

(2000) 06 KAR CK 0019

In the Karnataka High Court

Case No : Civil Revision Petition No. 2011 of 1998

G.M. Sudarshan Reddy

APPELLANT

Vs

Master Abhinay

RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, 115, 151
Constitution of India, 1950 — Article 20 (3), 21
Evidence Act, 1872 — Section 112

Citation : (2000) 4 KCCR 2598

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : M. Ramachandra Reddy, for the Appellant; V. Anand, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—By this petition, the Defendant (revision Petitioner herein) has challenged the order dated 11.6.1998 passed by (M. Shobha), Additional Civil Judge (Jr. Dn.) Bangalore (R) District, Bangalore, in O.S. No. 1048 of 1989 on I.A. No. 19, whereby the trial Court has dismissed the application (I.A. No. 19) filed under Order 26, Rule 10 read with Section 151 of the Code of Civil Procedure, to appoint an expert Commissioner who is expert in scientific investigation of paternity of the Plaintiff (Respondent herein).

2. In the suit for partition, the Defendant had disputed the paternity of the Plaintiff and alleged that the Plaintiff is not his son and he is not the father of the Plaintiff though it was admitted that the child i.e., the Plaintiff was born during the lawful wedlock and the marriage of the Defendant-revision Petitioner with the mother of the Plaintiff. The plea was taken by the Defendant to the effect that there was no consummation of marriage with the Plaintiff's mother.

3. That the Defendant (Petitioner herein) moved the application (I.A. 19) with which in order to test the paternity, it is necessary that expert Commission be

appointed in the filed to determine the paternity of the Plaintiff on the basis of scientific investigation.

4. The trial Court observed that the first essential thing in testing the paternity is that the mother should be alive. But in this case the Plaintiff's mother died during the pendency of the suit. As such, in the absence of the mother test cannot be conducted and the test of this nature cannot be conducted and valid results could not be arrived even after spending huge amount on that test. The Court can appreciate the evidence led by both the parties in this case with regard to the paternity of the Plaintiff and hence the trial Court dismissed the application I.A. No. 19.

5. Feeling aggrieved of the said order of the Additional Civil Judge (Jr. Division), Bangalore Rural District, Bangalore, the Defendant has come up in revision before this Court u/s 115 of the Code of Civil Procedure.

6. I have heard Sri M. Ramachandra Reddy, and Sri. V. Anand, learned Counsel for the revision Petitioner and Respondent respectively.

7. The learned Counsel for the revision Petitioner contended that the order below rejecting the application is illegal and it had illegally refused to appoint the Commissioner. It has further been argued that in the absence the mother's paternity test can be made and Science and Technology advanced too much.

8. The learned Counsel appearing for the Respondent contended that the application itself was not maintainable. He contended that there is no sure of the results of the Scientific test. Apart from that Section 112 of (The Indian) Evidence Act, 1872 provides for almost conclusive proof of paternity if the child is born during the wedlock. It is the conclusive proof that he is the legitimate son 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. The learned Counsel for the Respondent submitted that in view of Sections 4 and 5 read with Section 112 of the Indian Evidence Act, 1872 other evidence is closed and the Court below could not allow the party to produce any other evidence such as medical test report or DNA test. The learned Counsel for the Respondent further contended that no person can be compelled against his wish to undergo such test. Therefore, the Court below did not commit any error of law or jurisdiction in dismissing the application and the Court below might have been dismissed the application on the ground that the Plaintiff's mother dead. The learned Counsel contended that compelling a person to undergo such test will counter to the provisions of Section 112 of (The Indian) Evidence Act, 1872, as well as to Article 21 of the Constitution of India.

9. The learned Counsel for the revision Petitioner, in this connection, tried to place reliance on the Single Judge decision of this Court in Gangadharappa Vs. Basavaraj, , wherein a view had been taken that calling a party to medical test is not hit by Article 20(3) of the Constitution.

10. I have applied my mind to the contentions advanced by the learned Counsel appearing for the parties.

11. In this case, the application of DNA test has been hotly contested on behalf of the minor Plaintiff and the Plaintiff is not agreeable to undergo such test. The revision petition, in my opinion, is devoid of merits in view of the law laid down by this Court in the case of Smt. Ningamma v. Chikkaiah AIR 2000 Kar 50. This Court has observed in the said report as under:

To compel a person to undergo or to submit himself or herself to medical examination or his or her blood test or the like without his consent or against his wish tantamounts to interference with his fundamental right of life or liberty particularly even where there is no provision either in the CPC or the Evidence Act, or any other law which may be said to authorise the Court to compel a person to undergo such a medical test as blood group test or the like against his wish, and to create doubt about the chastity of a woman or create doubt about the man's paternity will amount to nothing but interference with the right of personal liberty.

12. This Court has further laid down that inherent powers of this Court u/s 151 of the CPC can't be allowed to be exercised in such matters where the provisions of Evidence Act completely close and debar the party from leading any evidence with respect to the fact to which law says to be the conclusive proof of legitimacy and paternity of child. The allowing male to medical test or to blood group test to determine paternity to exclude inherent powers would run counter to the provision of Section 112 of Evidence Act and Article 21 of the Constitution of India. The Court's power u/s 151 of the CPC can't be exercised to allow violation of law u/s 112 read with Sections 4 and 5 of the Evidence Act. This view has however been laid down by the Division Bench of this Court in T.N. Eranaika v. Baghu and Ors. AIR 2000 Kar 408. The same view has also been expressed by their Lordships of the Supreme Court in the case of Smt. Dukhtar Jahan Vs. Mohammed Farooq, as well as in the case of Goutam Kundu Vs. State of West Bengal and another, . This Court also expressed similar opinion in Smt. Revamma v. Sri Shanthappa AIR 1972 Mys 157. In view of the decision of their Lordships of the Supreme Court referred to above, the decision of this Court in Smt. Ningamma v. Chikkaiah AIR 2000 Kar 50 and the decision of the Division Bench of this Court in T.N. Eranaika v. Raghu and Ors. ILR 2000 Kar 408, wherein the Division Bench of this Court also expressed the view as above and has over ruled the single Judge decision in the case of Gangadharappa Vs. Basavaraj, . I am of view that trial Court did not commit any error by rejecting I.A. 19. Thus, considered in my opinion the revision petition has got no merits as the Court below cannot held to have committed any error what-so-ever, nor any jurisdictional error. There being no jurisdictional error in the order of the trial Court, the civil revision petition is liable to be dismissed and is hereby dismissed with costs of Rs. 1100/- (Rupees Eleven Hundred only).