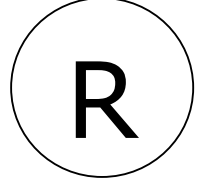




NC: 2026:KHC:34595  
W.P. No.7444/2022



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 9<sup>TH</sup> DAY OF JULY, 2026**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**  
**WRIT PETITION NO.7444/2022 (GM-CPC)**

**BETWEEN: .**

SRI. SHIVANNA  
S/O CHIKKANAIKA  
AGED ABOUT 65 YEARS  
R/AT HADYA VILLAGE  
HULLAHALLI HOBLI  
NANJANAGUD TALUK-571301  
MYSURU DISTRICT.

...PETITIONER

(BY SRI. ANIL KUMAR S, ADV.,)

**AND:**

1. SMT. H.S. MANJULA  
D/O SHIVANNA AND MAHADEVAMMA  
AGED ABOUT 30 YEARS.
2. SRI. H.S. SOMESH  
S/O SHIVANNA AND MAHADEVAMMA  
AGED ABOUT 29 YEARS.

BOTH ARE R/AT HADYA VILLAGE  
HULLAHALLI HOBLI  
NANJANGUD TALUK -571301  
MYSURU DISTRICT.

...RESPONDENTS

(BY SRI. SYED AKBAR PASHA, ADV., FOR  
SRI. MAHANTESH S. HOSMATH, ADV., FOR R1 & R2)





**NC: 2026:KHC:34595**  
**W.P. No.7444/2022**

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS. DIRECTION AS THE CASE MAY BE TO QUASH THE ORDER PASSED BY THE LEARNED I ADDL CIVIL JUDGE AND JMFC, NANJANGUD ON INTERIM APPLICATION UNDER ORDER 26 RULE 10 OF CPC R/W SEC 45 OF EVIDENCE ACT IN O.S.NO.690/2013 DTD. 17.02.2022 ALLOWING THE SAID I.A. FOR APPOINTMENT OF COURT COMMISSIONER UNDER ANNEX-G & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 06.07.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

**CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**CAV ORDER**

This writ petition is filed challenging the order dated 17.02.2022 passed by the I Additional Civil Judge and JMFC, Nanjangud (for short 'the Trial Court') in O.S.No.690/2013.

2. The brief facts leading to the filing of this petition are that the respondents/plaintiffs have filed a suit in O.S.No.690/2013 seeking the relief of partition and separate possession. In the said suit, the respondents/plaintiffs have filed an application under Order XXVI Rule 10 of the Code of Civil Procedure, 1908



(for short, 'the CPC') read with Section 45 of the Indian Evidence Act, 1872 (for short the 'Evidence Act') seeking to appoint a Court Commissioner to conduct blood analysis of the plaintiff No.1 and the defendant No.1. The petitioner/defendant No.1 filed objections to the said application. The Trial Court considered the said application and proceeded to pass the impugned order allowing the same. Hence, this petition is filed.

3. Sri.Anil Kumar S., learned counsel appearing for the petitioner submits that the Trial Court has passed the impugned order without considering the material on record and the law in its proper perspective. It is submitted that there is no *prima facie* proof of relationship between the petitioner/defendant No.1 and the respondents/plaintiffs, which has not been considered by the Trial Court. It is further submitted that the Trial Court has failed to consider that the application is filed at a belated stage after the evidence of the parties was concluded and the same is impermissible. It is also submitted that the



material documents produced show the name of the petitioner/defendant No.1 as Shivanna, whereas the school documents produced by the respondents/defendants show the name of the father as H.C.Shivanna, which clearly indicates that the petitioner is not the father of the respondents/defendants. It is contended that if the application for DNA test is allowed, the same would be in violation of the right of privacy of the petitioner/defendant No.1. Hence, he seeks to allow the petition.

