HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY ,THE FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

CIVIL REVISION PETITION NO: 3815 OF 2024

Petition under Article 227 of the Constitution of India, aggrieved by the orders dated 10/09/2024 passed in IA No. 60 of 2024 in OS No. 17 of 2017 on the file of the I Additional District And Sessions Judge Jogulamba Gadwal District, At Gadwal.

Between:

D. Srinivasa Reddy, S/o. Late Chinna Tirupathi Reddy, Age 80 Years, Occ NIL, R/o H. No. 1074, Undavelli Village, Manopadu Mandal, Jogulamba Gadwal District, Telangana State.

...PETITIONER

AND

1. Dumpala Radha, D/o. D. Srinivasa Reddy, Age 43 years, Occ Coolie, R/o H. No. 1-74, Undavelli Village, Manopad Mandal, Jogulamba Gadwal District, Telangana State.
2. Mala Sunitha @ Moola Sunitha, W/o. Mala Vijay Bhaskar @ Moola Vijay Bhaskar Age 53 Years, Occ Housewife, R/o Plot No. 502, B-Block, Girl Shakara Plaza Ramnagar, Hyderabad, Telangana State.

...RESPONDENTS

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 10/09/2024 passed in I.A.No.60 of 2024 in O.S.No.17 of 2017 on the file of Hon'ble I Addl. District and Sessions Judge, Jogulamba Gadwal District at Gadwal, pending disposal of above CRP and to pass

Counsel for the Petitioner: SRI B VENKATESHWAR REDDY

Counsel for the Respondents: SMT. POOJARI SRILEKHA

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

CIVIL REVISION PETITION NO.3815 OF 2024

ORDER:

This Civil Revision Petition is filed by the petitioner-defendant No.1 aggrieved by the order, dated 10.09.2024, in I.A.No.60 of 2024 in O.S.No.17 of 2017 passed by the learned I Additional District Judge, Jogulamba Gadwal District.

2. For the sake of convenience, the parties are hereinafter referred to, as they are arrayed in the suit.

3. The brief facts of the case are that the plaintiff filed a suit in O.S.No.17 of 2017 on the file of learned III Additional District Judge at Gadwal, Jogulamba Gadwal District seeking partition and separate possession of ½ share in the suit schedule property against defendant Nos.1 and 2. Originally, the suit schedule property belongs to grandfather of the plaintiff namely Late China Thirupathi Reddy, who died long back, leaving behind three sons and two daughters as his legal heirs. After his demise, the property was partitioned orally and in the said partition, the suit schedule property fell to the share of father of plaintiff. The plaintiff is only daughter to defendant No.1. Since, defendant No.1 addicted to bad habits and due to

the disputes between the plaintiff and defendant No.1, defendant No.1 without consent of the plaintiff, with an intention to fraud the plaintiff, sold the suit schedule property to defendant No.2 by misleading the facts. It is further stated that if the defendants are not restrained from selling the subject property, the plaintiff will be put to irreparable loss, injury and hardship. Therefore, the plaintiff filed a suit for partition and separate possession in respect of suit schedule property, entitling ½ share in suit schedule property by fixing the metes and that a Commissioner may be appointed for partition the suit schedule property into two equal shares and the plaintiff be delivered separate possession of ½ share in the suit schedule property and bounds etc.

4. It is stated that pending suit, the plaintiff filed I.A.No.60 of 2024 in O.S.No.17 of 2017 on the file of learned I Additional District and Sessions Judge, Jogulamba Gadwal District, under Section 45 of the Indian Evidence Act, 1872 (for short, 'the Act, 1872') seeking a direction to defendant No.1 and the plaintiff to give blood samples before the Lab at Telangana State Forensic Science Laboratories, Red Hills, Hyderabad, for scientific examination for conducting DNA Profile and the

sample can be collected from Lab and after test, the report shall produce before the trial Court. The learned I Additional District Judge, Jogulamba Gadwal Distict, through impugned order 10.09.2024 allowed the said application. Challenging the same, the present Civil Revision Petition is filed by the petitioner-defendant No.1.

