
(2008) 06 KL CK 0029
In the High Court Of Kerala
Case No : Writ Petition (C) No. 31369 of 2007

Sathya Raj

APPELLANT

Vs

Jayaprakash

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 20, 21, 227
Evidence Act, 1872 — Section 112, 114

Citation : (2008) 3 KLJ 630 : (2009) 1 RCR(Civil) 516

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : J. Om Prakash, for the Appellant; R. Azad Babu, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Whether the civil court can direct a party to undergo DNA test? This is the question to be settled in this writ petition. Petitioner is the plaintiff in O.S. 529 of 2004 on the file of Munsiff Court, Alappuzha and respondent, the defendant. Suit is filed for declaring that respondent is the father of the petitioner. Respondent denied that case. Petitioner filed I.A. 3449 of 2007 for a direction to the petitioner and respondent to undergo DNA test. Under Ext.P2 order, learned Munsiff dismissed the petition. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned Counsel appearing for petitioner and respondent were heard. Learned Counsel appearing for petitioner argued that learned Munsiff relied on the decision of the Apex Court in Goutam Kundu Vs. State of West Bengal and another, , without taking note of the subsequent Full Bench decision where the decision in Goutam's case was clarified. Learned Counsel, relying on the decision in Sharda Vs. Dharmpal, argued that it is not the law that in no circumstances blood test can be conducted and facts of the case in Goutam's case are entirely different and what was held by the Apex Court therein was only that courts

cannot order blood test as a matter of course and in view of Section 112 of the Evidence Act, non-access is to be established and it is different from a case where the son himself approaches the court for declaration of his paternity and this is not a case of making the child a bastard but declaring the actual person as the father and in such circumstances, learned Munsiff should have allowed the application.

3. Learned Counsel appearing for respondent, relying on the decision in Goutam's case argued that before ordering a DNA test, court must prima facie be satisfied that respondent is the father and in the absence of prima facie satisfaction, DNA test cannot be compelled. Learned Counsel also argued that respondent is not willing to undergo DNA test and in such circumstances, there is no reason to interfere with Ext.P2 order.

4. It is now settled that DNA test is a conclusive test to fix the paternity of a person. If respondent is not the father of the petitioner, I do not find why should he feel shy of undergoing the test. It is for his benefit to clear his name, if in fact, petitioner is falsely alleging that respondent is his father.

5. What was held by the Apex Court in Goutam's case (supra) was summarised in paragraph 26 as follows:

From the above discussion it emerges-

- 1) that courts in India cannot order blood test as a matter of course;
- 2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
- 3) 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.
- 4) 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.
- 5) No one can be compelled to give sample of blood for analysis.

6. As is clear from the facts of that case, it is a case where blood test was sought to be undergone to prove that the legally wedded husband is not the father of the child. In view of Section 112 of Evidence Act, what is to be established is non-access and no other evidence is prohibited. It is in such circumstances, Apex Court held that blood test cannot be allowed as a matter of course. That decision has been clarified by the later Full Bench decision in Sarda's case (supra). The later Full Bench held:

Yet again the primary duty of a court is to see that truth is arrived at. A party to a civil litigation, it is axiomatic, is not entitled to constitutional protections under Article 20 of the Constitution of India) Thus, the civil court although may not have any specific provisions in the CPC and the Evidence Act, has an inherent

power in terms of Section 151 of the CPC to pass all orders for doing complete justice to the parties to the suit".

Discretionary power u/s 151 of the Code of Civil Procedure, it is trite, can be exercised also on an application filed by the party.

In certain cases, medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms.

Their Lordships then held:

Goutam Kundu is, therefore, not an authority for the proposition that under no circumstances the court can direct that blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regard mechanical passing of such order. In some other jurisdictions, it has been held that such directions should ordinarily be made if it is in the interest of the child.

7. The Full Bench has declared that the court must be held to have the requisite power even u/s 151 of Code of Civil Procedure, to issue such a direction, either suo moto or otherwise which according to him, would lead to the truth. It was also held that subjecting a person to a medical test in a civil case is not in violation of Article 21 of Constitution of India. In the light of the law as declared in Sarda's case, on the facts to resolve the question whether respondent is the father of petitioner correctly, it is necessary to have a DNA test, as sought for by the petitioner. Then the question is what is the result if respondent refuses to undergo the test as directed. The Full Bench answered this aspect in paragraph 79 as follows:

If despite an order passed by the court, a person refuses to submit himself to such medical examination, a strong case for drawing an adverse inference would be made out. Section 114 of the Indian Evidence Act also enables a court to draw an adverse inference if the party does not produce the relevant evidence in his power and possession.

In such circumstances, it is to be found that civil court has implicit power to direct the parties to undergo DNA test if it finds that it will lead to the truth of the matter to be resolved in the suit.

8. In the result, writ petition is allowed. Ext.P2 order is set aside. I.A. 3449 of 2007 stands allowed.