



C.R.P.(PD)No.2090 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD)No.2090 of 2019
and CMP.No.13527 of 2019

S.Balaji

... Petitioner

VS

1.K.Sugavanam

2.Minor Arivudainambi @ Aruludainambi
Represented by his Father and Natural Guardian
K.Sugavanam

3.M.Manonmani

4.R.Shanmugam

5.Loganathan

.. Respondents

Petition filed under Article 227 of the Constitution of India against the Fair order and Decree dated 18.12.2018 made in I.A.No.353 of 2018 in O.S.No.269 of 2016 on the file of the III Additional District Judge, Salem.

For Petitioner : Mr.R.Nalliappan

For Respondents : No Appearance



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ORDER

This revision challenges the order of the III Additional District Judge, Salem in I.A.No.353 of 2018 in O.S.No.269 of 2016. The plaintiff is the civil revision petitioner. According to the plaintiff, he was born to one Prema and one K.Sugavanam on 13.03.1993 at Shanthi Nursing Home, Salem-7. In order to substantiate the same, he has produced Ex.P1 the birth certificate issued by the Salem City Municipal Corporation on 23.09.2015. He presented a suit for partition on the ground that Sugavanam being his father on whom the joint family properties had devolved and as he is the son of the Sugavanam and Prema, he is entitled to a share.

2.Sugavanam, the 1st defendant entered appearance in the case and filed a written statement totally denying the relationship between Prema and himself. According to him, he does not know the existence of Prema and is married to one Velumani from 1996 onwards through whom the 2nd defendant was born.

3.A case was sought to be projected that Prema married one Selvam and the petitioner is the son of Selvam and not the son of the 1st defendant. Parties entered the witness box and projected their respective cases. The learned trial Judge dismissed the application filed for DNA



profiling on the ground that the plaintiff has not proved that he has born to Sugavanam.

4.I heard Mr.R.Nalliappan, learned counsel who appeared for the petitioner. The respondents though served has not entered appearance.

5.The position of law with respect to DNA profiling has been settled by the Supreme Court in ***Dipanwita Roy v. Ronobroto Roy (2015 1 SCC 365)***. The relevant paragraph is as follows:

'12.We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

"114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him." This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 114 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved.'



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6.A reading of the said judgment would show that where there is a dispute in paternity, DNA profiling will conclusively determine the veracity of the acquisition. In other words, if the DNA report is available before the Court, it would prove either Sugavanam is the father of the petitioner or he is not. That will either confirm the basis on which the suit has been presented or the basis of the suit itself will vanish.

7.Under similar circumstances, this Court in CRP(PD)No.80 of 2017 dated 08.01.2021 has held that the Court stood in case of serious dispute in paternity adopt the procedure of DNA profiling. In the present case as narrated above, there is a serious dispute whether the petitioner Balaji was born as a result of the marriage between Prema and Sugavanam or whether he is the son of Selvam.

8.The Court has conducted a mini trial within a trial and has come to a conclusion that the petitioner has not proved with adequate documents that Sugavanam is his father. I am unable to appreciate the approach of the Court for the simple reason, in case there were documents apart from Ex.PW1 (birth certificate) to substantiate the facts that Balaji was born to Sugavanam, the question of his DNA profiling itself would not arise.

9.Being left with no other option, the only available tool with the



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plaintiff to prove his case is DNA profiling. Consequently, I set aside the order of the trial Court in I.A.No.353 of 2018 in O.S.No.269 of 2016 and allow the application. It is open to the 1st defendant/Sugavanam either to give his blood samples or refuse to give the same. In case, he gives his blood samples, the same shall be sent for DNA testing along with the blood samples of Prema and the petitioner for comparison to Forensic Science Laboratory, Kamarajar Salai, Chennai. In case the 1st defendant refuses to give his blood samples, then the Court may draw adverse inference as provided under Section 114 of the Indian Evidence Act.

10.The trial Court shall ensure that the samples are drawn in a proper manner under its supervision and sent for DNA profiling to Forensic Science Laboratory, Chennai without there being any possibility of tampering. This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The III Additional District Judge,
Salem.



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V. LAKSHMINARAYANAN,J.

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