5. Learned counsel for the petitioner-defendant No.1 submitted that the petitioner did not give consent for taking blood for conducting DNA test and forcefully the lab technicians collected the blood from him. The petitioner is aged about 80 years suffering from old age ailments. He also submitted that the petitioner is bedridden and not in a position to travel for about 600 kilometers from Kurnool to Hyderabad for giving blood samples. The petitioner also filed written statement in the suit on 05.03.2018 wherein he denied the relationship between himself and respondent No.1 and respondent No.1 failed to explain the delay in filing I.A.No.60 of 2024. He also submitted that respondent No.1 has suppressed the material facts that petitioner herein has got married to one Vimalamma and begotten two daughters and one son during their wedlock. The said fact is clear as seen from Ex.A.20-ration card. The

plaintiff herself in the cross-examination conducted on 03.02.2020 at paragraph No.2 in the 3rd line stated that 'I do not know the year and month of marriage of my parents.' It is stated that the petitioner and her mother are residing separately for the last five years. The plaintiff has admitted in her pleadings that she has not stated above statement, i.e., the place of her mother marriage and date of her marriage. The suit schedule properties along with other properties will be the self-acquired properties of late Thirupathi Reddy by virtue of Succession. As such, the petitioner being son of said Thirupathi Reddy, obtained the suit schedule properties by way of Succession and they cannot seek for partition, as the same are self-acquired properties of the petitioner and he further contended that the trial Court is likely to issue NBW against the petitioner, without even considering the fact that he is aged years 80 old and bedridden and hence, he prays to set aside the impugned order.

6. On the other hand, learned counsel for respondent No.1-plaintiff submitted that as petitioner denied the relationship of father and daughter since long back i.e., on 16.09.2022 she filed the aforesaid interlocutory application. He

further submitted that the petitioner has admitted certain aspects in his cross examination. He further submitted that all the disputes were among the petitioner, respondent No.1 and P.W.3, Chanderakala. There is another suit also filed before the learned Senior Civil Judge, Gadwal with an intention to harass respondent No.1. It is further stated that the petitioner approached this Court by filing the present C.R.P., and later came to Hyderabad for giving blood samples, which itself clearly shows that in order to avoid share to the plaintiff, the petitioner intentionally filed the present Civil Revision Petition by suppressing the material facts that too after I.A.No.172 of 2024 in I.A.No.60 of 2024, which has become infructuous. It is further stated that Ex.A.20-ration card is not a valid document to establish the relationship. She filed Exs.A.24 and A.25 to show the authenticity that she is daughter of the petitioner and P.W.3 is own sister of petitioner. PW.3 also deposed before the Court that the plaintiff is daughter of petitioner during the wedlock of first marriage. It is further submitted that the petitioner is having illicit intimacy with one Vimala and all the documents filed by the petitioner were created for the purpose

of this case and hence, she prays to dismiss the Civil Revision Petition.

7. Heard Sri B.Venkateshwar Reddy, learned counsel for the petitioner and Ms.Poojari Srilekha, learned appearing for respondent No.1.

8. As seen from the record, the petitioner-defendant No.1 could not give consent for blood samples for conducting DNA test and forcefully the lab technicians collected the same. The petitioner is aged about 80 years suffering from old age ailments, he is bedridden and not in a position to travel all around 600 kilometers from Kurnool to Hyderabad to give blood samples. Further, in the written statement filed in the suit on 05.03.2018 he denied the relationship between himself and respondent No.1, who also failed to explain the delay in filing I.A.No.60 of 2024. He also submitted that respondent No.1 has suppressed the material facts that petitioner herein got married one Vimalamma and during their wedlock they were blessed with two daughters and one son. The said fact clearly establishes from Ex.A.20-Ration card. The suit schedule properties along with other properties will be the self-acquired properties of late Thirupathi Reddy by virtue of Succession. As

such, the petitioner being son of said Thirupathi Reddy, obtained the suit schedule properties by way of Succession and they cannot sought for partition, as the same are self-acquired properties of the petitioner herein.