4. *Per contra*, Sri.Syed Akbar Pasha, learned counsel for Sri.Mahantesh S.Hosmath, learned counsel appearing for the respondents Nos.1 and 2 supports the impugned order of the Trial Court and submits that the Trial Court has considered the material on record in its proper perspective and the same does not call for any interference. It is submitted that the petitioner/defendant No.1 has himself admitted in his cross-examination that he is willing for the DNA test to ascertain the paternity,



hence, there is no violation of privacy of the petitioner/defendant No.1. In support of his contentions, he placed reliance on the following decisions:

- a) *NARAYAN DUTT TIWARI Vs. ROHIT SHEKHAR AND ANOTHER*<sup>1</sup>**
- b) *MOHAMMED REFEEQ Vs. S.MOHAMMED FAIROZ AHAMED AND OTHERS*<sup>2</sup>**
- c) *SMT.JAYALAKSHMAMMA Vs. ANJINAPPA (SINCE DEAD BY HIS LRS) AND ANOTHER*<sup>3</sup>**

Hence, they seek to dismiss the petition.

5. I have heard the arguments of the learned counsel for the petitioner/defendant No.1, the learned counsel for the respondents/plaintiffs and perused the material available on record. I have given my anxious consideration to the submissions advanced on both the sides.

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<sup>1</sup> (2012) 12 SCC 554

<sup>2</sup> W.P.No.52855/2019 dtd 10.01.2024

<sup>3</sup> R.F.A.No.2523/2007 dtd 13.06.2025



6. The respondents/plaintiffs filed a suit for partition and separate possession against the defendants in O.S.No.690/2013. The respondents/plaintiffs filed the said suit seeking partition in the property of the defendant No.1 claiming to be the children of defendant No.1 and their mother-Mahadevamma. The defendant No.1 and other defendants filed written statement and additional written statement denying the plaint averments by stating that the respondents/plaintiffs are not the children of the petitioner/defendant No.1 and that the respondents/plaintiffs are born out of the wedlock between Mahadevamma and one H.C.Shivanna. In the said suit, the respondents/plaintiffs after the conclusion of evidence and at the stage of arguments filed an application under Order XXVI Rule 10 of the CPC read with Section 45 of the Evidence Act, seeking to appoint a Court Commissioner in order to conduct a scientific investigation i.e. blood analysis for DNA identification between the plaintiff No.1 and the defendant No.1. The defendant No.1 filed



objections to the said application. The Trial Court considered the said application and proceeded to allow the same on the ground that the DNA test would help ascertain the biological relationship between the plaintiff No.1 and the defendant No.1 and also that the defendant No.1 himself has given his consent in the cross-examination.

7. In order to appreciate the material on record and the contentions raised by the learned counsels appearing on both sides, it would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **CHATURBHUI PRADHAN Vs. AMAR PRADHAN AND ANOTHER<sup>4</sup>**, wherein it was held as under:

*"4. Before us it is contended by CP that he cannot be compelled to give DNA sample nor is there an eminent need for the DNA test. Further, there cannot be any adverse inference against him under Section 114(h) of the Indian Evidence Act, 1872 at this stage. It is submitted that Amar's civil suit is barred by res-judicata. Per contra, it is*

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<sup>4</sup> 2026 INSC 600



*submitted on behalf of Amar that in view of the continuous denial of paternity by CP, there is no other recourse available to determine the question of paternity and therefore it is in the interest of justice. When the balance of interest between CP and Amar is examined, the same is in favour of the latter since there is no application of presumption under Section 112 of IEA. The right of privacy in as much as it is available to CP is not an absolute right. Regarding the question of res judicata, the same is submitted to be not applicable since the previous proceedings under Section 125 CrPC were instituted by the second respondent, though was also for the benefit of Amar, and further that these proceedings are summary in nature and do not amount to a proper finding.*

*5. We now examine these competing claims. In doing so, we must take notice of the controlling judgments:*

