revision Petition has been filed to set aside the fair and ex-order, dated 22.06.2017 in I.A.No.251 of 2016 in O.S.No.50 of 2014 passed by the learned Subordinate Judge, Virudhunagar.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The plaintiffs has filed a suit in O.S.No.50 of 2014 against the defendants for partition. During the pendency of the suit, the defendants have filed a interlocutory petition in I.A.No.251 of 2016 in O.S.No.50 of 2014, under Order 26 Rule 10(A) of Civil Procedure Code, for DNA test of the defendant Nos.1 & 3 and the plaintiffs. The said petition was dismissed on 22.06.2017. Aggrieved over the



same, the revision petitioners/defendant Nos.1 & 3 have filed this Civil Revision Petition.

4. Heard on either side. Perused the material documents available on record.

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5. This Civil Revision Petition is filed on the ground that the present case is not a criminal case and only property rights are asserted and denied. The Court below has failed to see that no prejudice would be caused to the plaintiffs if they are subjected to the DNA test which is now scientifically recognised as the most accurate method to dispel doubt of the biological relationship between two persons. The Court below has also failed to appreciate that DNA test is accurate and beneficial one, would conclude the dispute between the parties.

6. The revision petitioners/defendant Nos.1 & 2 have filed a petition in I.A.No.251 of 2016 in O.S.No.50 of 2014 under Order 26 Rule 10(A) of Civil Procedure Code, for DNA test of the defendant Nos.1 & 3 and the plaintiffs.

7. The plaintiffs have filed the suit in O.S.No.50 of 2014 for partition in respect of ancestral properties of the plaintiffs' father Krishnasamy Naicker. The revision petitioners/Defendant Nos.1 & 3 have raised an objections in their written statement that the plaintiffs are not born to Krishnasamy Naicker.

8. As per the case of the revision petitioners/Defendant Nos.1 & 3, the mother of the revision petitioners married one Chokkalinga Chettiar even during the life time of Krishnasamy Naicker and gave birth to plaintiffs. To prove the said fact, the petition in I.A.No.251 of 2016 in O.S.No50 of 2014 was filed for DNA test.

9. The plaintiffs have filed documents to prove the fact that they are the legal heirs of the said Krishnasamy Naicker. Further, the respondents have not consented for DNA test.

10. The paragraph Nos.13, 16 & 17 of the Judgment reported in **C.A.No.6153 of 2021** in the case of **Ashok Kumar Vs. Raj Gupta & Ors.**, the Hon'ble Supreme Court held as follows:

...

"13.DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information, whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S.Puttaswamy v. Union of India, wherein the



13. Therefore, the Court below has rightly dismissed the petition in I.A.No.251 of 2016 in O.S.No.50 of 2014. This Court has no valid reason to interfere with the order passed by the Court below.

14. Finally, this Civil Revision Petition stands dismissed by confirming the order, dated 22.06.2017 in I.A.No.251 of 2016 in O.S.No.50 of 2014 passed by the learned Subordinate Judge, Virudhunagar. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Subordinate Judge,
Virudhunagar.

+1 CC to M/s.P.MALINI, Advocate (SR-7288[F] dated 21/02/2022)

Order made in
C.R.P. (MD)No.1654 of 2017
21.02.2022

nsn(CO)

GC(15.03.2022) 4P 3C