9. In support of contentions of learned counsel for the petitioner he also placed reliance on the judgment of this Court in the case of **Gajjela Veeraswamy v. Gajjela Nagaraju**[1] and also the judgment of the Hon'ble Supreme Court in the case of **Ashok Kumar v. Raj Gupta & others**[2]. In **Ashok Kumar's case**, the Hon'ble Supreme Court held that forcing the plaintiff therein against his will to undergo DNA test would impinge on his personal liberty and his right to privacy and accordingly set aside same. It is further stated that the plaintiff cannot compel defendant No.1 to undergo DNA test. On perusal of the Judgment of the Hon'ble Supreme Court which is pertaining to the year 2001 in respect of **Narayan Dutt Tiwari's case (supra)** and the subsequent judgment of the Hon'ble Supreme Court in **Ashok Kumar's case (supra)** at paragraph Nos.15, 16 and 17 it was held as under:

> "Having answered these questions, additional issue to be resolved is whether refusal to undergo DNA amounts to 'other

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[1] CRP No.2479 of 2019
[2] CDJ 2021 SC 745

evidence' or in other words, can an adverse inference be drawn in such situation. In Sharda v. Dharmpal 2003 (4) SCC 493 a three judges bench in the opinion written by Justice S.B.Sinha rightly observed in paragraph 79 that "if despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference" can be made out against the person within the ambit of Section 114 of the Evidence Act. The plaintiff here has adduced his documentary evidence and is disinclined to produce further evidence. He is conscious of the adverse consequences of his refusal but is standing firm in refusing to undergo the DNA test. His suit eventually will be decided on the nature and quality of the evidence adduced. The issue of drawing adverse inference may also arise based on the refusal. The Court is to weigh both side's evidence with all attendant circumstances and then reach a verdict in the Suit and this is not the kind of case where a DNA test of the plaintiff is without exception.

16. The respondent cannot compel the plaintiff to adduce further evidence in support of the defendants' case. In any case, it is the burden on a litigating party to prove his case adducing evidence in support of his plea and the court should not compel the party to prove his case in teh manner, suggested by the contesting party.

17. The appellant (plaintiff) as noted earlier, has brought on record the evidence in his support which in his assessment adequately establishes his case. His suit will succeed or fall with those evidence, subject of course to the evidence adduced by the other side. When the plaintiff is unwilling to subject himself to the DNA test, forcing him to undergo one would impinge on his personal liberty and his right to privacy. Seen from this perspective, the impugned judgment merits interference and is set aside. In consequence thereof, the order passed by the learned Trial Court on 28.11.2017 is restored. The suit is ordered to proceed accordingly."

10. Further, the judgment of this Court in **Gajjela Veeraswamy v. Gajjela Nagaraju**[3], wherein this Court relying on the Judgment of the Hon'ble Supreme Court in **Ashok Kumar's case (supra)** and paragraph No.15, it was held thus:

[3] 2022 0 Supreme (Telangana) 139

"In that view of the matter, I am of the considered opinion that the learned trial Court failed to notice the sensitivities involved in the issue of ordering DNA test. It appears that the order impugned is passed merely based on emotions than on reasons with an observation that when the paternity of plaintiff is denied, it raises serious objections with regard to his birth itself, which cannot be tolerated by any person and it may also cause great loss to his personal life. But in the facts and circumstances of the case, as discussed above, such direction to the first defendant to undergo DNA test against his consent, would impinge on his personal liberty and his right to privacy. Seen from this perspective, in view of the principles laid by the Hon'ble Supreme Court in Ashok Kumar's Case, the impugned order warrants interference by this Court and it is liable to be set aside."

