



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Writ Petition (Civil) No. 31 of 2016

Shri Yam Prasad Pradhan,
S/o late Sri Prasad Pradhan,
Resident of Melli Payong,
South Sikkim,
Presently residing at Sichey,
East Sikkim.

... Petitioner/ Defendant.

versus

Mr. Sonam Pradhan,
Resident of Melli Payong,
P.O. & P.S. Melli,
South Sikkim.

... Respondent/ Plaintiff.

Appearance:

Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Aruna Chhetri, Advocate for the Petitioner.

Mr. Karma Thinlay, Senior Advocate with Mr. Thinlay Dorjee Bhutia, Advocate for the Respondent.

J U D G M E N T
(17.03.2017)

Satish K. Agnihotri, CJ

The instant petition, preferred under Articles 226/227 of the Constitution of India, is directed against the order dated



15.06.2016 rendered in Title Suit No. 40 of 2013, wherein and whereunder the Civil Judge, South at Namchi directed the plaintiff, the defendant, against whom the paternity is claimed by the plaintiff and mother of the plaintiff for the Deoxyribonucleic acid test (for short, 'DNA test'). The defendant, as aforesaid, has come up with this instant petition questioning the legality and validity of the impugned order on several grounds, *inter alia*, the direction to undergo DNA test for examining claim of paternity is per se illegal and violative of constitutional and legal rights of the defendant/ petitioner herein.

2. Mr. A.K. Upadhyaya, learned Senior Counsel appearing for the petitioner, would contend that the petitioner herein has a reputation in the society, undergoing a DNA test may undermine his reputation and name. Thus, undergoing a DNA test, as directed by the Civil Court, is violative of fundamental, constitutional, legal and natural rights. It is further contended that the Civil Court ought to have decided the Title Suit for declaration, on examination of other witnesses instead of directing the DNA test. It is lastly argued that the evidences adduced by both the parties are sufficient to decide the dispute raised in the suit.

3. On the other hand, Mr. Karma Thinlay, learned Senior Counsel, who was appointed by the Sikkim State Legal Services



Authority, to help the plaintiff/respondent herein and assist the Court, submits that if the defendant undergoes the DNA test, the truth will come out and the claim of the respondent herein of being the son of the petitioner herein will be clearly examined with stronger and cogent reasons. In the facts of the case, other oral evidences adduced by the parties may not be substantial and conclusive. Mr. Thinlay relied on a decision of the Supreme Court in ***Narain Dutt Tiwari vs. Rohit Shekhar and Another***¹.

4. Heard learned Senior Counsel appearing for the parties. Examined the pleadings and documents appended thereto carefully.

5. The respondent herein filed a suit for declaration/determination of paternity against the petitioner herein, on 30.11.2013, claiming that the defendant/petitioner herein is the biological father of the respondent herein. The Civil Court, after hearing both the parties framed the following issues on 23.09.2014: -

- "1. Whether there was a relationship between the mother of the plaintiff and the defendant?
2. Whether the plaintiff is the biological son of the defendant born through his relationship with Pavitra Darjee (Mother of the plaintiff)?
3. Whether the birth certificate filed by the plaintiff is genuine?
4. Whether the plaintiff is entitled to any relief(f), if any?"

Thereafter, the respondent herein preferred an application under Section 151 of the Code of Civil Procedure, 1908 (for short,

1 (2012) 12 SCC 554



“CPC”) seeking a direction for DNA test of the plaintiff as well as the defendant. The learned Civil Judge considering all aspects of the matter initially declined to undergo for a DNA test observing that “if at a later stage the Court is of the view that the evidence placed forth by the parties is not sufficient to arrive at a just determination of the issues, then by invoking the power under Section 151 CPC, the Court may allow the parties to undergo a DNA test” vide order dated 04.08.2015. Thereafter, it appears that the Civil Court, after examination of the evidences, thought it appropriate to direct the DNA test of the plaintiff and defendant to arrive at a conclusive finding, vide the impugned order.

6. The question which arises for consideration in this petition is as to whether the DNA test is essential in a suit for declaration/ determination of paternity when the biological father is not legally wedded husband of the mother of the petitioner and whether the same can be denied on the ground of purported dent in the image of the alleged biological father. The issue is no longer *res integra*.

