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IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI

Present

Sri. Kashinath V. Uppar

B.Sc. LL.B.

Civil Judge & JMFC., Jewargi.

Dated on this the 21st day of November-2025

E.P. No.04/2013

Decree holder: 1. Jainabi W/o Ladlesab and others.

(By. Sri. P.K., Advocate)

V/s.

Judgement debtor: Basavaraj S/o Hanamantraya Patil,

(By Sri.B.H.K., Advocate)

PARTIES TO I.A. NO.12

APPLICANT/S : Begumbee W/o Ladlesab
III Party applicant and others.
 V/S

OPPONENT : Modinsha & other

1	Provision under which the application is filed	U/O.26 Rule 10(A) of CPC.
2	Relief sought for	DNA Test
3	The date on which the application is filed	04-08-2025
4	Number of application	I.A.No.12

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5	The date which the objection are filed by different opponents	05-08-2025
6	The date on which the orders were passed on the said application	22-11-2025

COMMON ORDER ON I.A No.12 U/O 26 RULE 19(A) OF CPC.

The third party applicants have filed I.A.No.12 U/O 26 Rule 10(A) of CPC, to appoint a DNA expert to collect the DNA sample of the applicant No.2 and 3 and L.R's of deceased JaInabee and give a report of their paternity.

2. The first objector/applicant sworn to the affidavit stating that, she and other applicants have filed an application of third-party objectors claiming right of share stating that, herself and applicant No.2 are the daughters of deceased Ladle Sab and her mother i.e, applicant No.1, her mother is the legally wedded wife of deceased ladle Sab. The third party applicant stated that, petitioner is also the wife of ladle Sab and her children who her legal heirs deceased petitioner are also the children of deceased ladle Sab. But the petitioners have disputed their legal status with the deceased ladle Sab. In this execution the real controversy between the parties is as to legal status of applicants with the

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deceased ladle Sab. But the it is admitted fact that petitioner is the wife and her children are the son and daughters of the deceased ladle Sab. Hence, when the question of paternity arose, DNA test can be availed to determine the paternity issue. The applicants have filed voluminous documents. However, in addition to the same the DNA test can very well resolve the real controversy between the parties. The petitioners have disputed our legal status with deceased ladle Sab but they admit that they are the children of deceased ladle Sab. Hence, to determine the dispute relating to paternity, DNA test can be made available easily which will assist the court in determining the issue regarding the legal status. The issue between the parties to the suit is not legitimacy or illegitimacy but with regard to paternity and the same can be determined by DNA test. Hence, to aid the hon'ble court, expert assistance is required to collect the DNA of mine and admitted children of Ladlesab who the L.R's of petitioner and to report as to whether myself and another applicant No.2 and L.R's of petitioner are the children of deceased Ladlesab or not and report the same. the applicant made out a strong prima-facie case suggesting the eminent need to issue direction for DNA test. There are

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other documents produced to show that she is the daughter of deceased Ladlesab but the same are disputed by other side due to alphabetical errors. Hence, there is eminent need to have DNA test of her and applicant No.2 and L.R's of petitioner. That if the applicant is not allowed, I would be put to irreparable loss which cannot be compensated in terms of money. With these grounds applicant prays to allow the application.

3. The decree holder resisted the application by filing objections contending that, this court has no jurisdiction to determine the legal status of the party especially in the personal matters as parties governed under personal law the applicant has establish of contract of the marriage between the parties. As per personal law, contract of marriage has to be proved i.e., offer and acceptance under Sec.29 of the Contract Act, vague and ambiguous cannot be determined as per the Act. Even there is no pleading in the plaint, only claiming legally wedded wife is not ground to refer the DNA test in the absence of specific pleading proof. More over the marriage issue has been framed by remanding the matter and accordingly evidence lead went in vain

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nothing is proved, even there is no ground in the present E.P. why this effort has not been made in the trial court. Already marriage not proved and issue framed against them taken in the negative. More particularly status of marriage relief and declaration is within jurisdiction of family court and exercise of power in the civil court is specifically barred, the remedy whatever the OPPONENT desires to prove they ought to have filed the declaration suit within time after The death of Ladlesab. Unless proving of the contract between the opponent No.1 and deceased father of respondent No.1 no power is to be exercised to determine. Thereafter the death of Ladlesab within 12 years limitation to one claimed and only at the instigation of one Basavaraj they came to the court and one the brother of appellant No.1 to 3 he clearly admitted that his family not concerned with the late Ladlesab Khaji family, under the circumstance no DNA test is to be granted. It is estoppel to the plaintiffs and son Abdul Razak. Those other contents taken in the affidavit of one Zareena all are false and baseless holds no water to consider. Order XXVI Rule (10-A) to (C) are under the provision is for comparison of thumb-impresion, disputed signature appointment of