**5.1 Goutam Kundu v. State of W.B.<sup>5</sup> ,**

*"26. From the above discussion it emerges—*

*(1) that courts in India cannot order blood test as a matter of course;*

*(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.*

*(3) There must be a strong prima facie case in that the husband must establish non-access in*

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<sup>5</sup> (1993) 3 SCC 418



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*order to dispel the presumption arising under Section 112 of the Evidence Act.*

*(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.*

*(5) No one can be compelled to give sample of blood for analysis."*

### **5.2 Dipanwita Roy v. Ronobroto Roy<sup>6</sup>:**

*"16. It is borne from the decisions rendered by this Court in Bhabani Prasad Jena [Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633 : (2010) 3 SCC (Civ) 501 : (2010) 3 SCC (Cri) 1053] and Nandlal Wasudeo Badwaik [Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576 : (2014) 2 SCC (Civ) 145 : (2014) 4 SCC (Cri) 65] that depending on the facts and circumstances of the case, it would be permissible for a court to direct the holding of a DNA examination to determine the veracity of the allegation(s) which constitute one of the grounds, on which the party concerned would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril." (emphasis supplied)*

*5.3 Having considered extensively the previous judgments, the following principles were enunciated in **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia<sup>7</sup>**:*

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<sup>6</sup> (2015) 1 SCC 365

<sup>7</sup> (2024) 7 SCC 773



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*"43. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:*

*43.1. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.*

*43.2. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.*

*43.3. A court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.*

*43.4. Merely because either of the parties have disputed a factum of paternity, it does not mean that the court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test.*

*43.5. While directing DNA tests as a means to prove adultery, the court is to be mindful of the consequences thereof on the children born out of*



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*adultery, including inheritance-related consequences, social stigma, etc.”*

#### **5.4 Ivan Rathinam v. Milan Joseph<sup>8</sup>,**

*“35. In the peculiar circumstances of this case, this Court must undertake an exercise to ‘balance the interests’ of the parties involved and decide whether there is an ‘eminent need’ for a DNA test. This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.*

*36. On one hand, courts must protect the parties’ rights to privacy and dignity by evaluating whether the social stigma from one of them being declared ‘illegitimate’ would cause them disproportionate harm. On the other hand, courts must assess the child’s legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test.*

*...*

*46. When dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and must consider whether it is possible to reach the truth without the use of such a test.*

*47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test : (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.”*

*(emphasis supplied)*

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<sup>8</sup> 2025 SCC Online SC 175



*5.5 All of the judgments referred to above were recently followed by this bench in **Nikhat Parveen v. Rafique**<sup>9</sup>. It is clear from the above judgments that when the Court is confronted with the question whether or not to order a DNA test, the only test to be satisfied is whether the result of the DNA test is directly in issue and whether any other evidence-on-record can substitute for the answer that may be arrived at through this scientific process. Also, whether it is in the best interest of the parties and/or justice.”*

8. It would further be useful to refer to the decision of this Court in the case of **MOHAMMED REFEEQ** referred supra at paragraphs 10 to 15 held as under:

*“10. Now it is stated that the matter is set down for defendants’ evidence. At this stage, the plaintiff filed I.A.No.10 under Order 26 Rule 10A of CPC seeking a direction for collection of blood samples, to have DNA profiling and to have a report which will throw much light about his relationship the defendants. The said application was allowed by the trial Court. The order is challenged by defendant No.6.*

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<sup>9</sup> 2026 SCC Online SC 652



11. *It is pertinent to note that none of the other defendants have challenged the said order. The contention of learned counsel for the petitioner is that defendant No.6 cannot be compelled to give blood samples for the purpose of DNA profiling and therefore, he placed reliance on the decision of the Hon'ble Apex Court in Banarsi (supra).*

12. *In the case that was considered by the Hon'ble Apex Court in Banarsi (supra), a direction for DNA test was given for issuance of Succession Certificate under Indian Succession Act. The said order was set aside by the High Court and ultimately, it was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court placed reliance on its earlier decisions including Goutam Kundu Vs. State of West Bengal, where it is held that the Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. Under such circumstances, it is held that direction issued for DNA test by the trial Court is unsustainable and the High Court has rightly set aside the order of the trial Court.*

