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C.R.P.(PD).No.1706 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1706 of 2021

and

C.M.P. No.13244 of 2021

1.Mallika (Died)

2.Karunakaran

3.Mohandas

4.Jeyalakshmi

... Petitioners

[Petitioners 2 to 4 marked as Lrs' of the deceased
first petitioner, namely, Mallika as per Memo dated 29.01.2024
in C.R.P.(PD).No.1706 of 2021 and CMP.No.13244 of 2021]

Versus

1.Lakshmi

2.The Thasildar, Thasildar Office,
Uthangarai Town and Taluk Office,
Uthangarai.

3.The District Collector,
Collectorate,
Krishnagiri.

4.The Special Thasildar (ADW),
Tirupattur Town and Taluk,
Vellore District.
(now Thirupathur District)



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5.The State of Tamil Nadu,
rep.by The District Collector,
Collector Office,
Vellore.
(now Thirupathur District)

6.Rani

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, pleased to set aside the fair and decreetal order dated 05.02.2020 passed in I.A.No.1 of 2019 in A.S.No.5 of 2018 on the file of the Sub-Court, Uthangarai, Krishnagiri District.

For Petitioners : Mr. K. Thiruvengadam

For Respondents : Mr. Cibi Vishnu (for R1)

: Mr. C. Sathish, Government Advocate (for R2-R5)

: No Appearance (for R6)

ORDER

This Civil Revision Petition is filed challenging the order dated 05.02.2020 passed by the First Appellate Court allowing the application in I.A.No.1 of 2019 in A.S.No.5 of 2018 filed by the first respondent seeking DNA test to establish her paternity.

2. The first respondent herein filed a suit in O.S.No.125 of 2014, seeking a declaration that she was one of the legal heirs of the Late.



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Dhesingu and also for permanent injunction. The said suit was dismissed by the Court below on a finding that the marriage between the said Late. Dhesingu and the first respondent's mother, namely, one Rani, who was arrayed as ninth defendant in the suit, was not proved. Aggrieved by the dismissal of the suit, the first respondent filed an appeal in A.S.No.5 of 2018 on the file of the Subordinate Court, Uthangarai. Pending the first appeal, the present application was filed by the first respondent seeking to establish her paternity. In the affidavit filed in support of the application seeking DNA test, it was claimed by the respondent that she was born to the Late. Dhesingu and Rani on 15.06.1993. It is admitted case that the petitioners 2 to 4/defendants 2 to 4 are the children of the said Late. Dhesingu through the first petitioner (since died). Therefore, it is the case of the first respondent that if DNA samples of her and the petitioners 2 to 4 are compared, the first respondent could establish that she and the petitioners 2 to 4 were born to the same father.

3. The said application filed by the first respondent was opposed by the petitioners mainly on the ground that the first respondent failed to seek DNA test before the Trial Court. The Trial Court while dismissing the



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suit, observed that the first respondent in order to prove her paternity that her father and the father of the petitioners 2 to 4 were one and the same, failed to take any steps for DNA test. In such circumstances, in order to decide the main controversy involved in the appeal in a more effective was, the first respondent was constrained to file the present application, seeking DNA test. The First Appellate Court observed that the first respondent had been living with stigma as of now and in order to wipe out the stigma and to prove her case that she was born to the Late. Dhesingu, the DNA test would certainly help to the first respondent.

4. It is also seen from the finding of the Trial Court that the alleged marriage between the said Late. Dhesingu and Rani was not established and in the absence of any valid proof of marriage between them, the presumption under Section 112 of the Indian Evidence Act, cannot be pressed into service. In such circumstances, the DNA test is the best option available for her to prove her claim regarding the paternity. Taking into consideration all these facts, the First Appellate Court has rightly allowed the application filed by the first respondent seeking DNA test.



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5. Hence, I do not find any error or illegality in the order passed by the First Appellate Court. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is also closed.

15.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

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To:

1.The Sub-Court, Uthangarai, Krishnagiri District.



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S. SOUNTHAR. J.,

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15.02.2024