



C.R.P.No.5597 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.5597 of 2025
and C.M.P.Nos.28079 and 28081 of 2025

Dhinakaran

... Petitioner

VS.

Dhinaselvan

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 03.11.2025 passed in I.A.No.1442 of 2023 in O.S.No.212 of 2021 on the file of the Additional District Munsif Court, Gingee.

For Petitioner : Mr.R.Venkatraman
for M/s.Tatva Legal Chennai
For Respondent :Mr.R.Sivanathan

ORDER

This Civil Revision Petition is filed challenging the order passed by the trial Court ordering DNA test.



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2. The plaintiff/respondent herein filed a suit seeking declaration that he is a son of petitioner/defendant and he was born on 31.10.1978 out of the wedlock between the defendant and Selvi Ammal @ Kalaiselvi.

3. It is the case of the respondent that the defendant married Selvi Ammal @ Kalaiselvi and out of said wedlock, the plaintiff/respondent was born on 31.10.1978 and the various documents filed along with the plaint would show that the plaintiff was born to the defendant.

4. The petitioner herein filed a written statement denying the factum of marriage and contested the suit. The trial in the suit has not been commenced and the suit was posted for framing of issues. At this stage, the application has been filed by the respondent seeking DNA test involving the respondent/plaintiff and the petitioner/defendant. The petitioner filed a counter affidavit on the ground that first of all, the marriage between the petitioner and the above said Selvi Ammal @ Kalaiselvi has to be proved by the respondent and if the said fact was proved, automatically the respondent is entitled to legal presumption and hence the application for DNA test is unnecessary.



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5. The trial Court based on the documents filed along with the plaint came to the conclusion that the respondent established the *prima facie* case and ordered DNA test. Aggrieved by the same, the defendant has come before this Court.

6. The learned counsel appearing for the petitioner by relying on the judgment of the Apex Court in ***Ivan Rathinam Vs. Milan Joseph*** reported in ***2025 SCC Online SC 175*** would submit that need for DNA test would arise only when the evidence available on record is insufficient to come to a conclusion with regard to the legitimacy and paternity.

7. In nutshell, he submitted that if the factum of marriage between the petitioner and above mentioned Selvi Ammal @ Kalaiselvi is proved by the respondent by leading evidence at the time of the trial, he is entitled to take benefit of the presumption under Section 112 of the Indian Evidence Act (Section 116 of Bharatiya Sakshya Adhiniyam Act) and therefore, the petition is a prematured one.



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8. The learned counsel appearing for the respondent would submit that DNA test will conclusively prove the dispute, with regard to the paternity and therefore, the respondent shall be given an opportunity to take advantage of the scientific advancement. Section 116 of Bharatiya Sakshya Adhiniyam, which is equivalent to Section 112 of Indian Evidence Act, reads as follows:

116. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

9. A perusal of the above said provision would make it clear that if the birth of the child took place during continuance of a valid marriage between the man and woman or within 280 days, after the dissolution of said marriage and the mother is unmarried, there shall be a conclusive presumption that the child born to them is a legitimate child.



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10. In the case on hand, the respondent/plaintiff seeks a declaration that he was a son born to the petitioner/defendant on 31.10.1978 out of the wedlock between the petitioner and Selviyammal @ Kalaiselvi. Therefore, it is incumbent on the respondent to prove the factum of marriage between the petitioner and above said Selviyammal @ Kalaiselvi. If the factum of marriage is proved, during the course of trial, the respondent is entitled to take benefit of presumption available under Section 116 of Bharatiya Sakshya Adhiniyam. On the other hand, if the factum of marriage is not proved satisfactorily, the respondent is entitled to seek DNA test to establish the paternity. In the case on hand, the recording of evidence has not yet commenced. At this prematured stage, the respondent is not entitled to maintain an application for DNA test.

11. Having regard to the nature of the prayer sought for in the suit, it is clear, the respondent seeks a declaration that he is legitimate son born to the petitioner/defendant out of wedlock. Therefore, the initial burden is on the respondent to prove the factum of marriage between the petitioner and the Selviyammal @ Kalaiselvi. If the same is not proved, automatically the respondent is entitled to seek DNA test. Therefore, the question of going



for DNA test will arise only after recording the evidence and there is no need for DNA test before recording evidence.

12. In this regard, I would like to rely on the judgment of the Apex Court in ***Ivan Rathinam Vs. Milan Joseph*** reported in ***2025 SCC Online SC 175***, which reads as follows:

“First and foremost, the Courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the Court consider ordering a DNA test. Once the insufficiency of evidence is established, the Court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests. “

13. Therefore, only in a case, where the evidence available on record is insufficient, the Court can order DNA test. In the case on hand, recording of evidence has not yet started. Therefore, the trial Court ought not have

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ordered DNA test at this stage. Hence, the impugned order is set aside and the Civil Revision Petition stands allowed. However, it is made clear that after recording the evidence, if the trial Court finds that the evidence available on record is insufficient to decide controversy as to paternity and DNA test will be helpful to decide the controversy, it is always open to the trial Court to consider ordering of DNA test.

14. With these clarifications, the Civil Revision Petition stands allowed. No costs. Consequently, the connected civil miscellaneous petitions are closed.

08.12.2025

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Additional District Munsif Court,

Gingee.

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