

Court No. - 39

Case :- FIRST APPEAL No. - 960 of 2023

Appellant :- Sachin

Respondent :- Sangeeta Devi

Counsel for Appellant :- Ramesh Singh Kushwaha, Sushil Kumar Kushwaha

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Shri Ramesh Singh Kushwaha, learned counsel for the appellant and perused the record.

2. Challenge has been raised to the order dated 11.07.2023 passed by learned Principal Judge, Family Court, Chandauli, in Suit No. 102 of 2021 (Sachin Vs. Sangita Devi), instituted by the appellant, under Section 12 of the Hindu Marriage Act, 1955.

3. By that order, the learned court below has rejected the application made by the appellant seeking DNA test of the child born from the marriage ostensibly to establish that the appellant is not the biological father of the child thus born.

4. Undisputedly, the parties got married on 12.06.2019. The child was born on 02.02.2020 i.e. within 9 months. It is also the case of the appellant that after the marriage, parties cohabited, though the appellant has also sought to allege that no physical relationship was established between them. It is also his case that parties cohabited up to 22.06.2019. Such facts are stated in paragraph-4 and 5 of the plaint.

5. It is not the case of the appellant that before their marriage, the parties had not known or met each other. In that regard, the

pleadings are absolutely silent. In any case qua the allegation of adultery being levelled by the appellant, the burden to establish the same remains on the appellant. He cannot seek to lighten that burden by forcing the opposite party to lead evidence as may not only demolish the defence, if any of the opposite party but also be read as evidence that may prove the case of the appellants.

6. The principle of law laid down in **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & another, 2014 2 SCC 576**, invoked by the present appellant is not applicable to the facts of the present case. In that case, the DNA test report had been received in evidence and had been proven on record. It is in that light that Supreme Court laid down the principle that the presumption available under Section 112 of the Indian Evidence Act, 1872 is rebuttal, and that in face of the medical expert opinion of DNA test report, that presumption stood rebutted, in the facts of that case. At present, in absence of any DNA test report available the stage to apply that principle laid down by the Supreme Court, is not available.

7. The present proceeding being the civil proceeding and not a criminal trial or enquiry or investigation, it is not for the Court itself to direct the parties to lead any particular evidence. In any case the Court may never pass any order or issue any direction to compel the parties to lead any evidence as may contain a possibility of demolishing its case/defence.

8. The appeal lacks merit and is accordingly **dismissed**.

Order Date :- 29.8.2023

SA