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C.R.P.Nos.456 & 2806 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.456 and 2806 of 2023
and C.M.P.Nos.17334 and 3827 of 2023

Malathi ... Petitioner in both CRPs

-Vs-

1.Ponnusamy
2.Rathinam ... Respondents in both CRPs

Prayer in CRP No.456 of 2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order and decree passed in I.A.No. 179/2020 in O.S.No. 228/2014 on the file of the District Munsif Court, Udumalpet and allow this CRP.

Prayer in CRP No.2806 of 2023: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order and decree dated 28-02-2023 passed in IA. 06/2023 in OS.No. 228 of 2014 in on the file of the District Munsif Court, Udumalpet.

In Both CRPs

For Petitioner : Mr.S.Prabhu
For Respondents : Mr.M.Jaisingh
for Mr.A.Sivaji

COMMON ORDER

These two civil revision petitions arise against the orders passed by the learned District Munsif at Udumalpet in O.S.No.228 of 2014. For the sake of convenience, the parties will be referred to as per their ranking in the suit.



2. O.S.No.228 of 2014 has been presented by the civil revision petitioner seeking for the relief of partition and several reliefs of declaration. According to the plaintiff, one Ponnusamy married Thangamani and from the wedlock, she was begotten. She would further plead that she is having a share in the suit schedule mentioned properties and since the father Ponnusamy refused to give her rightful share, she was constrained to file the suit for the aforesaid relief.

3. On service of summons, the defendants took a plea that Ponnusamy and Thangamani hardly lived for a day and therefore there is no possibility that Malathi, the plaintiff would have been born to them. On the basis of these pleadings, issues have been framed and the parties went for trial.

4. On the side of the plaintiff, she examined herself as P.W.1 and other witness as P.W.2. and the defendants examined two witnesses on their side. The evidence was closed and the matter was posted for arguments.

5. At that stage, wisdom seems to have dawned on the plaintiff to examine her mother Thangamani to substantiate her case. She also took out an application in terms of Order XXVI Rule 10A of the Civil Procedure Code seeking scientific report on the DNA of the petitioner as well as Ponnusamy, the alleged father.

6. Learned District Munsif, Udumalpet took the applications filed in



I.A.No.179 of 2020 and I.A.No.6 of 2023 and dismissed the same. He held that as the party had been given sufficient opportunity to examine the witnesses on her side, there is no necessity to reopen evidence on the side of the plaintiff for examination of Thangamani. He further held in the application filed for appointment of a Commissioner that a Commissioner cannot be appointed for the purpose of collection of evidence and therefore dismissed the petition filed for testing of the DNA of the petitioner and the first respondent. Aggrieved by the same, the present revisions have been presented before this Court.

7. Notice had been ordered in both the revisions and respondents were served and they entered appearance through a counsel.

8. Heard Mr.S.Prabhu for the petitioner and Mr.M.Jaisingh on behalf of Mr.A.Sivaji for the respondents.

9. Both the counsel reiterated the arguments that had been put forth before the Court below. In addition, Mr.Jaisingh would urge that Ponnusamy, the first defendant is aged about 74 years and the idea of the plaintiff is to drag on the proceedings and harass him. He would state the order of the trial Court is reasoned and does not require interference. In addition, he would argue that the plaintiff is trying to fill up the lacuna which has been left in her evidence. He would therefore plead for dismissal of the revisions.



10. I have carefully gone through the pleadings and the orders of the Court below and have carefully analyzed the arguments of either side.

11. These are revisions which arise against the orders passed in the suit for partition. In order to claim a right over the property, the plaintiff will have to prove that she is the daughter of Ponnusamy, the first defendant. A child cannot give evidence as to her conception and the appropriate person to give evidence viz., the best evidence is her parents themselves. Here is a situation where one parent is denying the paternity of the civil revision petitioner. Had her paternity been admitted, things would have been easier. But, easy things are not always presented to the Court. The only other person who can speak about the access that Ponnusamy had to the plaintiff's mother is Thangamani, the mother of the plaintiff and the wife of the first defendant Ponnusamy. If best evidence is kept away from the Court, there is every possibility that the Court can draw adverse inference as against the plaintiff.

12. To obviate such an unfortunate circumstance, the plaintiff has come forward with a plea to examine her mother. When a party wants to examine the best and possible evidence, the Court should take into consideration the circumstances and the pleadings of the parties and ought to permit them to present the same.



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13. Apart from the evidence of Thangamani to prove the access between Ponnusamy and herself, an additional evidence which will point out to the paternity, though not necessarily conclusive in all cases, is the DNA test. If the DNA test were to go in favour of the plaintiff, then it will help the Court to settle the issue of paternity which is an essential issue to be decided by the learned District Munsif, Udumalpet. If the report were to go in the negative, then the plaintiff will find herself in soup. Therefore, either way the report of the expert who examines the DNA of both the parties would be relevant to the proceedings.

14. I am not tantalized by the argument that the plaintiff is filling the lacuna because, the suit is still at large though the parties having arrived at the stage of arguments in the suit. As long as the matter is pending before the trial Court, the question of lacuna does not arise. A lacuna would arise where evidence had been let in and judgment has been pronounced thereon and in appeal if any party attempts to fill up the gaps in the evidence. As the suit is still before the trial Court, I am inclined to consider the application filed for examination of the mother of the plaintiff Thangamani as well as the application for comparison of the DNA of the plaintiff and the first defendant.

15. I have to take note of the fact that here is a case which has been presented in the year 2014 and is still languishing before the trial Court. Perhaps,



only issue raised on paternity has been the reason for such a situation. As rightly pointed out by Mr.Jaisingh, the first defendant is a senior citizen and it is in the interest of all the parties that the end of litigation is seen at the earliest.

16. Taking into account the overall circumstances of the case, in order to give a fair opportunity to the plaintiff, I am inclined to allow the revisions. I am not willing to give this relief to her for the asking. For each of the application filed to reopen evidence on her side and for the DNA examination by the Forensic Sciences Department, Chennai, the plaintiff shall pay a sum of Rs.10,000/- to the contesting first defendant. The costs shall be paid on or before 05.07.2024. In case the cumulative costs of Rs.20,000/- are not paid before that date, the benefit of this order shall not enure to the petitioner. In case the costs are not paid, the Civil Revision Petitions shall stand dismissed without further reference to this Court.

17. With the above directions, the order of the learned District Munsif in I.A.No.179 of 2020 and I.A.No.6 of 2023 dated 13.10.2022 and 28.02.2023 are set aside. The Civil Revision Petitions stand allowed in the above terms. Consequently, connected miscellaneous petitions are closed.

26.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The District Munsif
Udumalpet.



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V. LAKSHMINARAYANAN, J.

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