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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-432-2019 (O&M)
Reserved on : 08.08.2022
Date of decision : 17.08.2022

Sukhdev Singh and Others ....Petitioners

Versus

Jaswinder Kaur ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.S. Boparai, Advocate for the petitioners.

Mr. Amit Bansal, Advocate for
Mr. Hardip Singh, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 08.12.2018 (Annexure P-9) whereby the Trial Court has dismissed the application filed by the defendant-petitioners for issuing a direction to the plaintiff-respondent to supply her blood sample for getting her DNA test conducted and getting the same compared with the blood samples of the defendant-petitioners for ascertaining the parentage of the plaintiff-respondent.

The brief facts relevant to the present *lis*, as available from the paperbook and from the website of the District Court, are that the plaintiff-respondent filed a suit for declaration that she is owner to the extent of 1/4th share out of the land of Jeet Kaur w/o Sukhdev Singh and also for joint possession of the 1/4th share and for permanent injunction. The plaintiff-respondent averred that she was the daughter of Sukhdev Singh and Jeet

Kaur while Jeet Kaur had expired on 19.10.1983. The defendants in this suit were Sukhdev Singh and the defendant-petitioners (sons of Sukhdev Singh). In their written statement dated 08.11.2013, Sukhdev Singh and the defendant-petitioners inter-alia denied that the plaintiff-respondent was the daughter of Sukhdev Singh and Jeet Kaur.

On 12.03.2014 the Trial Court framed the following issues :

1. Whether plaintiff is entitled for declaration as prayed for.
2. Whether plaintiff is entitled for joint possession as prayed for ? OPP
3. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
4. Whether suit of plaintiff is not maintainable ? OPD
5. Whether plaintiff has no locus standi to file present suit ? OPD
6. Whether plaintiff is estopped from filing present suit due to her own act, conduct ? OPD
7. Whether plaintiff has not come to the court with clean hands ? OPD
8. Whether suit of plaintiff is time barred ? OPD
9. Whether plaintiff has concealed material facts from the court ? OPD
10. Relief.

The plaintiff-respondent led her evidence, which was then closed on 01.07.2016. On 29.07.2016 Sukhdev Singh and the defendant-petitioners (sons of Sukhdev Singh) moved an application for directing the

plaintiff-respondent to get her DNA test conducted. This application was contested by the plaintiff-respondent and vide order dated 23.11.2016 the Trial Court dismissed the said application. Sukhdev Singh and the defendant-petitioners (sons of Sukhdev Singh) filed CR-103-2017 in this Court against the order dated 23.11.2016. During the pendency of CR-103-2017 Sukhdev Singh died and on 27.07.2018 the said CR-103-2017 was dismissed as withdrawn and the following order was passed :

> *"1. At the very outset, learned counsel for the petitioner states that petitioner No.1-Sukhdev Singh has died during pendency of the present revision petition, therefore, this revision petition has become infructuous as DNA profile of petitioner No.1 was in issue.*
>
> *2. Learned counsel for the petitioner seeks withdrawal of the present petition with a liberty to the son of the petitioner namely Sukhwinder Singh to file similar application before the trial Court.*
>
> *3. Dismissed as withdrawn with the liberty aforesaid.*
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> *4. In the event of doing so, the same may be decided in accordance with law."*

On 17.08.2018 the defendant-petitioners filed two applications before the Trial Court - one for bringing on record the defendant-petitioners as LRs of Sukhdev Singh, and second for issuance of directions to the plaintiff-respondent to get her DNA test conducted by giving the necessary samples of blood and getting the same compared with the blood samples of the defendant-petitioners for ascertaining the parentage of the plaintiff-respondent. The plaintiff-respondent contested the application regarding her

DNA test and filed a reply. Vide impugned order dated 08.12.2018 the Trial Court dismissed the application. Hence, the present revision petition.

Learned counsel for the defendant-petitioners has contended that the Trial Court erred in dismissing their application for issuance of directions to the plaintiff-respondent to get her DNA test conducted. According to counsel, the defendant-petitioners were contesting the claim of the plaintiff-respondent that she was the daughter of Sukhdev Singh and Jeet Kaur and therefore her DNA test would clinch the matter in issue. He placed reliance on the decisions in **Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & Anr. [2014 (1) RCR (Civil) 760]**, **Sharda vs. Dharmpal [AIR 2003 SC 3450]**, **Goutam Kundu vs. State of West Bengal & Anr. [1993 (3) SCC 418]** and **Rohit Shekhar vs. Narayan Dutt Tiwari & Anr. [2012 (2) RCR (Civil) 1011]**. It was also contended that this Court while deciding CR-103-2017 had permitted the filing of the application for getting the DNA test of the plaintiff-respondent done and therefore the Trial Court erred in dismissing the application.

