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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1303-2018 (O&M)

Date of Decision: 03.05.2023

Gurmail Singh and another

....Petitioners

Versus

Gurjeet Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioners.

Mr. Ashish Gupta, Advocate
for respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 05.08.2017 (Annexure P-6) passed by Ld. District Judge (Family Court), Moga, whereby the application filed by applicants/petitioners for conducting DNA (Deoxyribonucleic acid) Test of Gurjeet Kaur – respondent No.1 (alleged mother of minor namely Khushpreet Kaur), was dismissed.

2. Succinct facts first, as stated in the instant petition.

2.1. Petitioners are grandparents of minor namely Khushpreet Kaur. They (petitioners) had two sons namely Harjit Singh and Sarabjit Singh. Two brothers namely Harjit Singh and Sarabjit Singh were married with two sisters namely Balbir Kaur and Gurjeet Kaur respectively. Out of the wedlock of Balbir Kaur and Harjit Singh, two daughters namely Shubhpreet Kaur and Khushpreet Kaur were born. Khushpreet Kaur was born on 12.10.2009. Harjit Singh had expired on 15.07.2009 and at that time, the 2nd daughter namely Khushpreet Kaur was in the

womb of her mother Balbir Kaur. Under these compelling circumstances, Gurjeet Kaur and her husband Sarabjit Singh had taken the responsibility of Balbir Kaur's daughter Khushpreet Kaur as Harjit Singh (natural father) had expired and as they had no child of their own. Accordingly, the name of Gurjeet Kaur and Sarabjit Singh were incorporated in all the documentation of Khushpreet Kaur as her parents.

2.2. Balbir Kaur solemnized remarriage with one Amarjit Singh and gave birth to a son and a daughter. Later on, marriage between Gurjeet Kaur and Sarabjit Singh was dissolved by way of mutual consent by judgment dated 10.05.2011. Since minor child namely Khushpreet Kaur was shown as daughter of Gurjeet Kaur and Sarabjit Singh, in all the documents, it was also mentioned that the minor had taken birth from the marriage of Gurjeet Kaur and Sarabjit Singh and she will remain in the custody of Gurjeet Kaur.

2.3. Unfortunately, the second son of present petitioners namely Sarabjit Singh also expired on 07.03.2015. Thereafter, Gurjeet Kaur solemnized remarriage with one Rajinder Singh and from the lions of said Rajinder Singh, one son was born to Gurjeet Kaur. Accordingly, Gurjeet Kaur delivered back the custody of minor Khushpreet Kaur to the petitioners and presently the minor is residing with petitioners, who are her grandparents. Gurjeet Kaur-Respondent No.1 had also written a letter to the office of employer of Sarabjit Singh that she has remarried with Rajinder Singh and her husband is not accepting the minor child namely Khushpreet Kaur and requested for family pension in favour of minor. An intimation to this effect was also given by Captain, Record Officer (for OIC Records) to Office of The Principal, CDA (P), G-4 Section, Allahabad, (U.P.), vide letter dated 11.03.2016 (Annexure P-1), where the Sarabjit Singh was employed.

2.4. Thereafter, greed crept in mind of Gurjeet Kaur for getting the death-cum-terminal dues of Sarabjit Singh deceased son of present petitioners. With this intention, she filed petition (Annexure P-2) under Section 8/10 of the Guardian and Wards Act claiming the custody and guardianship of minor namely Khushpreet Kaur. Present petitioners were not impleaded as party though it was in the knowledge of respondent No.1-Gurjeet Kaur that minor was/is residing with her grandparents. Petitioners on coming to know of above said petition, appeared and filed written statement (Annexure P-3) stating all facts.

2.5. Since Gurjeet Kaur had claimed to be the natural mother of minor namely Khushpreet Kaur and all the documents were in the name of Gurjeet Kaur, present petitioners filed application (Annexure P-4) for conducting the DNA Test of Gurjeet Kaur, Khushpreet Kaur and real mother of minor namely Balbir Kaur. Respondent No.1-Gurjeet Kaur filed reply (Annexure P-5) to the said application.

