
(2014) 07 MAD CK 0161

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1787/2014 and MP. No. 1/2014

V. Vijayagopalan

APPELLANT

Vs

M.V. Devi

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Evidence Act, 1872 — Section 45, 67
Family Courts Act, 1984 — Section 7

Citation : (2014) 07 MAD CK 0161

Hon'ble Judges : S. Vaidyanathan, J; S. Rajendran, J

Bench : Division Bench

Judgement

S. Rajeswaran, J.—The above appeal has been filed by the appellant/first defendant in the suit in OS.No.133/2011, as against the order passed by the learned I Additional Judge, Family Court, Chennai, dated 10.04.2014 in IA.No.968/2012 in OS.No.133/2011.

2. The case of the appellant is that he was the first defendant in the suit in OS.No.133/2011 filed by the plaintiff/1st respondent herein for declaration that the plaintiff is the daughter of the first defendant/appellant herein, born on 02.09.1975. In the said suit, the first defendant/appellant herein filed a written statement resisting the claim of the plaintiff and the suit is being contested by him. Pending suit, an application in IA.No.968/2012 has been filed by the 1st respondent herein u/s. 45 and 67 of the Evidence Act read with section 7 of the Family Courts Act, seeking direction to the 1st defendant/appellant herein, to undergo the DNA test. The said interim application was resisted by the 1st defendant/appellant herein by filing a counter affidavit. The Family Court, by its order dated 10.04.2014, which is impugned herein, has allowed the said application, thereby directing the 1st defendant/appellant herein to appear before the Director, Forensic Science Department, Chennai, for the DNA test at the cost of the 1st respondent herein. Challenging the said order of the Trial Court, viz., the Family Court, the appellant is before this Court by way of filing the present appeal with the aforesaid prayer.

3. Heard the learned counsel for the appellant. We have also gone through the documents made available on record including the order passed by the Family Court in IA.No.968/2012 in OS.No.133/2011 dated 10.04.2014.

4. Though the learned counsel for the appellant would submit that the 1st defendant/appellant is prepared to subject himself for the DNA Test, but not at this stage. But, on a perusal of the order which is impugned herein, we find that the learned Judge has exercised the discretion and found that there is prima facie material for directing the appellant herein to undergo the DNA test. In paragraph 18 of the order of the Court below, the learned Judge has held that in the absence of any documentary evidence excepting the Transfer Certificate and the Birth Certificate, only DNA Test could prove the paternity and thus, allowed the petition. We also find that the findings rendered in the Judgment referred to by the learned counsel for the appellant before this Court reported in Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another, , is against the appellant herein. Learned Judge of the Court below after referring to the citations referred to by the appellant herein, has passed a detailed order, which in our opinion, does not warrant any interference of this Court as this Court does not find any infirmity or illegality in the order passed by the learned I Additional Judge, Family Court, Chennai.

5. In the result, the civil miscellaneous appeal fails and the same is dismissed at the admission stage itself. The order passed by the learned I Additional Judge, Family Court, Chennai, in IA.No.968/2012 in OS.No.133/2011.