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C.R.P.No.3876 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3876 of 2024
and C.M.P.No.21372 of 2024

Lyloon

.. Petitioner

Versus

- 1.Sasireka
- 2.Sabarishkumar
- 3.V.S.Sudhan
- 4.Kathija
- 5.Rahmath Bi
- 6.Shahiroon
- 7.Hiralal
- 8.Gowherlal
- 9.Biji @ Fazasulula
- 10.Kevarchand
- 11.Sayeed Sauhad
- 12.Rajadurai
- 13.Kandhasamy
- 14.Susilkumar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 04.04.2024 made in I.A.No.1 of 2022 in O.S.No.12 of 2021 on the file of the III Additional District and Sessions Judges' Court, Virudhachalam

For Petitioner : Mr.T.Sivagnanasambandan



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ORDER

The case of the plaintiff is that she was born from the wedlock between one Abdul Majid @ Mothilal and one Fathima Bi @ Vijayalakshmi. On the basis of this claim, she presented a suit for partition and separate possession.

2. The defendants 7 to 9 entered appearance and filed a written statement stating that the plaintiff was born to Kathija and Rahmath Bi @ Kabaarsheriff. Since the plaintiff has asserted that she is an offspring of Mothilal and Fathima Bi, the defendants 7 to 9 took out an application under Order XXVI Rule 9 of the Code of Civil Procedure to send the samples for DNA examination.

3. The learned Trial Judge, after receipt of a counter from the civil revision petitioner, allowed the application seeking for a direction to the parties to undergo DNA test. Aggrieved by the same, the plaintiff is on revision



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4. I have heard Mr.T.Sivagnanasambandan for the civil revision petitioner.

5. Mr.T.Sivagnansambandan submits that a perusal of the plaint documents, namely document Nos.4 to 7 shows that the plaintiff is the daughter of Mothilal @ Abdul Majid. When these documents clinchingly proved the same, automatically Section 112 of the Indian Evidence Act applies. Therefore, the Court necessarily has come to a conclusion that the plaintiff is the daughter of Abdul Majid @ Mothilal and Vijayalakshmi @ Fathima Bi. He states that in the light of Section 112 of the Indian Evidence Act, the court below ought not to have allowed the application. He relies on the Judgment of the Supreme Court in *Yamanamma v. Basappa, Civil Appeal No.9811 of 2024* dated 27.08.2024 to press his point.

6. I have carefully considered the submission of Mr.Sivagnanasambandan

7. It is a clear and categorical case of the defendants that the plaintiff is the daughter of Rahmath Bi and Kabarsheeriff. They do not accept that the



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petitioner was born to Mothilal @ Abdul Majid and Vijayalakshmi @
Fathima Bi.

8. The scope of Section 112 is that if a child is born during the continuance of a valid marriage between the mother and any other man, or within 280 days from the date of dissolution of the marriage and the mother has not remarried, the offspring shall be treated as a legitimate child of the person with whom, the mother was in relationship. This provision has exception where a party can prove that there was no access between the man and a wife for the purpose of proving the paternity of the child so born from the relationship. This section was incorporated in 1872. Scientific developments have taken place, which has to be taken note of by the courts.

9. A DNA test, the Supreme Court has held, proves the claim of paternity or maternity when is in dispute. The principle developed in ***Gautam Kundu v. State of West Bengal and another, 1993 AIR 2295*** has been clarified by the Supreme Court in ***Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365***. Therefore, it can no more be argued that DNA does not point out conclusively as regard the relationship between the parties.



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10. With respect to the judgment relied in *Yamanamma's* case by Mr.T.Sivagnansambandan, I have to point out that it was argued before the Supreme Court that no body can be forced to undergo DNA test. The said submission was rejected by the supreme court. Hon'ble Mr.Justice M.M.Sundresh, speaking for the bench, held that the DNA test is meant to facilitate the court to come to its conclusion with respect to paternity. It further held that it is for the court to make a decision as DNA test would, at best, constitute a piece of evidence for the purpose of appreciation.

11. Therefore, it makes it clear that if a DNA test is conducted and a report is submitted, it would only be treated as an expert evidence in terms of Section 45 of the Indian Evidence Act. It does not bar Mr.T.Sivagnanasambandan's client to afford evidence in terms of Section 112 of the Indian Evidence Act. It is for the trial court to decide as to whether it is preferring the evidence that comes by way of DNA test or the evidence that would be given by Sivagnanasambandan's client to prove she is the daughter of Abdul Majid and Fathima Bi at the time of disposal of the case.



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12. Suffice it to say, when the trial court has taken a view that the report of the DNA test will enable it to come to a conclusion in the suit, it need not be interferred with in a revision, in the light of the view expressed by the Supreme Court in ***Dipanwita Roy's case***

13. In the light of the above discussion, I do not find any merit in the revision. Accordingly, this civil revision petition is dismissed. It is left open to the plaintiff to prove, by way of whatever evidence is available, that she was in fact born to Abdul Majid @ Mothilal and Fathima Bi @ Vijayalakshmi. No costs. Consequently, the connected miscellaneous petition is closed.

29.10.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The III Additional District and Sessions Judges' Court, Virudhachalam



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V.LAKSHMINARAYANAN, J.

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