



CRP. PD.No.646 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.10.2024

Pronounced on:15.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.646 of 2023
and CMP. No.5083 of 2023

Arimuthu (Died)

1.Chandra

2.Venkatesh

... Petitioners

Vs

1.Alamelu

2.Sathiya

3.Manigandan

... Respondents

Prayer: The Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order passed in Docket order dated 20.12.2021 passed in I.A. No.565 of 2021 in O.S. No.239 of 2007 on the file of the District Munsif Court, Thiruvannamalai District.

For Petitioners

: Mrs.P.T.Sundari

For Respondents

: Mr.B.Jawahar for R1

No Appearance for R2 & R3

ORDER

The defendants in a suit for partition, aggrieved by the order of the

Trial Court ordering DNA Test are the revision petitioners.



2. I have heard Mrs.P.T.Sundari, learned counsel for the petitioners and Mr.B.Jawahar, learned counsel for the first respondent. I have also gone through the records, including the impugned order.

3. The learned counsel for the revision petitioners would submit that the Trial Court erred in directing the petitioners to undergo a DNA Test along with respondents 2 & 3. She would submit that the respondents were only attempting to fish for evidence and the Courts cannot be a party to such exercise. She would further submit that compelling the petitioners to undergo DNA Test was against public policy and fundamental rights granted under Article 21 of the Constitution of India more specifically Article including 20(3) of the Constitution of India.

4. The learned counsel for the petitioners would place reliance on the following decisions:-

(i) *Aparna Ajinkya Firodia Vs. Ajinkya Aurn Firodia*, reported in (2024) 7 SCC 773;

(ii) *Sukhdev Singh and others Vs. Jaswinder Kaur*, reported in CR. No.432 of 2019.



(iii) *Ashok Kumar Vs. Raj Gupta and others*, reported in (2022) 1

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5. Per contra, Mr.B.Jawahar, the learned counsel for the first respondent would submit that no right of privacy was involved in the present case, as it is only a suit for partition, where the respondents were claiming to be the children born to late Arimuthu, through another wife, Alamelu, whereas, the revision petitioners are daughter and son respectively of the said Arimuthu through his first wife. He would further submit that the Trial Court had rightly allowed the Application holding that it would be the proper course of action in the interest of justice. He would therefore pray for the revision being dismissed.

6. I have paid my anxious and careful consideration of the submissions advanced by the learned counsel on either side.

7. The suit admittedly is one for partition. According to the respondents, late Arimuthu, married one Alamelu and they were blessed with the revision petitioners, daughter and son. The revision petitioners as defendants, denied the allegation that the respondents were born to



Arimuthu and that Arimuthu never married Alamelu as contended by the respondents. The Application has been filed under Order 26 Rule 10A Code of Civil Procedure, 1908 seeking for an appointment of a commission for scientific investigation. It is also seen from the records that in I.A.No.551 of 2013 had been taken out by the respondents herein when Arimuthu, the first defendant was alive. The Trial Court dismissed the Application on the ground that the Application was filed belatedly.

8. In fact, challenging the dismissal of the said Application, CRP.No.583 of 2018 was filed before this Court and this Court disposed of the revision petition taking note of the fact that since the father Arimuthu Gounder had died in the interregnum period, it would be open to the petitioners therein, that is the respondents herein, to seek DNA test with the respondents 2 to 3 before the Trial Court and further directed the Trial Court to dispose of any such Application on merits, without being influenced by any observations made by this Court in CRP. No.583 of 2018 or in the order passed by the Trial Court in I.A. No.551 of 2013, which was the subject matter of the earlier revision. Subsequently, the present I.A. No.565 of 2021 came to be filed. The present Application though opposed by the revision petitioners came to be allowed by the



Trial Court, the reasoning of the Trial Court in allowing the Application being that, it would be in the interest of justice.

9. In *Ashok Kumar's* case (referred herein supra), the Hon'ble Supreme Court has not laid down any general Rule that the Court is not empowered to order a DNA Test and merely held that it should not be entertained in a routine manner or as a matter of course. In *Aparna Ajinkya Firodia's* case (referred herein supra), the Hon'ble Supreme Court held that a DNA Test of a minor child is not be ordered routinely in matrimonial disputes and proof by way of a DNA profiling in matrimonial disputes involving allegations of infidelity ought to be entertained only where there is no other mode of proving such assertions. and further held that the Court would not be justified in mechanically directing a DNA Test of a child in a case where paternity of the child is directly not in issue but is merely collateral to the proceedings. While ordering DNA Tests to prove adultery, the Court should be mindful of the consequences thereof on the children born out of adultery, including inheritance related consequences, social stigma, etc.,. The fulcrum of the issue before the Hon'ble Supreme Court in the aforesaid case was regarding DNA of minor child/children, especially in matrimonial



disputes. Even in the said decision, the Hon'ble Supreme Court has not ruled out the power of the Court to order a DNA Test.

10. In the present case, the DNA Test is only to ascertain whether the plaintiffs are born to Arimuthu and thereby whether they are entitled to a share in the properties, by way of partition. With the advancement of the technology, it is now possible for getting such a finding by sibling DNA Test. In *Narayan Dutt Tiwari Vs. Rohit Shekhar and another*, reported in (2012) 12 SCC 554, the Hon'ble Supreme Court discussing the issue whether a person can be physically compelled to give a blood sample for DNA profiling in compliance with the Civil Court order held that DNA testing can be issued if the test of eminent need is satisfied and not to be allowed for the mere asking. The Hon'ble Supreme Court further held that adverse inference from non compliance cannot be a substitute for enforceability of a direction for DNA Testing and the valuable right to prove paternity through DNA testing cannot be taken away by asking the person concerned to be satisfied with the comparatively weak 'adverse inference'.

11. Considering the ratio laid down by the Hon'ble Supreme Court



in the above cases and also in view of the liberty granted by this Court in CRP. No.583 of 2018, I do not find any infirmity in the order passed by the Trial Court. First and foremost, the DNA Test ordered is only of siblings who are not minors. Therefore, the reliance placed on the decision of the Hon'ble Supreme Court in *Aparna Ajinkya Firodia's* case (referred herein supra), does not apply to the facts of the present case. In fact, even in the said decision as already discussed, the Court's power to order DNA Test has not been totally shut out. Moreover, in the present case, unless the petitioners are able to establish through the sibling DNA Test that they are also children of late Arimuthu, they would not be in a position to successfully claim their legitimate share in the suit for partition. This way, they also pass the 'eminent test' as stipulated by the Hon'ble Supreme Court in *Narayan Dutt Tiwari's case* (referred herein supra)

12. In fact, even when Arimuthu was alive an attempt was made through a DNA Test to establish that the respondents were born only to Arimuthu and therefore, I do not see even delay or laches coming in the way of the respondents in taking out the Application which is impugned in the present proceedings, moreso, when this Court has given liberty to



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the respondents to take out such Application, which has been rightly exercised by the respondents. For all the above reasons, I do not find any infirmity in the order of the Trial Court warranting interference.

13. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

15.11.2024

Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1. The District Munsif, Thiruvannamalai District

2. The Section Officer, VR Section,
Madras High Court, Chennai.



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P.B.BALAJI, J.

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**Pre-Delivery Order in
CRP. PD. No.646 of 2023
and CMP. No.5083 of 2023**

15.11.2024