11. Having considered the entire material placed on record, it clearly shows that respondent No.1 herein already examined herself as P.W.1 and also examined P.Ws.2 and 3 on her behalf. P.W.3 is said to be sister of defendant No.1. Respondent No.1 also examined P.Ws.4 and 5 in support of her case to prove that she is the daughter of the petitioner. On behalf of respondents DWs.1 to 3 were examined and even the evidence was concluded.

12. When an application is filed by respondent No.1-plaintiff seeking the relief under Section 45 of the Indian Evidence Act, 1872, for collection of blood samples of the petitioner herein for the purpose of conducting DNA profile test

in order to establish biological test, the petitioner herein resisted the same by way of filing counter *inter alia* contending that at belated stage, the petition is not maintainable, as the material relating to father and daughter relationship has already placed on record. He further contended that the petitioner was suffering from ill-health, fever and as weather is not cooperating for journey, the petitioner and their family members were shifted from Undavally to Kurnool on health grounds. As he is also crossed the age of 81 years and not well and frequently used to visit the Doctor for health check up for undergoing treatment at various private hospitals.

13. Besides that considering the fact that law is well settled that in the decisions cited above respondent No.1 has every liberty to prove and establish her case that she has a right over the property in question through other material evidence.

14. In view of the contentions of the petitioner that though he is denying about the paternity and disputing the same, the question which arises for consideration before this Court is whether the rights of the parties involved and to protect the paternity disputed or denied by defendant No.1

whether the respondent No.1 is entitled to undergo DNA against his wish.

15. The respondent/plaintiff relied upon the judgment of the Hon'ble Supreme Court in **Tiwari's case (supra)** and the trial Court relied upon the said and allowed the application. In the present case, as trial has already been commenced and evidence of petitioner and respondents has already been completed. Therefore, respondent No.1-plaintiff is at liberty to adduce further material evidence if required as per law and without consent of the petitioner-defendant No.1 he may not be subjected or forced to undergo for DNA Profile test to establish the paternity of defendant No.1.

16. Considering the above circumstances, I am of the opinion that the learned Judge ought to have considered the sensitivities involved in issue before ordering the DNA test. It is settled law and in view of the principles laid down in the judgment of the Hon'ble Supreme Court in **Ashok Kumar's case (supra)** the direction given to the petitioner-defendant No.1 to undergo DNA Profile test without his consent, would impinge on his personal liberty and his right to privacy. As

seen from any angle, the impugned order suffers from irregularities and therefore, it is liable to be set aside.

17. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 10.09.2024, in I.A.No.60 of 2024 in O.S.No.17 of 2017 passed by the I Additional District Judge, Jogulamba Gadwal. There shall be no order as to costs.

Miscellaneous petitions pending, if any, pending shall stand closed.

SD/-M.OSMAN ALI BAIG
ASSISTANT REGISTRAR

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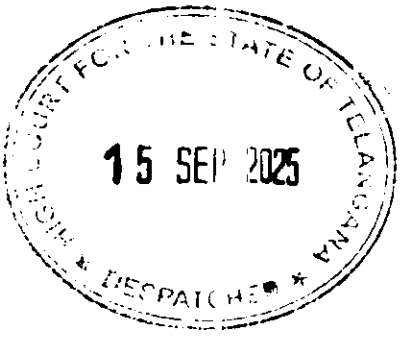
To,

1. The I Additional District And Sessions Judge Jogulamba Gadwal District, At Gadwal.
2. One CC to SRI. B VENKATESHWAR REDDY Advocate [OPUC]
3. One CC to SMT. POOJARI SRILEKHA Advocate [OPUC]
4. Two CD Copies

TPK/PSL

HIGH COURT

DATED:04/07/2025



ORDER

CRP.No.3815 of 2024

CIVIL REVISION PETITION IS ALLOWED

Grapted
1C
23/9/25