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Devadas Vs. P.D. Gopalakrishnan

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Court : Kerala

Decided On : Oct-01-2014

Judge : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

Appellant : Devadas

Respondent : P.D. Gopalakrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE1T DAY OF OCTOBER20149TH ASWINA, 1936 OP(C).No. 203 of 2014 (O) ---------- IN OS NO.52/2008 OF MUNSIFF'S COURT, NORTH PARAVUR PETITIONER(S)/PETITIONER: ---------- DEVADAS, AGED62YEARS, S/O.SUBRAMANYAN, PAZHAMPILLYSSERY HOUSE KATTATHURUTH KARA, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK ERNAKULAM DIST-683 522. - DIED. * ADDL. PETITIONERS2& 3 IMPLEADED:

2. P.G. GEETHA, AGED45YEARS, W/O. LATE DEVADAS, PAZHAMPILLYSSERY HOUSE KATTATHURUTH KARA, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK, ERNAKULAM DIST-683 522.

3. RAHULDEV P.D., AGED19YEARS, S/O. LATE DEVADAS, --DO-- --DO-- ADDL. PETITIONERS2& 3 ARE IMPLEADED AS PER

ORDER

DTD. 22.9.2014 IN IA.NO.12617/14 IN OPC NO.203/2014. BY ADVS.SRI.S.V.BALAKRISHNA IYER (SR.) SRI.P.B.KRISHNAN SRI.P.K.SAJEEV RESPONDENT(S)/RESPONDENTS: ---------- 1. P.D. GOPALAKRISHNAN, S/O.DEVADAS, PAZHAMPILLYSSERY HOUSE, KATTATHURUTH KARA, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK, NOW R/A.MANAKKAPPADY, KARUMALLOOR VILLAGE, (AS PER THE PLAINT) ERNAKULAM DIST-683 511 2. JAYA @ ELSY, W/O.DEVADAS, PAZHAMPILLYSSERY HOUSE.KATTATHURUTH KARA, MOOTHAKUNNAM VILLAGE, PARAVUR TALUK, NOW R/A.MANAKKAPPADY, KARUMALLOOR VILLAGE, (AS PER THE PLAINT) ERNAKULAM DIST-683 511 R1 BY ADVS. DR.K.P.SATHEESAN (SR.) SRI.M.R.JAYAPRASAD SRI.P.MOHANDAS (ERNAKULAM) SRI.ANOOP.V.NAIR SRI.S.VIBHEESHANAN SRI.SIDDHARTH KRISHNAN THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON0110-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 203 of 2014 (O) APPENDIX PETITIONER(S)' EXHIBITS ---------- P1:- TRUE COPY OF THE PLAINT IN OS NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR, DTD241/2008 FILED BY THE FIRST RESPONDENT. P2:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN OS NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR. P3:- TRUE COPY OF THE IA NO20092009 DTD311/2009 FILED BY THE FIRST RESPONDENT IN OS NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR. P4:- TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN IA NO20092009 IN OS NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR DTD1111/2009. P5:- TRUE COPY OF THE

ORDER

DTD296/2010 IN IA NO20092009 IN OS NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR. P6:- TRUE COPY OF THE

JUDGMENT

DTD233/2012 IN WPC NO.24776 OF 2010 ON THE FILE OF THIS HON'BLE COURT. P7:- TRUE COPY OF THE PETITION FILED BY THE PETITIONER AS IA NO10082012 ON47/2012 IN THE ORIGINAL SUIT PRAYING TO DISMISS THE SUIT NO. 52/2008 AND THE IA NO20092009 FOR WANT OF JURISDICTION. P8:- TRUE COPY OF THE COUNTER AFFIDAVIT DTD97/2012 FILED BY THE IST REPSONDENT IN IA NO10082012 IN OS NO522008 BEFORE THE MUNSIFF'S COURT, NORTH PARAVUR. P9:- TRUE COPY OF THE

ORDER
DTD.7/11/2013 IN IA NO10082012 FILED BY THE PETITIONER SEEKING AN

ORDER
DISMISSING THE SUIT NO522008 ON THE FILE OF THE MUNSIFF'S COURT, NORTH PARAVUR, FOR WANT OF JURISDICTION. RESPONDENT(S)' EXHIBITS ---------- R1(a): TRUE COPY OF REMAND REPORT IN CRIME NO.413/2008 OF MUNAMBAM POLICE STATION IN WHICH THE2D RESPONDENT HEREIN WAS THE COMPLAINANT AND THE1T RESPONDENT. R1(b): TRUE COPY OF ANSWERS GIVEN BY THE RAJIV GANDHI CENTRE FOR BIO TECHNOLOGY, MINISTRY OF SCIENCE AND TECHNOLOGY, GOVT.OF INDIA, POOJAPPURA, THIRUVANANTHAPURAM. /TRUE COPY/ P.A. TO JUDGE VPV "C.R." V.CHITAMBARESH, J.