Per contra, learned counsel for the plaintiff-respondent submitted that there was no error in the impugned order passed by the Trial Court. It was submitted that it is settled law that the Courts cannot order blood test as a matter of course and such prayers cannot be granted to have a roving inquiry and that there must be a strong prima facie case and the Court must carefully examine as to what would be the consequence of ordering the blood test. According to counsel the DNA test of the plaintiff-respondent would also result in invasion of her right to privacy.

Heard.

The matter in issue in the suit pending before the Trial Court is

whether the plaintiff-respondent is the daughter of Sukhdev Singh and Jeet Kaur. While the plaintiff-respondent asserts that she is their daughter, the defendant-petitioners deny this allegation. The plaintiff-respondent has led her evidence in support of her case and stand that she is the daughter of Sukhdev Singh and Jeet Kaur. Similarly, the defendant-respondents have also led their evidence to dislodge the case set-up by the plaintiff-respondent. While passing the impugned order the Trial Court inter-alia held that *"Both the plaintiff and defendants No.2 & 3 are at same footings. Both of them are relying upon some documents to show their parentage from the loins of Sukhdev Singh and Jeet Kaur. Defendants can not with all certainty plead that they are only the sons of Sukhdev Singh, what if their mother would have had any illegal relations with any other person at the time of begetting them. Then certainly there will be no any match of their DNA with plaintiff or what if their mother at the time of conception of plaintiff was having relation with some other person. Even in that eventuality there will be no match between the DNA of plaintiff and defendants. So in order to avoid such situation this court is of the opinion that present application be declined".*

In a recent decision, where the facts were similar to the present case, the Supreme Court in **Ashok Kumar vs. Raj Gupta & Ors. [2022 (1) SCC 20]** inter-alia held that :

> *"7. The pleadings were exchanged quite early in Civil Suit No.53 of 2013, but only after closure of the plaintiff's evidence, the defendants filed application on 19-4-2017 for subjecting the plaintiff to a DNA test. The question therefore is, whether in a declaratory suit*

where ownership over coparcenary property is claimed, the plaintiff, against his wishes, can be subjected to the DNA test. The related question is whether the plaintiff without subjecting himself to a DNA test, is entitled to establish his right over the property in question, through other material evidence. The timing of the application is equally relevant. The plaintiff has already led evidence from his side to prove relationship between the parties and at this stage whether the High Court should have directed the plaintiff to undergo the DNA test. Another issue of concern is whether in the absence of consent, a party can be forced to provide sample for a DNA test.

8. This Court in Banarsi Dass v. Teeku Dutta [Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449] had declared that DNA test is not to be directed as a matter of routine but only in deserving cases. A petition was filed in that case for grant of succession certificate in respect of properties of the deceased. The plaintiff claimed to be the deceased's daughter and the only Class 1 legal heir, under the Hindu Succession Act, 1956. The deceased had died intestate, leaving behind 5 brothers. The Delhi High Court denied [Teeku Dutta v. State, 2004 SCC OnLine Del 31] one of the brother's applications for conducting the DNA test of the daughter to establish her paternity. Arijit Pasayat, J.

upheld the decision of the High Court in the following passage of the judgment : (SCC p. 454, para 10)

> *"10. In matters of this kind the court must have regard to Section 112 of the Evidence Act. This section is based on the well-known maxim pater est quem nuptiae demonstrant (he is the father whom the marriage indicates). The presumption of legitimacy is this, that a child born of a married woman is deemed to be legitimate, it throws on the person who is interested in making out the illegitimacy, the whole burden of proving it. The law presumes both that a marriage ceremony is valid, and that every person is legitimate. Marriage or filiation (parentage) may be presumed, the law in general presuming against vice and immorality."*

9. In Bhabani Prasad Jena v. Orissa State Commission for Women [Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633 : (2010) 3 SCC (Civ) 501 : (2010) 3 SCC (Cri) 1053] , R.M. Lodha, J., while reconciling two earlier decisions [Goutam Kundu v. State of W.B., (1993) 3 SCC 418 : 1993 SCC (Cri) 928]' [Sharda v. Dharmpal, (2003) 4 SCC 493] of this Court on the point, had rightfully prescribed that : (SCC p. 643, para 23)

> *"23. There is no conflict in the two decisions of this Court, namely, Goutam Kundu [Goutam Kundu v. State of W.B., (1993) 3 SCC 418 : 1993 SCC (Cri) 928] and Sharda [Sharda v. Dharmpal, (2003) 4 SCC 493]. In Goutam Kundu [Goutam Kundu v. State of W.B., (1993) 3 SCC 418 : 1993 SCC (Cri) 928] it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and the court must carefully examine as to what would be the consequence of ordering the blood test. In Sharda [Sharda v. Dharmpal, (2003) 4 SCC 493] while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course."*

The learned Judge while noting the sensitivities involved with the issue of ordering a DNA test, opined that the discretion of the court must be exercised after balancing the interests of the parties and whether a DNA test is

needed for a just decision in the matter and such a direction satisfies the test of "eminent need".

