
(1951) 01 MAD CK 0038

In the Madras High Court

Case No : Civil Revision Petition No. 1205 of 950

Polavarapu Venkataswarlu

APPELLANT

Vs

Polavarapu Subbayya

RESPONDENT

Date of Decision : 11-01-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1951 Mad 910 : (1952) ILR (Mad) 150 : (1951) 64 LW 468 : (1951) 1 MLJ 580

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : K. Krishnamurthy, for the Appellant; V. Subramaniam and M. Ramakrishna, for the Respondent

Final Decision : Allowed

Judgement

Raghava Rao, J.—The appln. out of which the civil revn. petn. arises is one u/s 151, Civil P. C. The controversy between the parties to the original suit in which the appln. was filed is as to the legitimacy of the pltf. which the deft. the alleged lather, is disputing. The suit is one for partition.

2. The deft. applied u/s 151, Civil P. C. for a direction from the Ct. to the pltf. & his mother, his next friend, to appear in person before the Ct. in order to enable a medical expert to take samples of their blood. The learned Judge below has ordered the appln. in these terms :

"After hearing both the parties, it appears to me that it is necessary that the pltf. should be first examined by the medical expert & he should give his opinion to the Ct. whether it is sale to take some blood from him. For appearance of expert, pltf., his mother & deft. 1 on 5-8-1950."

After this order the deft. served a notice on the pleader for the pltf. in these terms :

"You are required to please state whether your client is prepared to give blood of her sou, that is, the pltf., & her own, if the expert says that there is test to recognise the paternity of a disputed child & that there is no danger for the child if the blood is taken from the child. You are required by this Honourable Ct. to file a Memo also giving the above particulars."

In answer to this notice the pltf.'s pleader replied as follows:

"The H. C. has ordered stay of all proceedings in pursuance of the order of the Ct. directing the pltf. & his next friend to be in Ct. for examination. This question therefore cannot arise at this stage."

Mr. Krishnamurthi in revn. against the order of the Ct. on the deft.'s appln. aforesaid contends that there is no warrant in law for an appln. of this kind; also says that there is no provision of law which compels his clients to offer any blood of theirs for the kind of test sought to be taken out by the deft.

3. I am clear that in both these contentions the learned counsel is correct. Section 151, Civil P. C., has been introduced into the statute book to give effect to the inherent powers of Cts. as expounded by Woodroffe J. in *Hukumchand Baid v. Kamla Nand*, 83 Cal. 927 at p. 931 & 932. Such powers can only be exercised ex debito justitiae & not on the mere invocation of parties or on the mere volition of Cts. There is no procedure either in the Civil P. C. or in the Indian Evidence Act which provides for a test of the kind sought to be taken by the deft. in the present case. It is said by Mr. Ramakrishna for the resp. before me that in England this sort of test is resorted to by Cts. where the question of non-access in connection with an issue of legitimacy arises for consideration. My attention has been drawn by learned counsel to p. 69 of Taylor's Principles and Practice of Medical Jurisprudence, Vol. 2, where it is stated thus:

"In *Wilson v. Wilson*, *Lancet* 1942 1.570 evidence was given that the husband's group was OM, that the wife's was BM, & that the child's was ABN. The Ct. held that the husband was not the father of the child, & granted, a decree for nullity."

It is also pointed out by learned counsel that in the text books on Medical Jurisprudence & Toxicology by Rai Bahadur Jaisingh P. Modi (Edn. 8) at p. 94 reference is made to a case decided by a criminal Ct at Mercara in June 1941, in which the paternity and maternity of the child being under dispute, the Ct. resorted to the results of the blood grouping test.

4. That may be. But I am not in any event satisfied that if the parties are unwilling to offer their blood for a test of this kind this Ct. can be forced to do so. Mr. Krishnamurthi says that his clients are not prepared to offer their blood for such a test.

5. In these circumstances there was no power in the Ct. below to make the order it did. The order is accordingly set aside. The revn. petn. succeeds & the resp. will pay the costs of the petnr. here & in the Ct. below.