
(2011) 03 AP CK 0114

In the Andhra Pradesh High Court

Case No : CRP No"s. 3482 and 4188 of 2009

Chalumuri Rohit Naidu

APPELLANT

Vs

Chalumuri Rama Rao

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Evidence Act, 1872 — Section 112

Citation : (2011) 5 ALD 588 : (2011) 8 RCR(Civil) 75

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : A. Rama Krishna, for the Appellant; T.V. Sri Devi, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—These two revision petitions arise out of two different applications being IA No. 122 of 2009 filed by the Petitioner and IA No. 197 of 2009 filed by the Respondent in OP No. 1207 of 2008 on the file of the Additional Family Court, Visakhapatnam. Both the said applications were disposed of under separate impugned orders, both dated 12.5.2009. Hence, these revision petitions are being disposed of by a common order.

2. Petitioner, minor through his mother, in both revision petitions is the Petitioner in OP No. 1207 of 2008 filed against the Respondent for maintenance. In the said OP, Petitioner filed an application being IA No. 122 of 2009 seeking interim maintenance at Rs. 5,000/- per month and for payment of Rs. 18,260/- immediately towards his school fees. The Respondent opposed the said application, inter alia, by contending that the Respondent and the mother of the Petitioner separated in their relationship, as husband and wife, 15 years ago and that there is no relationship between them from November 1993 onwards and when the Petitioner was born, his mother is said to have admitted her guilt. Since November 1993, as there is no subsisting relationship or access and the Respondent and mother of the Petitioner are living separately, the paternity of the Petitioner is seriously disputed by the Respondent. He has even claimed that

he is filing an appropriate application for conducting DNA test to determine the paternity of the Petitioner.

3. Accordingly, the Respondent filed IA No. 197 of 2009 in the said OP seeking to send him (Respondent) and the mother of the Petitioner and the Petitioner for conducting DNA Test for determination of the paternity of the Petitioner. The Petitioner opposed the said application by contending that the Respondent left the Petitioner and his mother ten months after the birth of the Petitioner and has neglected to maintain them and that the photographs of the cradle ceremony establish that the Petitioner is the son of the Respondent and there is no need for the Respondent to send the Petitioner and his mother for DNA Test to ascertain the relationship once again. After considering the rival contentions, the learned Judge, Family Court by order dated 12.5.2009 dismissed the Petitioner's application for interim maintenance and allowed the Respondent's application seeking to send the parties for DNA Test. Questioning the aforesaid orders, the Petitioner has filed these two revision petitions respectively.

4. Heard the learned Counsel appearing on either side.

5. Learned Counsel for the Respondent has placed reliance upon a specific averment of the Respondent that in the last 15 years, neither the Petitioner nor his mother made any claim for maintenance and that the mother of the Petitioner is working and both of them are residing in a house purchased by the Respondent. He, therefore, submits that there is no warrant for the order of maintenance when the paternity of the Petitioner is denied by the Respondent. He also supports the impugned order on the ground that as per the legal position now settled by a decision of this Court in *Buridi Vanajakshmi Vs. Buridi Venkata Satya Varaha Prasad Gangadhar Rao and Another*, the impugned order in CRP No. 4188 of 2009 sending the parties for DNA Test does not warrant interference.

6. Learned Counsel for the Petitioner, on the contrary, submits that only to escape the liability to pay maintenance, the Respondent is resorting to the petition for DNA Test in spite of the fact that the Petitioner has already submitted photographs and documents that the Petitioner was within the wedlock and he was named as per the choice of the Respondent. It is not open for the Respondent to deny maintenance, particularly, the educational expenses of the Petitioner and there is no justification for seeking DNA Test.

7. The counter-affidavit filed by the Respondent before the Court below opposing the application for maintenance specifically states that since November 1993 there is neither any relationship between the Respondent and the mother of the Petitioner nor there was any access among them. The Respondent alleged that, on birth of the Petitioner, the Respondent questioned the mother of the Petitioner whereupon she allegedly admitted the guilt and has since 15 years neither asked for maintenance nor for educational expenses, as she is already employed and has means to maintain herself and the Petitioner. The paternity of the Petitioner was, therefore, seriously disputed by the Respondent.

8. This Court in Buridi Vanajalakshmi's case (supra) has noticed the legal position in the light of several decisions of the Supreme Court upholding similar prayer. Applying the ratio to the present case, there is specific allegation by the Respondent that he had no access to the mother of the Petitioner from November 1993 onwards and relies upon the alleged admission of the mother of the Petitioner; the presumption of access between the Respondent and the mother of the Petitioner cannot be drawn. It was also held in Buridi Vanajalakshmi's case (supra) that the primary duty of the Court being to see that the truth is arrived at and the impugned order directing the Petitioner, his mother and the Respondent to undergo DNA Test cannot be faulted. In another later judgment of the Supreme Court in Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Women 2010 (6) SCJ 588, it was held as under:

13. In a matter where paternity of a child is in issue before the Court, the use of DNA is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the Court must be reluctant in use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the Court to reach the truth, the Court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in matter relating to paternity of a child should not be directed by the Courts as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption u/s 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test.

9. In the present case also keeping in view the specific allegation of the Respondent, as mentioned in his counter, I am unable to find any infirmity in the test so ordered by the Family Court, particularly, as the main issue in OP No. 1207 of 2008 has to be resolved by the Family Court necessarily on the basis of evidence and report of DNA Test would certainly be a piece of evidence necessary for adjudication of the issues involved

10. CRP No. 4188 of 2009 is accordingly dismissed.

11. So far as CRP No. 3482 of 2009 is concerned, the Court below has declined to grant interim maintenance on noticing that for the first time after 15 years, the said application is made and there is no averment in the affidavit of the Petitioner that he has no means to maintain himself. I do not find any error in the impugned order rejecting the prayer for interim maintenance as sought for

by the Petitioner.

12. CRP No. 3482 of 2009 is accordingly dismissed. No costs.