13. *In the present case, status of the plaintiff as a member of the family is denied by the*



*defendants. The plaintiff is not only claiming his status as one of the member of the family, but he is also claiming his right over the suit property. He has lead evidence by stepping into the witness box and subjected himself for cross-examination. He also examined S. Mohammed Ummar who fostered him and according to defendant No.6 who is the biological father of the plaintiff. The said witness categorically stated that he is not the biological father of the plaintiff, but it was late L.P.Ghouse Baig and late Umerabi were the parents of the plaintiff.*

*14. It is stated that the plaintiff is not in a position to produce the Birth Certificate pertaining to him. Simply because the plaintiff could not produce the Birth Certificate or any such documents to prove his relationship with late L.P.Ghouse Baig and Umerabi, his right to claim the status as one of the family member of the defendants, to claim his right as the son of late L.P.Ghouse Baig and Umerabi and to claim share in the suit property cannot be denied. The plaintiff himself has taken the risk of seeking DNA profiling to prove his contention that he is the son of late L.P.Ghouse Baig through late Umerabi. Under such circumstances, it cannot be said that the right of*



*either the plaintiff or the defendants is violated in any manner.*

*15. The Hon'ble Apex Court in a subsequent decision in Narayan Dutt Tiwari (supra) considered a similar situation where the petitioner before the Apex Court denied the paternity of the respondent. Under such circumstances, the Hon'ble Apex Court called upon to furnish DNA lab report in a sealed cover to maintain confidentiality. The Hon'ble Apex Court considered the order passed by the High Court and upheld the same. The High Court considering the application for DNA test filed by the applicant where the paternity was disputed by his father who was the respondent, a distinction was drawn between legitimacy and paternity of child. It also observed that Section 112 of the Evidence Act is intended to safeguard the interest of the child by securing his or her legitimacy and not the paternity. Right of the child to know the truth of his or her origin was highlighted by stating that the child is having a right to know his biological roots through reliable scientific tests. It is noticed that there is no bar for conducting such DNA test and it will not in violation of the right to life or privacy of a person. It will not amount to an invasion of right to life. The High Court has also noticed that the applicant was aged 29 years and*



*he was capable of taking his decisions. Under such circumstances, question of his welfare being adversely affected did not arise. The Court also noticed that even though it is the contention of the respondent that there are other materials on record to arrive at a decision regarding paternity or otherwise, it is felt that there is strong prima-facie case suggesting eminent need to issue direction for DNA test. The Division Bench of High Court also upheld the finding of the learned Civil Judge by observing that the accuracy of DNA test was not even imagined at the time when the law was formulated. When a child seeks declaration regarding his true paternity, Section 112 of the evidence Act will not come in the way of passing necessary orders. It also observed that, if the prayer for DNA test is not accepted, the applicant will suffer irreparable injury."*

9. It would also be useful to refer to the decision of this Court in the case of **SMT.JAYALAKSHMAMMA** referred *supra* at paragraphs 57 to 64 held as under:

*"57. The counsel appearing for the appellant in support of her contention seeking for DNA test relied upon judgment passed by this Court in W.P.No.112825/2019 dated 27.09.2024 and in this judgment discussed judgment of*



*M.V.Narayanaswamy and others V/s Sri.Suresh in W.P.P.No.13491/2018 delivered on 14.02.2014 as well as decision of co-ordinate bench and so also the judgment of Apex Court in case of Narayana Datta Tiwari V/s Rohit Shekhar and another reported in 2012 SCC 554 a distinction was drawn between legitimacy and paternity of the child since counsel for the respondent argued more on the distinction between legitimacy and paternity of the child and so also taken note of Section 112 of Indian Succession Act is intended to safeguard the interest of the child by securing his or her legitimacy and not the paternity.*