10. The above decision in Bhabani Prasad Jena [Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633 : (2010) 3 SCC (Civ) 501 : (2010) 3 SCC (Cri) 1053] was considered and approved in Dipanwita Roy v. Ronobroto Roy [Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365 : (2015) 1 SCC (Civ) 495 : (2015) 1 SCC (Cri) 683] , where the Court noticed from the facts that the husband alleged infidelity against his wife and questioned the fatherhood of the child born to his wife. In those circumstances, when the wife had denied the charge of infidelity, the Court opined that but for the DNA test, it would be impossible for the husband to establish the assertion made in the pleadings. In these facts, the decision [Ronobrto Roy v. Dipanwita Roy, 2012 SCC OnLine Cal 13135] of the High Court to order for DNA testing was approved by the Supreme Court. Even then, J.S. Khehar, J., writing for the Division Bench, considered it appropriate to record a caveat to the effect that the wife may refuse to comply with the High Court direction for the DNA test but in that case, presumption may be drawn against the party.

11. In circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests. This is

because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled."

In Ashok Kumar's case (*supra*) it was further held that :

"14. It was also the view of the Court that the normal rule of evidence is that the burden is on the party that asserts the positive. But in instances where that is challenged, the burden is shifted to the party, that pleads the negative. Keeping in mind the issue of burden of proof, it would be safe to conclude that in a case like the present, the court's decision should be rendered only after balancing the interests of the parties i.e. the quest for truth, and the social and cultural implications involved therein. The possibility of stigmatising a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy.

15. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered

considering the test of proportionality laid down in the unanimous decision of this Court in K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1], wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA test.

16. It cannot be overlooked that in the present case, the application to subject the plaintiff to a DNA test is in a declaratory suit and the plaintiff has already adduced evidence and is not interested to produce additional evidence (DNA), to prove his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial court dismissed the defendants' application and we feel that it was the correct order.

17. In the yet to be decided suit, the plaintiff has led evidence through sworn affidavits of the respondents, his school leaving certificates and his domicile certificate. Significantly, Respondent 1, who is one of

the 3 siblings (defendants) had declared in her affidavit that the plaintiff was raised as a son by her parents. Therefore, the nature of further evidence to be adduced by the plaintiff (by providing DNA sample), need not be ordered by the court at the instance of the other side. In such kind of litigation where the interest will have to be balanced and the test of eminent need is not satisfied our considered opinion is that the protection of the right to privacy of the plaintiff should get precedence.

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19. 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 the manner, suggested by the contesting party."

The law regarding a DNA test is well settled. In the present case the parties have led evidence in support of their respective stands taken in Court. The defendant-petitioners cannot compel the plaintiff-respondent to adduce evidence in support of the case set-up by the defendant-petitioners. It is the burden on a litigating party to prove his case by adducing evidence in support of his plea and the Court cannot compel a party to prove his case in the manner as suggested by the contesting party. A Court cannot order a DNA test as a matter of course and such a prayer cannot be granted so as to lead to a roving inquiry. The defendant-petitioners have failed to make out a strong prima facie case for ordering a DNA test of the plaintiff-respondent.

The ratio of the decision in Ashok Kumar's case (*supra*) is fully applicable to the present case. In Ashok Kumar's case (*supra*) the decisions cited by the defendant-petitioners in the cases of Sharda (*supra*) and Goutam (*supra*) have been considered and discussed. Further, while deciding CR-103-2017 this Court did not pass an order that any application for ordering the DNA test of the plaintiff-respondent was to be allowed by the Trial Court. Rather, it was ordered that *"In the event of doing so, the same may be decided in accordance with law"*. This is what the Trial Court has done, it has decided the application in accordance with law.

In view of the discussion above, this Court finds no illegality or error in the exercise of jurisdiction by the Trial Court while passing the impugned order. The present civil revision petition is without any merit and is dismissed. Pending applications, if any, also stand disposed off. Nothing mentioned in this order shall have any bearing while finally deciding the suit.

(ALKA SARIN)
JUDGE

17.08.2022
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NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO