

2024:PHHC:005199

**131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2704-2023 (O&M)

Date of decision: 16.01.2024

Yogesh

....Appellant

Versus

Tejbir

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Surinder Gaur, Advocate for the appellant

Mr. Rajesh Lamba, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the correctness of the concurrent findings of fact, arrived at by the courts below, is challenged by the plaintiff. He has also filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for permission to produce certificates issued on 21.01.2016 and 24.02.2021, by Middle School, Jindran (Rohtak). The dispute in the present case is with respect to the property in the hands of respondent-Sh.Tejbir s/o Sh.Balbir. The plaintiff claims to be his son. It is the case of the plaintiff that he is entitled to 50% share in 1/30th share in the land measuring 433 kanals 1 marla. The defendant, while contesting the suit, asserted that he was previously married to Smt. Sushila in the year 1989 and a son was born out of their wedlock but he went missing and despite best efforts could not be traced after 2004. The marriage between the defendant and Smt.

Sushila was dissolved by a decree of divorce in 2001 and thereafter, he as well as Smt. Sushila got re-married. The defendant, thereafter, filed an application offering to undergo DNA profiling in order to match his DNA with that of the plaintiff. The aforesaid application was allowed by the court on 12.01.2016, and it was directed that the DNA profiling shall be conducted by the Forensic Science Laboratory, Madhuban, failing which an adverse inference shall be drawn against the plaintiff. The appellant (the plaintiff) did not come forward to give his blood sample. Thereafter, another application was moved by the respondent for giving direction to the Chief Medical Officer, Sonapat authorising any doctor to take the blood sample of the appellant. The aforesaid application was also allowed and another direction was issued to the appellant to give his blood sample. However, on the scheduled date the appellant did not appear in compliance with the court order. Despite giving numerous opportunities to the appellant, he did not come forward and give his blood sample. He ignored the directions of the court time and over again. Ultimately, the trial court drew adverse inference against him in terms of illustration of Section 114 of the Indian Evidence Act, 1872 and dismissed his suit. Before the First Appellate Court, the appellant filed an application under Order XLI Rule 27 of the CPC, but the same was dismissed keeping in view his conduct. The appeal filed by the appellant was also dismissed.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the appellant submits that though the appellant had at one point in time failed to honour the directions of the court, however, he has a right to know his parentage. He submits that the appellant is now prepared to undergo the DNA profiling test.

4. On the other hand, the learned counsel representing the respondent submits that the appellant has been given more than sufficient opportunities in this regard. He submits that the court issued the directions twice, while specifically stipulating that if the appellant does not come forward to give his blood sample, an adverse inference would be drawn against him and therefore, this court should not interfere.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. While filing the suit, the plaintiff (appellant herein) claimed that he is the defendant's son. He came to the court with a positive assertion that he was born from the lions of the defendant. The defendant immediately came forward and offered the DNA profiling which was permitted in the year 2016, while specifically stipulating that if the plaintiff failed to come forward to give his

blood sample, an adverse inference may be drawn against him. Thereafter, yet another application was filed by the defendant, which was also allowed but the appellant failed to honour the direction of the court. In these circumstances, the appellant cannot be permitted to play hide and seek with the court.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.
8. Hence, dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

16.01.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No