

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CR-4756 of 2018(O&M)
Date of Order: 09.05.2022

Rajwinder Kaur and another

..Petitioners

Versus

Charanjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aayush Gupta, Advocate,
for the petitioners.

Mr. Anil Kumar Garg, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The petitioners' application for conducting DNA test has been dismissed. The plaintiffs claim to be the widow and daughter of late Sh. Pritam Singh. They have filed a suit claiming decree of declaration to the effect that they are owners to the extent of 2/3rd share in the properties left behind by late Sh. Pritam Singh. The defendants are sister and mother of late Sh. Pritam Singh and subsequent vendees. Defendant No.1 claim inheritance on the basis of an unregistered Will from late Sh. Pritam Singh. She has also claimed that plaintiff no.2 is not the daughter of plaintiff no.1 and late Sh. Pritam Singh.

In such a situation, a serious dispute with regard to the maternity of plaintiff no.2 has arisen.

The learned trial Court dismissed the application on the ground that since late Sh. Pritam Singh is not alive, therefore, the DNA profile test shall not help the Court in deciding the suit.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the respondents has placed on record certain documents in order to support his plea that plaintiff no.2 is not the daughter of plaintiff no.1. It is alleged that she, herself, has stated in her testimonials that she is the daughter of Sh. Piara Singh and Smt. Pritam Kaur.

The correctness of the aforesaid documents shall be seen at the stage of decision of the case. Once a scientific test is available which aids the Court to ascertain about the paternity/maternity, with reasonable certainty, then, it is not considered appropriate to refuse the party from leading such evidence.

In the present case, the defendant is even disputing the inter-se relationship between plaintiff no.1 and 2. In such circumstances, the plaintiffs are required to prove that fact.

The parties come to the Court with a hope to get justice. It is expected that the Presiding Judge would help the parties to unearth the truth. This is one among the fundamental purposes for setting up the Courts.

This matter has already been examined in detail in **Bibly Monica vs. Vir Vikram Kumar @ Jason Victor Steele and another, 2020(2) PLR 130.** The relevant discussion reads as under:-

*“12. The question, whether DNA test should be permitted has been drawing attention of the Courts for quite sometime. In the case of **Goutam Kundu Vs. State of West Bengal and another, (1993) 3 SCC 418,** the Court was examining the conduct of blood test in the context of presumptions under **Section 112** of the Indian Evidence Act, 1872. The Supreme Court while concluding, has observed as under:-*

"26. From the above discussion it emerges:-

(1) that courts in India cannot order blood test as matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under [Section 112](#) of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

13. Thereafter, once again this question was came up for consideration before a Three Judge Bench of the Supreme Court in the case of Sharda Vs. Dharmpal, (2003) 4 SCC 493. In the aforesaid case, matrimonial Court had permitted the DNA test. Hon'ble the Supreme Court in para 39, observed as under:-

"39. Goutam Kundu is, therefore, not an authority for the proposition that under no circumstances the Court can direct that blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regards mechanical passing of such order. In some other jurisdictions, it has been held that such directions should ordinarily be made if it is in the interest of the child."

14. Thereafter, once again, this question was raised in the case of Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and another, (2010) 8 SCC 633. Again, the Supreme Court examined the question in the context of [Section 112](#) of the Indian Evidence Act, 1872. Once again, the matter was considered in the case of Nand Lal Wasudeo Badwaik Vs. Lata Nand Lal Badwaik, (2014) 2 SCC 576.

15. There is another judgment of Hon'ble the Supreme Court in the case of Dipan Wita Roy Vs. Ronobroto Roy, (2015) 1 SCC 365. In this judgment, the Supreme Court has permitted the DNA test. There is another famous judgment of Delhi High Court in the case of Rohit Shekhar Vs. Shri Narayan Dutt Tiwari and another, 2011 (4) RCR (Civil) 459.

16. After careful reading of the aforesaid judgments, this Court has come to the conclusion that as rightly observed by the Supreme Court in the case of Goutam Kundu (Supra), DNA profiling should not be allowed in routine and the Court must evaluate as to whether it will have the effect of branding a child as a bastard and a mother as an unchaste woman. "

Moreover, a distinction has to be drawn between cases where

the paternity of the child is denied and in cases where the paternity/maternity

of the child is sought to be established. In the former, DNA tests are not

ordered casually, however, in the later cases, such tests must be allowed by the Court so as to benefit the child in proving his/her relationship. Courts must remember that welfare of the child should be the paramount consideration in all such cases.

Keeping in view the aforesaid facts, the application is allowed.
The order under challenge is set aside.

The trial Court is requested to permit the plaintiffs to lead evidence.

All the pending miscellaneous applications, if any, are also disposed of.

May 09, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No