

IN THE COURT OF THE SUBORDINATE JUDGE, METTUR

Present: Thiru. R.Saravana Babu,B.A., L.L.B.,

Subordinate Judge, Mettur

Tuesday, the 21st day of July 2026

I.A.No: 3 of 2023

in

HMOP No. 62/2020

Srinivasan

... Petitioner /Respondent

/Versus/

Radha

... Respondent/ Petitioner

This petition is coming on 10.07.2026 for final hearing before me in the presence of Thiru.A.S.Thailappan, advocate appearing for Petitioner and presence of Thiru.B.Balamurugan, advocate appearing for Rspondent and upon perusing material papers, documents and hearing both side arguments and having stood over for consideration of this court till this day, the court delivers the following:

ORDER

The Petitioner has filed this Petition Under Section 151 of CPC.

2. The Brief facts of the petition :

The petitioner is the respondent in the main application. The petitioner has stated that, the respondent is not legally wedded wife of the petitioner and their marriage was not solemnized on 25.02.2010 as alleged by the respondent. It is false that there is no husband and wife relationship between the petitioner and the respondent and the child namely Varshini would not bond to both the petitioner and the respondent out of marital relationship. The petitioner further stated that he has filed the suit in OS No.315/2011 against the respondent who was arrayed as 1st defendant in the suit and did not whisper about the child Varshini. The respondent also agreed for DNA test. The petitioner also filed an IA No. 635/2018 for DNA test and it is dismissed by the court. The suit filed by the petitioner in OS No. 315/2011 was partly decreed and he has preferred an appeal before the Sub Court of Mettur in AS No. 8/2022. The petitioner further stated that he did not have any relationship with the respondent and the child namely Varshini has not been

bond to the petitioner and the respondent. In order to prove that, the petitioner has seeking a DNA test with the alleged child before the Government Mohan Kumaramangalam Medical College Hospital to collect the blood samples of the petitioner and the child. Hence, the petitioner is prayed for allow the application.

3. The Brief facts of the Counter Statement :

The respondent has stated that the petition filed by the petitioner is false, frivolous and not maintainable under the law and on facts. The respondent has denied all the allegations levelled against the respondent. The respondent further stated that this petitioner has filed the petition only to drag the case proceedings. The petitioner has not appeared before this court for long time and after order of the court for the substituted service, the petitioner has appeared before this court. The respondent has admitted that the petitioner has file the suit in OS No. 315/2011 and it has been partly decreed. The petitioner again preferred appeal in AS No. 8/2022 and it was also pending. The petitioner already filed an petition for DNA test before the learned District Munsif, Mettur and same has been dismissed by the court. Again, the petitioner has filed the petition for the same relief. Hence, the respondent has stated that the petition has filed only to drag the proceedings and it is liable to be dismissed.

4. Now the point for consideration is that:

Whether the application filed under section 45 of Indian Evidence Act is allowed or not?

5. Heard the both sides and documents perused.

6. Point:

(6.1) The petition has been filed by the petitioner under section 45 of Indian Evidence Act for paternity test for the baby namely Varshini born to the respondent. The respondent has filed the main application for restitution of conjugal rights on various grounds under Hindu Marriage Act. The petition has been filed under section 45 of Indian Evidence Act for DNA test for the child namely Varshini which is not born to the

petitioner and respondent. The relationship between the petitioner and respondent has been disputed by the petitioner that there was not solemnization of the marriage between the petitioner and the respondent. Therefore, the petitioner has disputed the birth of the child namely Varshini is not born to him. Therefore, this petitioner has filed an application and sought for a DNA test.

6.2) It was resisted by the respondent stating that the petition has been filed in the year of 2020 and the petitioner/respondent did not appear for the case for long time. Only after order of the court for substituted service, the petitioner/respondent has appeared for the case. The petitioner has already filed the application under section 45 of Indian Evidence Act for DNA test before the OS No. 315/2011 in IA No. 635/2018 and it has been dismissed for the reasons that it is only filed to drag the proceedings. The respondent further stated that the petition also filed only to drag the proceedings and it is liable to be dismissed.

(6.3) On careful perusal of the records, the respondent also filed the petition under section 9 of Hindu Marriage Act for the restitution of conjugal rights. The petitioner has contended that the baby has not been born to the petitioner and the respondent. The claim of the petitioner is strongly objected by the respondent by way of filing counter statement.

(6.4) The petitioner has strongly disputing the birth of the child namely Varshini which is not born to him. The respondent has filed the petition for restitution of conjugal rights in the year of 2020 itself. It is pertinent to note that the petitioner/respondent has appeared before the court on 23.12.2020. Thereafter, the petitioner has filed this counter statement on 12.11.2021. The case has been posted for enquiry till 24.03.2023. The trial has been commenced on 24.03.2023 and documents were subsequently marked on 19.4.2023. Thereafter, the petitioner has filed an application for DNA test regarding the paternity of the child. As far as the present case is concerned, the petition has been filed only for the restitution of conjugal rights under section 9 of Hindu Marriage Act. The petitioner disputing the very fact of the marriage itself with the respondent. It is admitted

by the petitioner itself that the similar petition for DNA test has been already dismissed by the learned District Munsif, Mettur for various reasons. In this case, the petition has been filed only for restitution of conjugal rights and the petitioner seriously disputing over the same. The respondent has not claimed any maintenance to the daughter namely Varshini from the petitioner in this petition. At present, the burden of proof lies upon the respondent to establish the marriage between the petitioner and the respondent. If the marriage between the petitioner and the respondent has been established then the petitioner having ample opportunity to dispute the birth of the child. At this juncture, In view of this court, the present petition is unnecessary and in the relief of restitution of conjugal rights, sending the child namely Varshini for DNA test is unwarranted. Considering the circumstances and nature of the case, the petition is not maintainable at this stage and it is liable to be dismissed on devoid of merits.

7. In the result, the petition is hereby dismissed. No cost.

Dictated by me to Typist and typed by her directly in computer, and corrected and pronounced by me in the open court, this the 21st day of July 2026.

**Subordinate Judge,
Mettur**

Petitioner side witness and documents: Nil.

Respondent side witness and documents: Nil.

**Subordinate Judge,
Mettur**