

(2007) 06 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 656 of 2006

Miss Renuka

APPELLANT

Vs

Sri Tammanna Battal and Others

RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10A
Constitution of India, 1950 — Article 21

Citation : AIR 2007 Kar 133 : (2007) ILR (Kar) 3029 : (2007) 6 KarLJ 239 :
(2007) 3 KCCR 2003

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : M.B. Naragund, for the Appellant; S.P. Shankar for SPS Assts. for R5, Sri Chandrashekar P. Patil, for R1 and R2 and Sri Srinidhi, for Lex Parle, for R3 and R4, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 02.12.2005 in O.S.No. 129/2003 passed by the Civil Judge (Senior Division), Ranebennur allowing I.A.No. 14 filed under Order 26 Rule 10(a) CPC appointing Dr. Syed Husain, Director, Center for DNA (Finger Printing diagnosis), ECU, Road, Nacharama, Hyderabad-500 076 as expert commissioner to conduct the DNA test by obtaining blood samples of plaintiff, defendant No. 4 and his wife Smt. Geetareddy.

2. Petitioner is the plaintiff. Respondents are the defendants before the Trial Court in O.S.No. 129/2003. The parties in this writ petition are referred to their status before the Trial Court.

3. Plaintiff filed O.S.No. 129/2003 against the defendants to declare that she is the daughter of late Sri. Ramakrishna and his wife Smt. Lalitha and for other reliefs. The defendants filed written statement denying the claim of plaintiff and

contended that plaintiff is the daughter of one Sri. Narayana and his wife Smt. Geeta Reddy. After completion of pleadings the Trial Court framed the issues and when the matter was set down for evidence, the first defendant filed I.A.No. 14 under Order 26 Rule 10(a) CPC for appointment of Court Commissioner for scientific investigation. The Trial Court after hearing both the parties, passed the impugned order allowing I.A. No. 14 and appointed a Court Commissioner for scientific investigation to obtain blood samples of plaintiff, defendant No. 4 and his wife Smt. Geetha Reddy and to conduct DNA test. Hence this writ petition.

4. Sri M.B. Naragund, learned Counsel for the petitioner contends that against the will of plaintiff, no needle can be pierced into her body to draw the blood sample and same amounts to violation of human rights. He further contends that under the impugned order it is directed to draw the blood sample of Smt. Geeta Reddy who is not a party to the proceedings and as such the same is bad in law. He contends that the document produced by the plaintiff prima-facie establishes that she is the daughter of late Sri. Ramakrishna and his wife Smt. Lalitha. In the absence of any ambiguity in the evidence, there is no need to appoint a court commissioner for scientific investigation. Reliance is placed on the following decisions:

- i) Smt. Kanti Devi and Another Vs. Poshu Ram,
- ii) ILR 2005 KAR 3271 Banarsi Dass v. Teeku Dutta (Mrs) and Anr.
- iii) H.M. Prakash @ Dali Vs. The State of Karnataka,

5. Per contra, Sri S.P. Shankar, learned Senior counsel for respondent No. 5 contends that the only controversy between the parties is, whether the plaintiff is the daughter of Sri. Ramakrishna Reddy and his wife Smt. Lalitha or Sri. Narayana and his wife Smt. Geetha Reddy. This controversy can be best adjudicated by subjecting the parties to DNA test. He supports the impugned order. Reliance is placed on the following decisions:

- i) Shri Banarsi Dass Vs. Mrs. Teeku Dutta and Another,
- ii) Kamalanantha and Others Vs. State of Tamil Nadu,
- iii) Surya Dev Rai Vs. Ram Chander Rai and Others,
- iv) H.M. Prakash @ Dali Vs. The State of Karnataka,
- v) Sharda Vs. Dharmpal,

6. Heard arguments on both the side and perused the entire writ papers.

7. It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity. In the instant case the evidence is not yet commenced and therefore the question of ambiguity in the evidence will not

arise at this stage. The trial Court without considering the settled position of law committed an error in passing the impugned order appointing a Court Commissioner. On this ground the impugned order is liable to be quashed.

8. Under the impugned order the trial Court directed DNA test by obtaining blood samples of plaintiff, defendant No. 4 and his wife, Smt. Geetha Reddy. Admittedly Smt. Geetha Reddy is not a party to the proceedings. There is no evidence on record to show that Smt. Geetha Reddy has voluntarily agreed to give her blood sample. Under the circumstances the Court cannot compel a person who is not a party to the proceedings to give blood samples. Further no adverse inference can be drawn against any of the parties to the suit in the event of Smt. Geetha Reddy refusing to give her blood samples. Therefore the impugned order is liable to be quashed on this ground also.

9. On both me side elaborate arguments are addressed on the question of DNA test and number of decisions are relied on. The Supreme Court in the case of Goutam Kundu Vs. State of West Bengal and another, held as under:

- i. That Courts in India cannot order blood test as a matter of course;
- ii. Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained;
- iii. There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act;
- iv. The Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman;
- v. No one can be compelled to give sample of blood for analysis.

10. Subsequently the Supreme Court in the case of Shri Banarsi Dass Vs. Mrs. Teeku Dutta and Another, affirmed the view taken in Goutam Kundu's case. The impugned order passed the trial Court is contrary to the dictum of the Supreme Court in the decisions referred to supra and therefore the same is liable to be quashed.

11. Sri. S.P. Shankar, learned Senior Counsel for fifth respondent placing reliance on the observations made by the Supreme Court in the case of Sharda Vs. Dharmpal, contends, that the Court is having power to issue appropriate directions to conduct DNA test. In Sharada's case the husband filed a divorce petition against the wife u/s 12(1)(b) and Section 13(1)(iii) of the Hindu Marriage Act, 1955, on the ground of unsound mind. In divorce proceedings the husband filed an application seeking direction for medical examination of the wife. The wife opposed the application on the ground that it violates her personal liberty guaranteed under Article 21 of the Constitution of India. Under those circumstances the Supreme Court held as under:

- i. A matrimonial court has the power to order a person to undergo medical test.

ii. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

iii. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.

Therefore, the facts in Sharada's case are entirely different from the facts in the case on hand. The law laid down by the Supreme Court in Sharada's case has no application to the facts in the instant case.

12. For the reasons stated above, the following;

ORDER

I. Writ petition is allowed.

II. The impugned order dated 02.12.2005 in O.S.No.129/2003 passed by the Civil Judge (Senior Division), Ranebennur, is hereby quashed.

III. Liberty is reserved to the respondents to file an appropriate application at appropriate stage for appropriate relief. If such an application is filed, the trial Court shall decide the same in accordance with law without being influenced by the observations made in the impugned order. Ordered accordingly.