



C.R.P.No.3826 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.3826 of 2023

and

C.M.P.No.23685 of 2023

M.Sekar

... Petitioner

Vs.

1.Sindhamani

Kandhayammal (died)

2.R.Durai

3.K.Baby @ Kalaivani

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution

of India against the order dated 27.06.2023 in I.A.No.3 of 2023 in

O.S.No.129 of 2017 on the file of the III Additional District Court, Salem.

For Petitioner : Mr.L.Mouli

For R1 : Mr.K.A.Mariappan

For R2 and R3 : No appearance

ORDER



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Challenging the order of the III Additional District and Sessions Judge, Salem, dated 27.06.2023, in I.A.No.3 of 2023 in O.S.No.129 of 2017, directing the revision petitioner/2nd defendant to undergo DNA Test along with the 1st respondent/plaintiff, the present revision is filed by the 2nd defendant.

2.The suit has been originally filed by the 1st respondent claiming partition and allotment of 5/16 share in her favour. The case of the plaintiff is that she is the daughter of one Muthu Gounder and the 1st defendant is her mother and the 2nd defendant/revision petitioner is her brother. The said Muthu Gounder died intestate on 12.11.2014. Therefore, she has filed the suit for partition. The 2nd defendant/revision petitioner took a stand in the written statement filed in the suit that the plaintiff was an orphan and she was brought up by his father. According to the 2nd defendant, the plaintiff is only a fostered daughter of his father and she is not born to his father Muthu Gounder. Since there was a dispute with regard to the paternity of the plaintiff, the plaintiff/1st respondent has earlier filed an application to direct her and the 2nd defendant/revision petitioner to undergo DNA Test. That



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application was dismissed by the trial Court. Thereafter, during cross-examination of the parties, the 2nd defendant himself has admitted to undergo DNA Test to establish his contention. Therefore, the plaintiff has taken out the present application to direct her and the 2nd defendant/revision petitioner to undergo DNA Test. The trial Court, considering the admission of the 2nd defendant/revision petitioner, allowed the application by observing that no stigma would be cast on the 2nd defendant even if it is found that the plaintiff is not born to the father Muthu Gounder, rather a stigma would be cast only upon the plaintiff. Therefore, as the plaintiff herself is willing to undergo DNA Profiling Test, the trial Court allowed the application. Challenging the same, the present revision has been filed by the 2nd defendant.

3.Heard the learned counsel on either side and perused the entire materials available on record.

4.The very contention of the plaintiff is that she is born to Muthu



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Gounder, whereas, the same has been disputed by the 2nd defendant.

Normally, a person cannot be compelled to undergo DNA Profiling Test, but in the given case, the fact remains that the 2nd defendant himself has admitted in cross-examination that he is prepared to undergo DNA Profiling Test. In such view of the matter, it cannot be said that there is a compulsion against his will. Therefore, I do not find any merit in this revision. It is for the petitioner to undergo DNA Test or refrain himself from undergoing the Test. If he refrains himself from undergoing the DNA Test, the same will invite adverse inference as against him. The conduct of the petitioner/2nd defendant may also be taken note of by the trial Court, if the petitioner/2nd defendant refrains himself from undergoing the DNA Profiling Test.

5. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.06.2025

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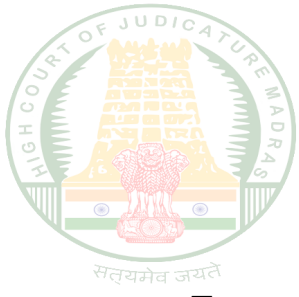
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Neutral Citation : Yes / No

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To

The III Additional District Judge,
Salem.

N. SATHISH KUMAR, J.

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