7. In ***Goutam Kundu vs. State of West Bengal and another²***, wherein the petitioner disputed the paternity of the child and prayed for blood grouping test to determine parentage

2 (1993) 3 SCC 418



as he was not the father of the child. The Supreme Court held as under: -

"18. Blood grouping test is a useful test to determine the question of disputed paternity. It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child. However, it requires to be carefully noted no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal."

and observed that the Court must make out a strong *prima facie* case before ordering to blood test.

8. In ***Sharda vs. Dharmpal***³, wherein divorce was claimed on the basis of mental illness, the medical examination was directed which was opposed on the ground that it would be violative of personal liberty granted under Article 21 of the Constitution of India. The Supreme Court laying emphasis on the fact that it is the primary duty of the Court to see the truth is arrived at, observed as under: -

"32. 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 Code of Civil Procedure and the Evidence Act, has an inherent power in terms of Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit.

33. Discretionary power under Section 151 of the Code of Civil Procedure, it is trite, can be exercised also on an application filed by the party."



9. In ***Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and another***⁴, wherein the issue involved was as to whether DNA test in a matter relating to paternity of the child be directed by the Court, the Supreme Court observed as under: -

"21. In a matter where paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the court to reach the truth without use of such test."

10. In yet another decision in ***Narayan Dutt Tiwari*** (supra), the Supreme Court while upholding the direction of the High Court to undergo DNA test, observed as under:-

"39. We, in this context find the judgment of the Court of Appeal (Civil Division) in *G. (Parentage : Blood Sample)*, In re : (1997) 1 FLR 360 holding that the court should find proven forensically what the person by his refusal had prevented from being established scientifically, to be apposite. It was further held therein:

"Justice is best served by truth. Justice is not served by impeding the establishment of truth. No injustice



is done to him by conclusively establishing paternity. If he is the father, his position is put beyond doubt by the testing, and the justice of his position is entrenched by the destruction of the mother's doubts and aspersions. If he is not the father, no injustice is done by acknowledging him to be a devoted stepfather to a child of the family. Justice to the child, a factor not to be ignored, demands that the truth be known when truth can be established, as it undoubtedly can. Whilst, therefore, I do not in any way wish to undermine the sincerity of the father's belief that contact is of a continuing good to the child and that it will be reduced if the mother's beliefs prevail, that contact is best when taking place against the reality of fact, *and fact can be established by these tests being undertaken.*"
(emphasis supplied)

Thorpe, L.J. in his opinion, agreeing with Waite, L.J. that the appeal should be allowed, said:

"A putative father may seek to avoid his paternity which science could prove; alternatively, to cling on to a status that science could disprove. In both cases selfish motives or emotional anxieties and needs may drive the refusal to cooperate in the scientific tests which the court has directed."

11. In the case on hand, initially the learned Judge declined to direct the DNA test, however, after having examined all the available evidences, it appears that she had come to a strong *prima facie* conclusion that the DNA test was essential to determine the truth in respect of the paternity and accordingly directed the same by the impugned order.

12. In the light of aforestated principles of law as laid down by the Supreme Court, it is well established that the DNA test may not be directed on the drop of a hat. In a case like this, where the plaintiff/respondent herein is seeking declaration/determination of parentage and also on examination of evidences, learned Civil Judge found strong *prima facie* case in favour of direction of DNA test, the impugned order is proper.



The other factor of reputation of the petitioner being damaged as stated by the learned Senior Counsel appearing for the petitioner is concerned, the DNA test will establish the reputation of the petitioner, if the claim of the plaintiff/respondent herein is not established.

13. In such view of the matter, I am of the considered view that the impugned order directing DNA test of the defendant/petitioner herein, plaintiff/respondent herein and mother of the plaintiff/respondent herein, after proper examination, is neither erroneous nor illegal and also not violative of the petitioner's fundamental, legal or natural rights.

14. As a result, interference is not warranted and the writ petition is dismissed. However, I make it clear that the State Authorities, Doctors and Forensic Laboratory Experts dealing with the DNA test shall maintain the confidentiality and the report be submitted in a sealed cover to the Court.

15. No order as to costs.

Sd/-
Chief Justice
17.03.2017

jk

Approved for Reporting : Yes/No.
Internet : Yes/No.