

A.F.R.

Judgment Reserved On 08.11.2021

Judgment Delivered on 12.11.2021

Court No. - 28

Case :- CIVIL REVISION No. - 153 of 2019

Revisionist :- Shezad And Another

Opposite Party :- Shareef

Counsel for Revisionist :- Mohit Kumar Singh, Gauri Shanker Mishra

Counsel for Opposite Party :- S.M. Nazir Abbas Abedi, S.M. Nazir Abbas Abedi

Hon'ble Syed Aftab Husain Rizvi, J.

1. Heard learned counsel for the parties and perused the material on record.
2. This Civil Revision has been filed against the order dated 29.07.2019 passed by Additional Civil Judge, Senior Division, Court No.3, Meerut in O.S. No. 1223 of 2013 (Shareef Vs. Shahazad and others).
3. In brief the facts are that an application 81(C) was moved by the plaintiff under Section 151 and Order 18 Rule IV C.P.C. alleging therein that the plaintiff has filed a suit for a declaratory decree on the ground that plaintiff being son and defendant no.2 being the widow of Mohd. Haneef who has died on 27.08.2012 are the sole legal representatives and owner in possession of the disputed properties described in Schedule I, II and III of the Suit. The defendant no.1 is not the son of plaintiff. He has no right, title or interest in the disputed property. The defendant no.1 is not the son of defendant no.2 Smt. Baano but

the son of her brother Mohd. Usman and thereby nephew of defendant no.2. This fact can be made clear through D.N.A. test and its report. Defendant nos. 1 and 2 filed objections against the aforesaid application and alleged that the said application has been moved after closing of evidence when the file is pending for final arguments. Plaintiff has no legal right to get D.N.A. test of defendant nos. 1 and 2. The responsibility of leading evidence was on the plaintiff. There is no provision for conducting D.N.A. test. The learned trial Court by the impugned order has allowed the aforesaid application of the plaintiff.

4. Learned counsel for the revisionists mainly contended that the learned Court below illegally and in improper manner and without perusing the relevant material on record has allowed the application of the plaintiff and directed the Chief Medical Officer to conduct the D.N.A. test of the revisionist. The learned Court below has exercised the jurisdiction which was not vested in it and has committed manifest error of law. The learned trial Court has not considered the fact that there are other evidence on record on the point and the fact in issue can be decided by other evidence on record. Learned counsel for the revisionists further contended that the impugned order directly affect the privacy of the revisionists causing serious prejudice to them, hence it cannot be sustained. Learned counsel for the revisionists also contended that no one can be compelled to under go D.N.A. test against his will. Learned counsel for the revisionist has placed reliance on **Ashok Kumar Vs. Raj Gupta and others (Civil Appeal No.6153 of 2021** decided on **1st October, 2021**).

5. Learned counsel for the opposite party on the other hand contended that the points in issue in the Suit is whether

defendant no.2 is the real son of deceased Haneef or not. D.N.A. test may be good piece of evidence determining the aforesaid issue. The plaintiff wants to bring this fact on record to conclusively prove his case and he could not be prevented from adducing a scientific evidence. It is further contended that the learned trial Court has properly exercised its jurisdiction and rightly allowed the application. There is no illegality or impropriety in the impugned order. Learned counsel for the opposite party placed reliance on **Minor Siva Kumar Vs. Chandrasekarn** reported in **2014 LawSuit (Mad) 2491** and **Dipanwita Roy Vs. Ronobroto Roy** reported in **2014 LawSuit (SC) 851**.

6. From the material on record, it appears plaintiff has filed a suit for declaration that plaintiff and defendant no.2 are the sole legal representatives in possession of the disputed property and defendant no.1 is not the son of Baano wife of Mohd Haneef but son of Mohd. Usman the brother of Baano. So the point in issue in original suit is whether the defendant no.2 is the real son of deceased Mohd. Haneef and his legal representative and has right, title or interest in the disputed property or not. Burden is on the plaintiff to prove his case and in support of his case, he wants to produce one sort of evidence which is scientific in nature. So it will not be proper to debar him from bringing such evidence on record. It is true that a person cannot be compelled to undergo D.N.A. test which can be conducted only on willingness of the concerned person. So it is for the defendants to decide whether they should go for D.N.A. test or not. If they decline to go for the D.N.A. test, Section 114 of the Evidence Act may apply. This has also been observed by the Hon'ble Apex Court in the case of **Dipanwita Roy Vs. Ronobroto Roy** reported in **2014 LawSuit (SC) 851** which is cited by learned counsel for the opposite party.

7. In Ashok Kumar Vs. Raj Gupta & Others (Supra) the ruling relied by learned counsel for the revisionists, the facts are that the burden was on the defendant and the other party moved the application for D.N.A. test and in such a situation Hon'ble the Apex Court in para 16 has observed thus:-

“16. The respondent cannot compel the plaintiff to adduce further evidence in support of the defendant's case. In any case, it is the burden on a litigating party to prove his case adducing evidence in support of his plea and the court should not compel the party to prove his case in the manner, suggested by the contesting party.”

In this case the burden is on the plaintiff and to discharge it, he wants to adduce one particular evidence which may be relevant so due to above reason the present case is distinguishable.

8. The revisionist/defendant no.2 is claiming legal right in the property of Mohd. Haneef and plaintiff has filed Suit for declaration that he and his mother defendant nos. 1 and 2 are the only legal heirs and owner in possession of property of the deceased Mohd. Haneef. In the facts and circumstances of the present case it will not be just and proper to deny the opportunity to plaintiff to bring the relevant scientific evidence on record. From the aforesaid discussion, it is clear that impugned order is just and proper, there is no illegality or impropriety in the impugned order and the revision lacks merit and liable to be dismissed. However, it is made clear that revisionists has liberty to comply or disregard the impugned order for D.N.A. test, if they don't comply the order, the allegations may be determined by the concerned Court by drawing presumption of the nature contemplated in Section 114 of the Evidence Act and also the other evidence available on record.

9. With the aforesaid observations, the civil revision is hereby **dismissed.**

Order Date :- 12.11.2021 // Krishna*