

Master 'X' vs. 'Y'

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Court : Delhi

Decided On : Mar-17-2003

Reported in : AIR2003Delhi195; 2003(69)DRJ21

Judge : Manmohan Sarin, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 23; [Evidence Act, 1872](#) - Sections 112

Appeal No. : I.A. Nos. 5018-19 of 2002 in Suit No. 1328 of 2001

Appellant : Master 'X'

Respondent : 'Y'

Advocate for Def. : Sanjay Jain, Adv.

Advocate for Pet/Ap. : Ashok Bhasin, Adv

Disposition : Application dismissed

Judgement :

ORDER

Manmohan Sarin, J.

1. By this Judgment IAs 5018/2002 and 5019/2002 are being decided. Vide is 5018/2002 plaintiff seeks a direction to the defendant to undergo the DNA test

along with plaintiffs mother, to establish the parentage of the plaintiff. By is 5019/2002 direction to the defendant to pay interim maintenance of Rs. 5,000/- per month from the date of suit till disposal is sought.

2. These two applications are made in the suit filed by the minor through his next friend and mother, by which the plaintiff seeks maintenance of Rs. 5,000/- per month to be paid by the defendant. Plaintiff also seeks a declaration of defendant being the father of the plaintiff. Further declaration as to the entitlement of the plaintiff to all the rights and interest, as a son of the defendant is sought, due from the defendant as his father. A decree for mandatory injunction is also sought against the defendant to undergo DNA Test for establishing the parentage of the plaintiff.

3. Written statement had been filed. Replies to the above applications have also been filed by the defendant. It may also be noted that plaintiff had along with the suit also filed is No. 6050/2001 seeking interim maintenance as is 6051/2001 for a direction to the defendant to undergo DNA medical test. These applications were dismissed as withdrawn, reserving the plaintiffs right to file appropriate applications after the written statement has been filed; The present applications bearing is Nos. 5018-19/2002 thus came to be filed.

4. Mr. Ashok Bhasin in support of the applications submitted that plaintiff's mother and defendant were both working in the Song and Dance Division of the Ministry of Information and Broadcasting. As a result of a close working relationship and as fate would have it, intimacy developed between them. Plaintiffs mother was allured by the defendant, who was already married ' by holding out false promises.

5. It is claimed that the plaintiffs mother and the defendant who were in love with each other and had developed intimacy, got married in a ceremony on 5-12-87, which Was attended by relations of the plaintiffs mother and few colleagues of the defendant. It is claimed that the marriage was kept secret and not disclosed as per the desire of the defendant. It is claimed that the defendant has wrongfully deserted and disowned the plaintiff and his mother.

6. Mr. Bhasin submitted that the plaintiff who is in his adolescent years is going through the anguish and trauma of being declined the parentage by the defendant. The plaintiff is feeling insecure and socially ostracized. His peers are asking embarrassing questions regarding his father. Mr. Bhasin also placed reliance on an examination report submitted by one Dr. Shashi Sethi of the ISHS Guiding and Counselling Centre who found the plaintiff to be possessed of superior intellect (IQ). However, it is observed in the report that environment factors such as father's separation were resulting in psychological block, poor concentration, destruction and lack of confidence and a confused state, of mind. The minor was also stated to be remaining tense. The Counsellor recommended that feelings of insecurity should be uprooted. Mr. Bhasin, therefore, submitted that for the welfare of the minor and to ensure the proper development of personality, it was important that the defendant be directed to go through the DNA Test so that the cloud over plaintiff's parentage is removed and the child is able to lead a normal life.

7. During the course of arguments', it was noticed that the plaintiff was present in Court with his mother. It was pointed out to counsel for the plaintiff that the presence of plaintiff in these proceedings may not augur well for his psyche or mental well being. Mr. Ashok Bhasin next submitted that the defendant on account of his influence subjected the plaintiff to a 'lot of harassment and the plaintiff's mother is presently suspended on a false and trumped up charge of bribery. Mr. Bhasin submitted that the defendant initially in response to a notice from the plaintiff's mother had stated that the defendant had no reservation to go through a DNA test, provided it was ordered by a competent Court. Mr. Bhasin submitted that carrying of the DNA Test would remove the clouds over the legitimacy of the plaintiff and this was the minimum that the Court should do to ensure well being of the child. He also relied on a decision of this Court in *Ms. 'X' v. Mr. 'Z'* reported at AIR 2002 Delhi 217, wherein the Court had directed DNA test to be carried out. It was held that if the right of privacy which was not an absolute right could not come in the way of the test being held. In the cited case, it was observed that as the so called foetus stood discharged from the body, it would not tantamount to compelling the wife to give DNA test as that part of the organ already stood discharged. Mr. Bhasin submitted that in this case there would not be any violation of any right of privacy in as much as the factum of relationship and the marriage of

the plaintiffs mother and defendant is well known among the colleagues. Complaints and counter-complaints had been lodged with the various statutory and: other authorities. Besides the defendant has also lodged a complaint under Sections 499 and 500 IPC and the factum of relationship between the parties is well known.

8. In support of the application for interim maintenance, counsel submitted that the plaintiffs mother was suffering a cash-crunch on account of her suspension and is unable to look after the basic needs of the child. The amount of maintenance being sought from the defendant who was the father was reasonable and commensurate with the income of the defendant. Mr. Bhasin also argued that it was immaterial whether the marriage of the plaintiffs mother with the defendant was proved or not since a legitimate as well as an illegitimate child, would both be entitled to maintenance from the father as it was the pious and bounden duty of the father to maintain the child.

