



C.R.P.No.4177 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.4177 of 2024

and

C.M.P.No.23160 of 2024

Karuppan @ Karuppusamy

..... Petitioner

-Versus-

K.Selvaraj

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 18.06.2024 passed by the learned District Munsif, Avinashi, in I.A.No.422 of 2020 in O.S.No.170 of 2019

For Petitioner : Mr.L.Mouli



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ORDER

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This civil revision arises against an order dated 18.06.2024 passed by the learned District Munsif, Avinashi, in I.A.No.422 of 2020 in O.S.No.170 of 2019.

2. The 1st defendant is the civil revision petitioner. O.S.No.170 of 2019 is a suit for partition and separate possession presented by the 1st respondent.

3. For the sake of convenience, the parties in this order will be referred to as per their rank in the suit.

4. The case of the plaintiff is that the 1st defendant married his mother-Pazhanal and from the wedlock he was born. As he was not give a share, he came forth with the suit. The 1st defendant filed his written statement *inter alia* contending that he has absolutely no connection with Pazhanal. He had pleaded that he married one Nanjammal and from the wedlock between Nanjammal and himself, he begot five daughters and one son. On the basis of this pleading, issues were framed and the parties were referred to trial.



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5. At that stage, the plaintiff took out an application under Section 45 of the Indian Evidence Act, 1872, seeking for DNA test of himself and the 1st defendant in order to substantiate his plea. The 1st defendant resisted the said application. The learned District Munsif proceeded to allow the application and directed the 1st defendant to present himself for DNA Test. Aggrieved by the said order, the present revision.

6. Mr.L.Mouli submits that the 1st defendant has no connection with the plaintiff or his mother. He further states that unless and until the plaintiff tenders some evidence in order to prove that there was relationship between the 1st defendant and Pazhanal, he is not entitled to maintain the said application.

7. I have carefully considered the submissions of Mr.L.Mouli and also gone through the records.

8. The issue presented before is not *res-integra*. The Supreme Court had considered the position of law on two occasions one in **Goutam Kundu v. West Bengal** [(1993) 3 SCC 418] and in **Dipanwita Roy v. Ronobroto Roy** [(2015) 1 SCC 365].



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9. The Supreme Court, taking into consideration the scientific improvements, that have happened after the Indian Evidence Act has come into force in 1872, felt where there is a dispute as regards relationship between the parties, DNA test should be ordered in order to enable the court to decide the issue.

10. A perusal of the impugned order shows that the learned Judge has referred to the said judgement and has come to the conclusion that the application deserves to be allowed.

11. Here is a case where the 1st defendant pleads that he has no relationship with the plaintiff's mother. It is a case where he accepts that the plaintiff was born to him but in a relationship not covered under the umbrella of marriage. If it was the latter case, then, the plaintiff will have to prove the marriage and thereafter, proceed to seek for DNA Test.

12. Per contra, it is the clear and categorical case of the 1st defendant that he had no relationship with the plaintiff. As held in **Dipanwita Roy v. Ronobroto Roy [(2015) 1 SCC 365]**, this issue can be easily resolved if the parties submit themselves for DNA Test.



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13. As the learned District Munsif has applied the correct principle of law to the facts presented before me, I do not find any reason to interfere with the order of the learned District Munsif, Avinashi, in I.A.No.422 of 2020 in O.S.No.170 of 2019 dated 18.06.2024 and the revision petition is liable to be dismissed.

In the result, the civil revision petition stands dismissed. No costs.
Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The District Munsif, Avinashi, Tiruppur District.



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V.LAKSHMINARAYANAN.J.,

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