*58. It is also important to note that there is no bar for conducting such DNA test and it is not in violation of the right to life or privacy of a person and also an observation is made that it will not come out an invasion of right to life. This Court also taken note of judgment of Aparna Ajinkya Firodia's case and also while discussing the same, taken note of the principles laid down in the judgment of Kamti Devi (Smt) and another V/s Poshni Ram, reported in (2001) 5 SCC 311 wherein also held that the result of genuine DNA test is said to be scientifically accurate. Even that is not enough to escape from the conclusiveness of Section 112 of Act that is if a husband and wife*



*living together during the time of conception but the DNA test reveal that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This Court made detailed discussion in a case of Aparna Ajinkya Firoidia and even extracted paragraph No.24 of the judgment wherein also an observation is made that it was incumbent upon the plaintiff Nos.1 to first prove that she was the wife of defendant No.1 by adducing both oral and documentary evidence and even after such evidence is led, the question whether the plaintiff No.1 was the wife of defendant No.1 or not, cannot be scientifically established or if there is a doubt as to whether the defendant No.1 had access to the plaintiff No.1 or not and if the DNA test was the only route to establish the truth, then Court may consider the application filed by the parties. Having taken note of the same also, it is very clear that if no sufficient material available before the Court then the Court can invoke the DNA test, but in case on hand, the plaintiff examined P.W.1 to P.W.4 relying upon the oral evidence as well as the documentary evidence of sale deed executed by Smt.Ammayamma in favour of one Keerthi and in turn the very same Keerthi executed the sale deed in favour of Ammayamma and these two sale deeds were taken place in the year 1979 and*



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*1981. The Trial Court has not discussed more anything about these two sale deeds whether this sale deed between Ammayamma to whom the plaintiff relies upon the evidence and also not given definite finding whether Ammayamma which the plaintiff relies is the mother of the defendant since the defendant claims Ammayamma is the wife of Ramaiah but plaintiff claims that plaintiff and defendant are the children of Ammayamma wife of Subbarayappa. When the issue is with regard to whether they are the children of Ammayamma wife of Subbarayappa, if DNA test is conducted and the same would be scientifically a conclusion can be made and sufficiently establish the relationship between the parties since there is a serious dispute between the parties in respect of relationship between the plaintiff and defendant.*

*59. This Court also in the judgment taken note of paragraph No.57 of the Aparna Ajinkya's case wherein Apex Court considered the presumption under Section 112 and 114 of Evidence Act. This Court also comes to the conclusion that DNA test is not only a substantive piece of evidence and the said DNA test will come to the aid of the petitioner in order to prove the claim and also submission of the appellant's counsel is very clear that if DNA test evidence goes*



*against the appellant they are out of Court and when such submission is made, taken note of the said fact into consideration.*

*60. This Court also in the judgment in W.P.No.36322/2017 dated 05.04.2019 in a similar set of facts when the relief is sought for DNA test discussed in detail in paragraph No.13 and so also in paragraph No.14 and considering the judgment of Goutam Kundu V/s State of West Bengal reported in 1993 (3) SCC 418 wherein it is held that normally the Courts in India cannot order blood test as a matter of course and also cannot be entertained and unless there must be a strong prima facie case in that the husband must establish nonaccess in order to dispel the presumption arising under Section 112 of the Evidence Act. In the judgment also setting aside the order of the Trial Court allowed to make scientific investigation of the DNA profiling of blood samples.*

*61. The High Court of Madras in CRP.PD.No.646 of 2023 and CMP.No.5083 of 2023 taken note of judgment of Ashok Kumar case reported in (2022) 1 SCC 20 wherein also even discussed the case of Ajinkya Firodia's case and in paragraph No.10 discussed the DNA test is only to*



