



IN THE HIGH COURT OF ORISSA AT CUTTACK

**CMP No.758 of 2025**

(In the matter of an application under Article 227 of the Constitution of India)

***Golapi Majhi***

....

***Petitioner***

*-versus-*

***Bhabanishankar Budulal @ Kisan  
and others***

....

***Opposite Parties***

Advocate(s) appeared in this case:-

For Petitioner : Mr. B. Sahoo, Advocate

For Opposite Parties : Mr.A.P.Bose, Advocate

**CORAM: JUSTICE B.P. ROUTRAY**

**JUDGMENT  
18<sup>th</sup> August 2025**

**B.P. Routray, J.**

1. Heard Mr.Sahoo, learned counsel for the Petitioner and Mr.Bose, learned counsel for the Opposite Parties.

2. Present CMP is directed against the order dated 02.12.2024 of learned Civil Judge (Sr.Division), Kuchinda passed in C.S.No.3 of 2018, wherein the prayer of defendant no.1 for DNA test of defendant no.3 with regard to his parentage has been rejected.



3. Present Opposite Party No.1 is the plaintiff. The Petitioner is defendant no.1 before the trial court and Opposite Party No.3 is Defendant no.3. The plaintiff filed the suit praying for partition. Defendant No.1 filed his W.S. along with counter claim stating that Defendant no.3 has no share in the suit property for the reason that he is not the son of Thutha Budula@Kisan and then filed the petition dated 23.3.2024 praying for DNA test.

4. It is true that the wife of Thutha Budula was examined as a witness Viz. P.W.2 and she has admitted defendant no.3 as the son of Thutha Budula and herself.

5. In a suit for partition, the prayer for DNA test to determine parentage of rival party is unwarranted. It is to be borne in mind that forcing a person to undergo DNA test affects his right to privacy.

6. In *Bhabani Prasad Jena -Vrs- Convenor Secretary, Orissa State Commission for woman and another, (2010) 8 SCC 633*, it has been observed that;

“22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the



matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of “eminent need” whether it is not possible for the court to reach the truth without use of such test.

23. There is no conflict in the two decisions of this Court, namely, *Goutam Kundu v. State of West Bengal and another*, (1993) 3 SCC 418 and *Sharda v. Dhanupal*, (2003) 4 SCC 493. In *Goutam Kundu*, it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and the court must carefully examine as to what would be the consequence of ordering the blood test. In *Sharda* while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course.”

7. In the case at hand, admittedly the suit is for partition where defendant no.1 disputes the parentage of defendant no.3 despite the evidence of P.W.2, the mother. The mother has stated in her cross-examination that Defendant No.3 is her son through Thuta Budula. Moreover, Defendant No.1 does not dispute status of P.W.2 as the



wife of Thuta Budula, who is dead now, nor does he dispute valid marriage between P.W.2 and Thuta Budula at any point of time. Defendant No.3 being a third person is also not authorised to do so. In such situation, directing for DNA test of the child on the face of admission of the mother would be an insult to her motherhood and against the law enumerated in section 112 of the Evidence Act. Apart from this, it is inconceivable how the DNA test would be relevant in a case of partition where the status of the parties as the members of joint family is required to be seen to determine their respective shares. It is important to be reminded here is that recognition of a person as son of another is not required to be determined through blood relation only and what is important is his recognition in the society as such. Defendant No.3 is at the age 58 years now. So the trial court has rightly observed that direction for DNA test at this stage would not bring any fruitful result. This Court in *Satyanarayan Chandra Deo vrs. Kumari Rajamani Deo*, 60(1985) C.L.T. 414, have observed that the mother of the child is the best witness to prove his paternity. In *Kamti Devi v. Poshi Ram*, (2001) 5 SCC 311, it is observed that;

“10. ... xx ... The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g. if a husband and wife were living together during the



time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. ..  
xx ..”

Keeping in view the principles laid down, as above, on the authority of the Court to direct for DNA test and the facts of the case at hand, I do not see this as a fit case to be directed for DNA test of Defendant No.3. No infirmity is seen in the order of the learned trial court refusing the prayer of the Petitioner.

8. Resultantly, the CMP is dismissed.

**( B.P. Routray )**  
**Judge**