

R.C.S. No. 59/2017
(Smt. Laxmi vs. Sau. Sangita & Anr.)
(CNR: MHSN020002072017)

Order below Exh.74
(Date 20.10.2022)

1. The present application is filed by plaintiff seeking DNA test of defendant No.1 Sau. Sangita Amrutrao Patil to establish plaintiff's biological relationship with defendant no.1 as her mother.

By filling say vide Exh.79 defendant No.1 contended that plaintiff filed this application with a view to prolong the matter.

2. Ld. Counsel for plaintiff submitted that defendant No.1 got legal heir certificate and decree of civil death declaration of plaintiff by suppressing fact that she is still alive. Hence, plaintiff filed this suit for declaration that decree obtained by defendant No.1 is null & void. But defendant No.1 filed written statement denying the status of plaintiff as her mother and called plaintiff as fake lady. In order to prove their biological relationship as mother and daughter, defendant no.1 needs to undergo DNA test which will help the court to decide the case on merits. In support of contention relied upon the decision in case of *Sharda Vs. Dharmpal (2003) 4 SCC 493* and *Pantangi Balarama Vs. State of A.P. 2003 CRI.L.J. 4508*.

On the contrary, Ld. Counsel for defendant No.1 submitted that Smt. Lakshmibai Dutta, mother of defendant no.1 was not traced for a period of 7 years, therefore in R.C.S.No.145/15 her civil death was declared and issued legal heir certificate in favour of defendant no.1. Therefore, plaintiff cannot move this application unless the said decree is quashed.

3. In this connection, it is relevant to mention the law declared by the Hon'ble Apex Court in the case of *Ashok Kumar Vs. Raj Gupta and others reported in (2022)1 SCC 2020*, wherein it is held that forcing an individual to undergo DNA Test would impinge on his personal liberty and right to privacy and therefore, it is the burden on the litigating party to prove his case adducing evidence in support of their plea and Court should not compel the parties to prove the case in the manner as contended by the petitioners.

In the present case, plaintiff filed this suit seeking declaration that legal heir certificate and decree of her civil death obtained by defendant no.1 is null & void. Whereas defendant no.1 denied that plaintiff is her mother and submitted that as no one heard about her mother from year 2007, she has got decree of her mother's Civil death in R.C.S.No. 145/15. Hence, the suit filed by fake third person is not tenable. Thus, the parties have led evidence in support of their respective stands. The plaintiff cannot compel the defendant No.1 to adduce evidence in support of the case set-up by her. It is the burden on a litigating party to prove her case by adducing evidence in support of her plea and the Court cannot compel other party to prove her case in the manner as suggested by the contesting party. A Court cannot order a DNA test as a matter of course and such a prayer cannot be granted so as to lead to a roving inquiry. The plaintiff has failed to make out a strong prima facie case for ordering a DNA test of the defendant No.1. The ratio of the decision in Ashok Kumar's case (supra) is applicable to the present case. In Ashok Kumar's case (supra) the decisions cited by the plaintiff in the case of Sharda (supra) has been considered and discussed.

4. Hence, in view of this matter, application is liable to be rejected thus, passed the following order.

ORDER

Application stands rejected.

Sangli.
Date:20.10.2022

(D. R. Deshmukh)
Jt. Civil Judge, Sr. Dn., Sangli.

CERTIFICATE

I affirm that the contents of this PDF file are same as per original.

Name of Stenographer :- R. B. Samalewale

Name of the Court :- Shri. D. R. Deshmukh
Jt. Civil Judge Sr. Dn., Sangli.

Date of decision :- 20.10.2022

Order signed by P.O. on :- 20.10.2022

Order uploaded on :- 21.10.2022