

(1954) 11 AP CK 0020

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1812 of 1953

Pulavarthi Sreeramamurthi

APPELLANT

Vs

Pulavarthi Lakshmikantham and Another

RESPONDENT

Date of Decision : 08-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1955 AP 207

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : B.V. Subramaniam and B.V. Krishnamurthi, for the Appellant; N.C.V. Ramanujachari, for the Respondent

Judgement

(1) This Civil Revision Petition is filed as against the order of the Subordinate Judge of Eluru, in I. A. No. 196 of 1953, in O. S. No. 53 of 1952 dismissing an application filed by the petitioner to direct the medical examination of respondent 1, as to whether she had become enceinte and given birth to a child at any time. The suit was filed by the plaintiff, respondent 1 for partition and recovery of a one-third share of the suit properties, on the ground, that her husband died divided from his brothers, the petitioner and respondent. 2 herein.

Alternatively, she prayed that, if the partition was found to be not true, she was entitled to a one-third share in the non-agricultural properties and for maintenance. It was contended by the petitioner that the plaintiff had, given birth to a child subsequent to her husband's death and being unchaste, she was not entitled to recover any maintenance. Issue 8 was raised in regard to the question of respondent 1's chastity.

(2) The present application was filed on 14.2.1953, to find out, by medical examination, whether respondent I gave birth to a child at any time. The court below followed the judgment of Raghava Rao J., in -- Polavarapu Venkataswarlu Vs. Polavarapu Subbayya, (1) (A), and held that the respondent could not be compelled to undergo medical examination. The learned Advocate for the

petitioner contended that under S. 14, Evidence Act, facts showing the existence of any state of body is a relevant fact and that he is entitled to lead evidence to show that the respondent was enceinte after her husband's death.

The respondent's advocate does not challenge that position that evidence may be let is to prove that fact. The only question is, whether there is any power in Court to compel an unwilling party to be medically examined. The petitioner's advocate has not drawn my attention to any specific provision in the CPC or in the Indian Evidence Act, for compelling the attendance of a party for medical examination. It is on that very ground that the learned Judge, Raghava Rao, held in *Polavarapu Venkataswarlu Vs. Polavarapu Subbayya*, (1) (A)", that such an application was not maintainable.

(3) Section 151, Civil P. C., was next sought to be relied on, as conferring power on the Court to pass such an order. The learned advocate for the respondent contended that such an examination would offend the provisions of Art. 21 of the Constitution which enacts that

"no person shall be deprived of his life or personal liberty except according to procedure established by law".

As pointed in -- *A.K. Gopalan Vs. The State of Madras*, (B).

"The right to the safety of one's life and limbs and to the enjoyment of personal liberty, in the sense of freedom from physical restraint and coercion of any sort are the inherent birth-right of a man. The essence of these rights consists in restraining others from interfering with them and hence they cannot be described in terms of "freedom" to do particular things An individual can be deprived of his life or personal liberty only by action of the State either under the provisions of any penal enactment or in the exercise of any other coercive process vested in it under law

There must be a substantive law, under which the State is empowered to deprive a man of his life and personal liberty and such law must be valid law which the Legislature is competent to enact within the limits of the powers assigned to it and which does not transgress any of the fundamental rights that the Constitution lays down."

(4) In the absence of any statutory provision compelling the medical examination of a party, and..... restricting the enjoyment of personal liberty on that person, it is not right to rely upon the generation or inherent power of the Court under S. 151 Civil P. C., to achieve that purpose. The examination of a party as a witness is however warranted by the provisions of the Code of Civil Procedure. Medical examination is in certain case specifically provided as under the terms of Indian Lunacy Act. I therefore follow the decision of Raghava Rao J., in -- "*Venkateswarlu v. Subbayya*", (A), and agree with the Court below that the respondent cannot be compelled to undergo medical examination.

(5) Moreover, it is impossible to ascertain after a lapse of four years as to

whether the respondent was enceinte and gave birth to a children Taylor in his treatise on Principles and Practice of Medicial Jurisprudence (Vol. II) discusses this question on pp. 64 to 68. At p. 64 he states :

"In some strong and vigorous women the body resumes its natural state within a few days and the traces of parturition may have become so ambiguous as to furnish no satisfactory evidence. In others proofs of delivery may be obtainable for a fort-night or three weeks afterwards. In most cases, however it is difficult to say after the lapse of eight or ten days that delivery has certainly taken place, the signs having partially disappeared".

The passage in Modi's "Medical Jurisprudence and Toxicology" and Lyon's "Medical Jurispurdence for India" are to the same effect. At p. 368 of Lyon's book the question "Has this woman ever been delivered of a Child" is answered by Dr. Meadows as follows :

"No certain answer can be given except in the case of recent delivery".

So, in my opinion even if such a medical examination is to be ordered, it will throw no light on the question. The learned advocate for the petitioner relied on para. 5 of the counter affidavit to show that respondent 1 had no objection undergo medical examination. I do not think that is a correct reading of para. 5. The respondent contended that the application was not maintainable and that the Court has no jurisdiction to direct her medical examination but that if be examined by an efficient lady doctor at the of the petitioner. There is, therefore, no substance in this contention of the petitioner.

(6) In the result, the Civil Revision Petition fails and is dismissed with costs.

(7) D. R. Repetition dismissed.