*ascertain whether the plaintiffs are born to Arimuthu and thereby whether they are entitled to a share in the properties, by way of partition. It is observed that with the advancement of the technology, it is now possible for getting such a finding by sibling DNA test. In the said judgment discussion was made with regard to the Narayan Dutt Tiwari case reported in (2012) 12 SCC 554 wherein is also observation is made that the DNA test ordered is only of siblings who are not minors and also observation is made that Courts power to order DNA test has not been totally shut out and also an observation is made that unless the petitioners are able to establish through the sibling DNA test that they are also children of late Arimuthu, they would not be in a position to successfully claim their legitimate share in the suit for partition.*

*62. The counsel for the respondent mainly relies upon the case of Ashok Kumar V/s Raj Gupta and others wherein discussion was made with regard to Section 101 to Section 103 and Section 112 and presumption as to legitimacy of child wherein also discussion was made with regard to the timing of the application is equally relevant. The plaintiff has already led evidence from his side to prove relationship between the parties and at*



*this stage whether the High Court should have directed the plaintiff to undergo the DNA test and in paragraph No.11 discussion was made that where other evidence is available to prove or disprove the relationship, the Court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions and also discussion was made with regard to Section 112 and also discussed in paragraph No.14 that possibility of stigmatizing a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy. No doubt the Apex Court in detail discussed in this judgment with regard to asking for subjecting the plaintiff to a DNA test and in the case on hand the issue is involved between the parties with regard to proving of sibling test and not the question of right of privacy and test is sought for the purpose of determining the legitimate claim of the plaintiff. No doubt the counsel appearing for the respondent relies upon the judgment of Aparna Ajinkya Firodia's case which I have also taken note of while discussing the consideration of DNA test in the Writ Petition which has been disposed of by this Court*



*wherein also principles summarized for conducting of DNA test.*

*63. The counsel also relied upon the recent judgment of Apex Court in case of Ivan Rathinam V/s Milan Joseph wherein also discussion was made with respect of article 21 and Section 112 of evidence Act particularly issue No.1 displacing of legitimacy and permitting a DNA test was discussed in paragraph No.7 wherein cases of Aparna Ajinka Firodia case, Ashok Kumar's case and Goutam Kundu's case were also discussed and also discussed regarding paternity and not legitimacy and this Court already made discussion with regard to factual aspects of the case on hand and here is a case for testing of sibling test for the purpose of arriving for a conclusion regarding relationship between the parties and not the question of right of privacy and also in paragraph No.47 discussed in the judgment also that Courts must therefore consider the existing evidence assess the presumption of legitimacy and if that evidence is insufficient to come to a finding, only then should be consider ordering for a DNA test. Once the insufficiency of evidence is established, the Court must consider whether ordering a DNA test is in the best interest of the parties involved*



*and must ensure that it does not cause undue harm to the parties.*

*64. Having considered the principle, it is very clear that in the case on hand only for the purpose of deciding the issue of plaintiffs whether they are entitled for claim in the suit schedule property has a share the issue is involved and also plaintiff is ready to take the result of DNA test and also submission of the counsel is very clear that if report goes against the plaintiffs, plaintiffs will be out of the Court and when such submission is made and issue involved between the parties is not in respect of right of privacy and only with respect to test of siblings as well as consideration of legitimate claim of the plaintiff for a share in the property. Hence, I do not find any force in the contention of the counsel appearing for the respondent that there cannot be any order of DNA test and the reasons assigned in the application filed by the appellant is very clear only for the purpose of determining the relationship as well as legitimate claim going to take DNA test. Under these circumstances, the appellant made out the case to allow the application. Hence, I answer the Point No.2 as Affirmative.”*



