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CRP.No.3780 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.3780 of 2016 and
CMP.No.19258 of 2016

G.Rajkumar

... petitioner

Vs.

1.G.Santhamani
2.N.Ranganathan
N.Renuka(deceased)
3.D.Vimala @ Saraswathy
4.D.Devaraj
5.S.Rajendran
6.P.Balusamy
7.P.Rajendran
8.N.Krishnakumar
9.R.Jayabal
10.J.Sriram
11.R.Dhanabal

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned fair and decretal order dated 17.08.2016 made in IA.No.521 of 2013 in OS.No.727 of 2010 pending on the file of III Additional District and Sessions Judge, Coimbatore thereby consequently dismiss the petition bearing IA.No.521 of 2013 in OS.No.727 of 2010.

For Petitioner : Mr.C.Ravichandran



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For Respondents

For R1 : Mr.C.R.Prasanan

For R3 to 6,8,9,

10,2,7 : No appearance

ORDER

This civil revision petition has been filed to set aside the impugned fair and decretal order dated 17.08.2016 made in IA.No.521 of 2013 in OS.No.727 of 2010 pending on the file of III Additional District and Sessions Judge, Coimbatore, thereby allowing the petition seeking DNA test for the petitioner and the first respondent herein.

2. The first respondent is the plaintiff and the petitioner is the third defendant. The first respondent filed suit for partition. The case of the first respondent is that she got married with one, Govindarajulu and gave birth to the petitioner herein. The said Govindarajulu was the second son of one, Narayanasamy and Kuppayammal @ Kuppammal. After their demise, her husband had succeeded $\frac{1}{4}$ share in the suit property. Therefore, she and the petitioner herein each derived $9\frac{3}{4}$ in the undivided share of $\frac{1}{4}$ of her husband. After his demise, one year later, she got married on 22.08.1999. However, all the defendants colluded together and played fraud among



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themselves and entered into a partition deed dated 11.10.2004. The recital of the deed revealed that the first respondent died on 25.01.1999. She is very much alive and deliberately false and fraudulent averments were made in the deed of partition dated 25.01.1999 in order to deny her share. Therefore while pending the suit, the petitioner filed application under Section 75 of Evidence Act for direction to conduct DNA test for both the petitioner and the first respondent herein at CMC Hospital, Coimbatore. It was allowed and aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that it is settled principle of law that the first respondent has to prove her case by documents and not to pick up loop holes in the defence of the petitioner herein. She failed to produce any document to prove that she is so called mother of the petitioner herein and wife of the said Govindarajulu who is the father of the petitioner herein. Therefore, she cannot make roving enquiry by filing the petition seeking DNA test. The suit itself is filed with false claim since she is not his mother and she has to prove before the trial court in the manner known to law instead of filing the petition for DNA test. It would bring down the reputation of the petitioner among his family members and friends. Therefore without his consent, it cannot be done and he cannot be subjected for any DNA test. No one



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can be compelled to give sample of blood for analysis against his or her will. In order to substantiate the same, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Ashok Kumar Vs. Raj Gupta and others* reported in *(2022) 1 SCC 20*.

4. Per contra, the learned counsel for the first respondent would submit that she has so many documents in order to prove her claim in the suit. However, she could not produce all those documents in the application filed for DNA test. In fact, the first respondent is supported by other relatives i.e. her husband's brother's sons. While pending the suit, the petitioner herein attacked the first respondent and as such she lodged complaint and the same was registered in crime No.296 of 2012 on the file of the Inspector of Police, Chettipalayam, Coimbatore District for the offences under Sections 341, 294(b), 324 and 506(ii) of IPC. However, it was subsequently referred as mistake of fact. All the relatives applied for information under RTI Act with regards to the death certificate produced before the court and also the ration card. However the authorities concerned failed to provide the same for the reason that it is not available. Therefore the first respondent sought for DNA test and the court below rightly allowed the petition. He also cited the very same judgment cited by the learned counsel for the petitioner and submitted that the Court is to



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weigh both side's evidence with all attendant circumstances and then reach a verdict in the suit and this is not the kind of case where a DNA test of the plaintiff is without exception. Therefore, the court below weighed of the evidence and circumstances and rightly allowed the petition for DNA test.

5. Heard, the learned counsel for the petitioner and the learned counsel for the first respondent.

6. On receipt of suit summons, the petitioner filed his written statement and specifically pleaded that the first respondent is not the widow of the said Govindarajulu who is the father of the petitioner herein. She is the widow of one, Rangasamy and her son is one, Anandan. In fact, his mother already died on 25.01.1999. The first respondent is not his mother. Further contended that though the first respondent got remarried, she did not even whisper the name of her husband. In order to grab the suit property, she filed suit with false claim that she is the mother of the petitioner herein. On perusal of the plaint, the first respondent produced the sale deed stands in the name of Narayanasamy Naidu and others, the death certificate of Govindarajulu and the partition deed dated 11.10.2004. On perusal of the partition deed dated 11.10.2004 itself, categorically mentioned that the mother of the petitioner died



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as early as on 25.01.1999 and thereafter entered into a partition deed dated 11.10.2004. That apart, the petitioner also marked certified copy of the partition deed dated 11.10.2004 as Ex.R1 and the death certificate of his mother Santhamani as Ex.R2. Thereafter, he also obtained legal heir certificate and it was marked as Ex.R3. However, the court below without considering those aspects, mechanically allowed the petition for DNA test for the petitioner and the first respondent herein. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Ashok Kumar Vs. Raj Gupta and others** reported in **(2022) 1 SCC 20**, wherein it is held as follows:

*15. 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 right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, 52019 (1) SCC 1 i.e whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the*



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encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test.

16. It cannot be overlooked that in the present case, the application to subject the Plaintiff to a DNA Test is in a declaratory suit and the plaintiff has already adduced evidence and is not interested to produce additional evidence (DNA), to prove his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial Court dismissed the defendants application and we feel that it was the correct order.

7. Thus it is clear that it has to be examined the proportionality of the legitimate aims being pursued, whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test.

8. In the case on hand, the first respondent can very well prove her case by material and oral evidence in the manner known to law i.e. the first respondent is the plaintiff and she has to prove the case in the manner known to law. Therefore, the petitioner cannot be compelled to give sample of blood for



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analysis which is against his will. Further, the court shall not subject the person for DNA test as a matter of course or in a routine manner. Therefore, this Court finds infirmity in the order passed by the court below and the same is liable to be set aside. Accordingly, the impugned fair and decretal order dated 17.08.2016 made in IA.No.521 of 2013 in OS.No.727 of 2010 pending on the file of III Additional District and Sessions Judge, Coimbatore is set aside and this civil revision petition is allowed. However, the first respondent is at liberty to adduce evidence in the manner known to law in order to prove her case. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking/non-speaking
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To
The learned III Additional District and Sessions Judge,
Coimbatore



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