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commissioner for experts examining signatures etc. and the prayer made by the opponent does not come under the purview these provisions. But in the case on hand the appellant made and claimed Abdula Razak also son and he who denied the relationship with that of Ladlesab Khaji family under the deed. Thus I.A.is not maintainable deserves to be rejected. In exceptional cases DNA, when material documents filed failed to prove the marriage, the DNA test cannot be granted 1) that court is India cannot order blood test as a matter of course. That the court cannot enforce to DNA test it is constitutional privacy of rights. The application is frivolous, vexatious besides being devoid of merits not maintainable deserves to be dismissed.

4. Heard the both sides. The applicant counsel relied on the decision of 1) W.P.No.52855/2019 in between Mohammed Rafeeq V/S. Mohammed Fairoz Ahmed and others of Hon'ble High Court of Karnataka, Kalaburagi Bench, 2) RSA No.200244/2024 in between Padmavati D/o Sangappa V/S. Ramesh S/o Sangappa Darji.

5. On considering the I.A, affidavits and objections, points would arise for my consideration are as under:

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POINTS

1. Whether the I.A.No.12 filed by the applicants is deserves to be allowed ?
 2. What order?
6. My answers to the above points are as under:

Point No.1:- Negative.

Point No.2:- As per final order, for the following:

REASONS

7. **Point No.1:-** Admittedly, this Execution Petition filed by the decree holder filed a O.S.No.6/2007 for eviction and compensation against the judgement debtor and same is decreed on 21-02-2009. Thereafter, decree holder filed the execution petition. Further, this court was issued the delivery warrant. The judgement debtor was appearing before this court and submits that, he is ready to handover the possession of suit property. Thereafter, the 3rd party applicant filed the I.A.No.4 and 5 U/O 21 Rule 97, 99, 101 R/w.Sec.147 of CPC, 1908, stating that they have fixed share in the petition schedule property by restraining the respondents from dispossession the objectors.

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8. It is the contention of the applicant that, she and applicant No.2 are the daughters of Ladlesab and applicant No.1 is the legally wedded wife of deceased Ladlesab. The applicants admitted that, the decree holder also the legal heirs of deceased Ladlesab, but the decree holder denied the legal status of applicants with the deceased Ladlesab. The applicants are filed many documents proved relation with the deceased Ladlesab, but it is necessary to appoint a DNA expert to detect the paternity of applicant No.2 and 3. Per-contra, the learned counsel for decree holder objected that, at the stage, the application filed by the applicants not maintainable. The rights of parties already decide in O.S.No.52/2013. Moreover, the application filed by the applicants barred by limitation. The order 26 Rule 10(A) to 10(C) this provision not applicable to DNA test, with these grounds decree holder counsel prays to reject the I.A.No.12.

9. On considering both parties pleadings this court is opinion that, the DNA test sought by the applicant is not maintainable because, an execution proceedings cannot be used to decide the new issues such as marriage, paternity or legal status. Execution is only for enforcing

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the decree already passed and not a reopening or proving fresh claim. Admittedly, this execution petition filed by the decree holder in O.S.No.6/2017. The rights of the third party applicant already decide in O.S.No.52/2013. The applicants had earlier opportunity in the O.S.No.52/2013, to prove their alleged marriage and relationship with deceased Ladlesab. The applicant cannot be now use a DNA test at the execution test to cure the deficiencies in the earlier proceedings. The law does not permit re-litigation of issues that, were already framed and trial. More ever, the DNA test is violate the personal rights of decree holder. The party applicant already produced sufficient documents to prove their relationship. More ever, the applicant filed this application for a DNA test for a LR's of deceased Ladlesab. The father of decree holder already died long back. This court cannot be compel the decree holder to give their blood sample to DNA test. On considering the relations of the parties if application allowed, the very purpose of filing application is purpose not serve. Therefore, the application filed by the third party applicant deserves to be reject. Hence, I answer Point No.1 in the Negative.

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10. **Point No.2**:- In view of the my findings on Point No.1, Hence, I proceed to pass the following:

ORDER

The interim application No.12 filed by the 3rd party application U/Sec.26 Rule 10(A) of CPC, is hereby dismissed.

For arguments on 29-11-2025.

(Dictated to the Stenographer, typed by him revised and corrected by me and then pronounced by me in the Open Court on this 21th Day of November-2025).

(Kashinath V. Uppar)
Civil Judge & JMFC, Jewargi.

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