10. The aforesaid enunciation of law by the Hon'ble Supreme Court and this Court can be outlined as follows:

- a) It is to be satisfied by the Court that the result of the DNA test is directly in issue to adjudicate the dispute.
- b) The test for DNA analysis to ascertain paternity is a sensitive exercise to be carried out exceptionally keeping in mind the welfare of the parties.
- c) The stigma or sensitivity around the DNA test is with regard to the chastity of the mother and the legitimacy of birth of the child.
- d) There is a distinction between paternity and legitimacy and though Section 112 of the Evidence Act, aims to protect the legitimacy of the child, there can be no bar to ascertain the paternity of the child using scientific methods, specially when the child himself/herself is seeking to know his biological roots in order to make a claim in a partition suit and the same will not amount to invasion of the privacy of the person.



e) The DNA test can be ordered to prove the legitimacy of a claim of the parties in a dispute only if there is a finding to the effect that the evidence produced is insufficient to prove the same, scientific opinion would aid the Court in deciding the controversy in the case and that the test would not cause undue harm to the parties.

f) The order for conducting a DNA test shall be made considering the facts and circumstances on a case to case basis, keeping in mind the aforesaid broader guidelines and the same must not be ordered in a mechanical manner.

11. In the instant case, the /plaintiffs have clearly averred in the plaint that they are the children of the defendant No.1 and the defendant No.1, in the written statement has categorically denied the said assertion. It is to be noticed that the evidence adduced by the witnesses put a cloud over the paternity of the respondents/plaintiffs. The depositions of PW-2 and PW-3



states that the defendant No.1 and the mother of the respondents/plaintiffs have got married and the respondents/plaintiffs are the children born to them, whereas the deposition of the PW-3 in his cross-examination states that the father of the respondents/plaintiffs is Shivanna from Hommaragalli Village, whereas the defendant No.1 is from Hadiya Village. Furthermore, the respondents/plaintiffs have filed the statement of objections in this petition and produced the marks card of the respondent No.1, Aadhar Card and Voter ID of the respondent No.2, marks card of the respondent No.2, caste certificate of the respondents and the deposition of the petitioner/defendant No.1 in the evidence. A perusal of the documents produced indicates that the father of the respondents/plaintiffs is H.C.Shivanna, whereas the petitioner/defendant No.1 is claiming to be Shivanna. Hence, it is clear that the evidence adduced is insufficient to ascertain the biological relationship between the petitioner/defendant No.1 and



the respondents/plaintiffs. It is further to be noticed that the DNA test is sought by the respondents/plaintiffs themselves, hence, the question of invasion of privacy or causing stigma towards their legitimacy does not arise. Furthermore, the defendant No.1, in his cross-examination has clearly deposed that he is willing to take the DNA test, hence, after giving such consent in the evidence, he cannot now contend that the same amounts to invasion of his privacy.

12. It is also required to be noticed that the suit is filed by the respondents/plaintiffs seeking partition of the property belonging to the petitioner/defendant No.1 claiming to be his children, hence, the issue with regard to the paternity of the respondents/plaintiffs is foundational to decide the suit of partition. Hence, the Trial Court has rightly allowed the application seeking to appoint the Court Commissioner to conduct a DNA test and ascertain the biological relationship between the plaintiff No.1 and the defendant No.1, which does not call for any interference.



13. However, I am of the considered view that in view of the law laid down by the Hon'ble Supreme Court in the case of **NARAYAN DUTT TIWARI** referred *supra*, the DNA test is required to be conducted by the appointed Court Commissioner and the result is required to be placed before the Trial Court in a sealed cover in order to maintain confidentiality.

14. For the aforementioned reasons, I proceed to pass the following:

**ORDER**

- (i) The writ petition is disposed of.
- (ii) The impugned order dated 17.02.2022 passed in O.S.No.690/2013 by the I Additional Civil Judge and JMFC, Nanjangud, is upheld and modified to an extent of producing the DNA test report in a sealed cover.



(iii) The Trial Court is directed to ensure that the result of the DNA test conducted by the Court Commissioner is placed before it in a sealed cover.

**Sd/-**  
**(VIJAYKUMAR A. PATIL)**  
**JUDGE**

RV  
List No.: 2 SI No.: 1