2.6. Upon consideration, Ld. Trial Court dismissed the application filed by petitioners by way of impugned order (Annexure P-6).

3. Learned counsel for petitioners would *inter alia* argue that since all the documents are in the name of Gurjeet Kaur, the only way to find the truth as to whether Gurjeet Kaur is the biological mother of minor Khushpreet Kaur, as claimed by her, in the Guardianship petition is by conducting the DNA Test of Gurjeet Kaur as well as the minor daughter namely Khushpreet Kaur.

4. *Per contra*, learned counsel for respondent No.1 urges that in the petition under Section 13-B of Hindu Marriage Act, it was clearly mentioned that from the wedlock one female child namely Khushpreet Kaur was born and the custody of minor child was given to respondent No.1 and no one raised any objection to it. Therefore, necessary requirement of alleged DNA test is not fulfilled as father of the child namely Sarabjit Singh has already expired and Balbir

Kaur, alleged real mother of minor Khushpreet Kaur is not a party to the present case and her husband has also expired.

5. I have heard competing arguments of learned counsel for parties and gone through the record.

6. Impugned order dated 05.08.2017 (Annexure P-6) passed by learned District Judge (Family Court), Moga, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

7. *There cannot be quarrel with the proposition that the DNA test can be directed but the controversy has to be understood in the light of circumstances of each case. Hon'ble Supreme Court has held in Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another, 2010 (4) RCR (Civil) 53 when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the Court to reach the truth without use of such test.*

8. *Other factors that can be considered in the instant case are that in the birth certificate Ex.P-4 issued by the competent authority, names of mother and father of Khushpreet Kaur have been mentioned as Gurjeet Kaur and Sarabjit Singh and in the judgment dated 10.5.2011 Ex.P-7 passed in petition under Section 13-B of the Hindu Marriage Act filed by Gurjeet Kaur and Sarabjit Singh, it has been mentioned that from their wedlock one female child Khushpreet Kaur was born on 12.10.2009 and the custody of the minor child was given to the Gurjeet Kaur. All these documents are much prior to the present case. Further, Sarabjit Singh has already expired and Balbir Kaur, alleged natural mother of minor Khushpreet Kaur is not a party to the present case. Moreover, husband of Balbir Kaur, alleged natural mother of minor Khushpreet Kaur has also expired, hence, necessary requirement of DNA test is not fulfilled. It is also not the version of applicants/respondents No.2 and 3 that any evidence. has so far been led with regard to disputed question of parentage of minor Khushpreet Kaur, except moving the instant application for DNA test.*

9. *For the foregoing reasons, I do not find any merit in the instant application and same is dismissed.*

xxxx xxxx xxxx xxxx”

7. Pertinently, perusal of written statement (Annexure P-3) filed by petitioners reveals that after the birth of a son from remarriage with Rajinder Singh, Gurjeet Kaur delivered the custody of minor Khushpreet Kaur back to her biological mother i.e. Balbir Kaur and now the child continues to be in the custody of her biological mother. The biological mother Balbir Kaur is not a party to the case and cannot therefore be directed to undergo her own DNA test or to give consent to such a test of a minor child in her custody.

8. Furthermore, in reply (Annexure P-5) to application seeking DNA test, the respondent No.1 while relying on medical jurisprudence (sic law) also asserted that a child will have 50% DNA from her mother and 50% from her father. Nothing to the contrary is forthcoming from the side of petitioners. To my mind, there is some merit in the assertion of respondent No.1 that the child will have 50% DNA from mother and 50% from father, but in the instant case the biological father of child is stated to be one Sarabjit Singh, who is no more. Thus, no purpose would be served by directing respondent No.1 alone to give her sample for DNA test.

9. Dismissed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 03, 2023
ashish

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