9. Plaintiff had also produced on record a transcript of a purported tape recorded conversation between the plaintiffs mother and a colleague of the defendant, wherein factum of relationship of the plaintiffs mother with the defendant as also the questions with regard to the custody of the child i.e. plaintiff and other issues are reported to have been discussed between the parties. It is urged that the colleague of the defendant was representing the view point of the defendant.

10. I have heard Mr. Sanjay Jain in opposition. It is urged on behalf of the defendant that the suit had been filed mala fide as a part of personal vendetta to harass and defame the defendant. It is stated that the plaintiffs mother has lodged a complaint of harassment against the defendant. The defendant denies the relationship with the plaintiffs mother. It is urged that in the absence of a suit for declaration by the mother of plaintiff that she was the lawfully wedded wife of the defendant, the present suit would not be maintainable.

11. Mr. Jain submits that there is no prima facie evidence on record to warrant a direction to the defendant to go through the DNA test. A test, such as the 'DNA test' cannot be directed on bald allegations. Learned counsel for the defendant submitted that merely because a scientific test is available to determine parentage,

the same is not to be directed to be undergone by the parties unless there is overwhelming evidence and circumstances to justify such a direction. Any such direction has far-reaching consequences on the parties. Mr. Jain submitted that the submission of plaintiff that defendant must undergo the test to have his position vindicated and to establish his innocence, was not tenable, at law. Counsel submitted that the documentary evidence as produced by defendant on record clearly dispels the plaintiff's claim and shows that the version of plaintiff's mother of the plaintiff having been born as a result of the alleged marriage with defendant was incredible and contradicted by her own documentary admissions.

12. In these circumstances, he submitted there was no occasion whatsoever to pass interim directions directing the defendant to undergo a DNA test, Mr. Jain further submitted that since there was no relationship between the plaintiff's mother and defendant and the plaintiff, the defendant had no obligation and liability to provide for maintenance of the plaintiff. Mr. Jain also raised objections on the maintainability of the applications stating that the interim directions which are sought are also the main relief prayed for in the suit and accordingly granting any of these interim reliefs would amount to decreeing the suit without trial.

13. Having heard the learned counsel for the parties, perused the pleadings and replies to the applications on record, I find that the plaintiff has not made out a case for the direction to the defendant to undergo a DNA test or for the grant of interim maintenance at this stage. The plaintiff's (mother) claims to have married the defendant on 5-12-87, in presence of relatives and friends. The defendant has, however, produced on record photo copy of the declaration made by the plaintiff's mother on 25th February, 1988, to the Director stating that she has been married to one Mr. R. Mohan on 10th January, 1988 at Bareilly. She sought the same to be incorporated in office records. This is followed by another communication dated 29th October, 1990, in response to a memorandum issued by the office seeking particulars of her husband Shri R. Mohan. The plaintiff's mother explained in reply that the said R. Mohan is engaged in petty trading business of selling domestic goods and had no fixed office premises. Further that the said R. Mohan was presently unemployed and was staying with the plaintiff's mother. The plaintiff's mother objected to the information being sought and re-confirmed

the intimation about the marriage given earlier. It is also a part of official record that she availed of maternity leave for three months w.e.f. 1st September, 1988. A birth certificate issued by the GNCT of Delhi shows the birth of a male child on 7-9-88 at Talwar Nursing Home, wherein the name of the mother is shown as Madhu i.e. the plaintiff's mother's first name and the name of the father is shown as Rule Mohan. Plaintiff has also produced on record the index card issued by the CGHS wherein the plaintiffs date of birth is December, 1989 and one Bhavna Dalel a daughter is said to have been born on September, 1995 is shown. Defendant has also produced on record a photo copy of the application form submitted by the plaintiff's mother to UPSC where against the column husband, it is written not applicable. As regards the marriage certificate issued by the Pandit Bhuvneshwar Tripathi, affidavit of one of the witness namely Lekh Raj has been filed, wherein he has denied his signatures on the certificate. In view of the foregoing documentary evidence as filed by the defendant the existence of which has not been disputed by the plaintiff, it tends to falsify the averments in the plaint as also raises considerable doubts on the conduct and credibility of the plaintiffs mother. Learned counsel for the plaintiff attempted to explain these by arguing that since parties were having a clan destine relationship and had decided to keep the same secret, these documents were created for the said purpose. The aforesaid Explanationn prima facie does not appeal to me. Similarly the transcript of the tape recorded conversation purporting to be between the plaintiffs mother and a colleague of the defendant cannot advance the plaintiff's case without the necessary foundation of the Colleague as representing the defendant's view point or veracity of conversation being established.

14. The facts and circumstances of the case including the documents and declarations as executed by the plaintiffs mother are such that no case for direction to the defendant to undergo DNA test or to pay interim maintenance to the plaintiff at this stage can be made. As regards the reliance on X v. Z AIR 2002 Delhi 217 (supra), the said authority would not advance the plaintiff's case even though the considerations of privacy cannot come in the way of a direction for DNA test being issued where warranted. In the instant case, the plaintiff has not been able to make a good prima facie case at this stage to warrant either interim direction for DNA Test or grant of maintenance. It is only after evidence has been

led in this case and the plaintiff satisfactorily explains the various documents filed by the defendant and her evidence is subjected to cross-examination and scrutiny that directions for undergoing of DNA test or interim maintenance can be considered by the Court. In view of the foregoing discussions, the applications are dismissed.

In view of the nature of the allegations, it would be in the interest of justice that names of the parties are not disclosed. Accordingly, it is directed that reporting of this case in journals and law reports would be under the cause title Master X v. Y.

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