=-=-=-=-=-=-=-=-=-=-= O.P.(C)No.203 of 2014 =-=-=-=-=-=-=-=-=-=-=-=-=-=-= Dated this the 1st day of October, 2014

JUDGMENT
The suit in O.S.No.52/2008 on the file of the Court of the Munsiff of North Paravur is for a declaration that the plaintiff is the son born to the first defendant and for consequential reliefs. The plaint averments are to the effect that the first defendant legally married the second defendant on 13.12.1972 and that the plaintiff was born in the wedlock on 25.1.1977. The alleged marriage of the first defendant with the second defendant and the birth of the plaintiff in the wedlock is disputed by the first defendant. Therefore one of the cardinal issues that arise for consideration in the suit is as to the paternity of the plaintiff. The question as to whether the plaintiff is

the legitimate or illegitimate son of the first defendant is undoubtedly an incidental question. Thus the issue of legitimacy of the birth of the plaintiff owing to the relationship between defendants 1 and 2 arises for consideration in the suit. Such a question can only be adjudicated by the family court under section 7 (1)(e) of the Family Courts Act, 1984, which is extracted hereunder: O.P.(C)No.203 of 2014 2 "(e) A suit or proceeding for a declaration as to the legitimacy of any person." The civil court has undoubtedly no jurisdiction to entertain the suit for adjudication of such an issue in the light of the statutory provision. The court below erred in overruling the objection as regards the maintainability of the suit by dismissing I.A.No.1008/ 2012. The impugned order is therefore set aside and I.A.No.1008/ 2012 in O.S.No.52/2008 on the file of the Court of the Munsiff of North Paravur is allowed. The court below is directed to return the plaint in O.S.No.52/2008 to the plaintiff for presentation before the proper forum if he so desires.

2. The plaintiff had made a motion for a DNA Test to be conducted on the first defendant during the pendency of this original petition on the premise that he was terminally ill. This Court passed an interim order in this original petition on 13.8.2014 to the following effect: "Urgent notice by special messenger to second respondent. The messenger is empowered to serve notice by affixture also. Part heard. Post on 21.08.2014 as the first item in the 300 list. The question pertains to the paternity of the first respondent who claims to be the son of the petitioner. The first respondent contends that the petitioner is terminally ill and that a DNA Test has to be conducted soon. Reliance is placed on Narayan Dutt Tiwari v. Rohit Shekhar and O.P.(C)No.203 of 2014 3 Another [(2012) 12 SCC554 in this regard. The Head of the Elite Mission Hospital wherein the petitioner is a patient shall take his sample blood. The same shall be forwarded to the Rajiv Gandhi Centre for Bio Technology, Ministry of Science and Technology, Govt. of India, Poojapura, Thiruvananthapuram. The first respondent is permitted to produce a copy of this order before the hospital for necessary steps. The first respondent shall pay the requisite fee for having the DNA Test conducted by the Rajiv Gandhi Centre for Bio Technology. The Head of the hospital shall forward the sample blood to the Rajiv Gandhi Centre for Bio Technology forthwith." 3. Rajiv Gandhi Centre for Bio Technology has now filed a report dated 26.8.2014 concluding as follows: "The DNA test performed on the exhibits provided is sufficient to conclude that the

source of exhibit C (Devadas) is the biological father of the source of exhibit B (P D Gopalakrishnan). The source of exhibit A (Jaya @ Elsy) is the biological mother of the source of exhibit B (P D Gopalakrishnan)." The acceptability or otherwise of the report above has to be considered by the Family Court only after examining the author of the report. The DNA Test on the first defendant was warranted in the midst of the original petition only because it was reported that he was terminally ill. It now transpires that the first defendant died on 22.8.2014 soon after his sample blood was taken for DNA Test. Petitioners 2 and 3 seek impleadment in this original petition as the O.P.(C)No.203 of 2014 4 widow and son of the deceased first petitioner (first defendant). Their impleadment is allowed leaving open the question as to who amongst the second petitioner and the second defendant is the legally wedded wife. All these are matters to be considered by the Family Court after framing appropriate issues in that regard. The Registry shall forward the DNA report dated 26.8.2014 to the Court of the Munsiff of North Paravur where O.S.No.52/2008 is hitherto pending. The original petition is disposed of. No costs. Sd/- V.CHITAMBARESH JUDGE vpv

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