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MC No.37/2023

Presented on : 04-11-2023  
Registered on : 04-11-2023  
Decided on : 12-03-2026  
Duration : 2 years 4 months 8 days

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, SEDAM**

**PRESENT:**

Sri SAGAR GURUGOUDA PATIL  
B.A., LL.B(Spl.)  
Senior Civil Judge & JMFC, Sedam

**Dated this the 12<sup>th</sup> day of March-2026**

**MC No.37/2023**

Petitioner/s :

Gundappa S/o Late Basawaraj Malipatil, Age: 28 years, Occ: Coolie, R/o H.No.175 Ashraya Colony Udgi Road Sedam, Tq: Sedam, Dist: Kalaburagi.

(Smt/Sri.N.R. Advocate)

VS

Respondent/s :

Smt. Chennamma @ Channamma W/o Gundappa Malipatil, Age: 25 years, D/o Hanmanth @ Hanmanthrao R/o H.No.175 Ashraya Colony Udgi Road Sedam, Tq: Sedam Dist: Kalaburagi Now R/o C/o Hanmanthraya @ Bijnalli, Tq: Sedam, Dist: Kalaburagi.

(Smt/Sri. R.M. Advocate)



## **J U D G M E N T**

The petitioner has filed the petition u/s 12(d) of Hindu Marriage Act and sought to declare the marriage of the petitioner with respondent is void U/s.12(d) of Hindu Marriage Act, 1955.

2. The brief facts of the petitioner's case are as under:

The petitioner and respondent married on 22.05.2023 at Mallikarjun Temple Bijnalli Tq: Sedam. Since beginning the attitude of the respondent was totally indifferent towards petitioner and she was not talking with the petitioner. She did not lead happy married life. The mother of the petitioner and parents of respondent fixed the marriage between the petitioner and respondent on 16.12.2022. There was no physical relationship between the petitioner and the respondent prior to their marriage i.e., 22.05.2023. The first night was arranged on 24.05.2023 but the respondent stated that she is not feeling well. Therefore, first night took place on 25.05.2023 and they led marital for about one week. Thereafter, the respondent was not feeling well and therefor after one week there is no marital relationship. After more than one month from the marriage the respondent went to her parental house and within short time her mother informed the petitioner that respondent is not feeling well and she is having stomach pain so they visited Malkhed hospital for checkup and the doctor reported that respondent became pregnant. The petitioner used to go to Vasavadatta Factory for coolie and the respondent used to



call her mother and they both visited hospital and did not report actual age of pregnancy to this petitioner and also did not show scanning reports. In the second scanning the name of the respondent is wrongly given as Chandramma. In fact the report belongs to the respondent.

**3.** The petitioner has submitted that on several times he asked the respondent why the stomach is bigger and appears to be pregnancy of long back and for that the respondent and her mother stated that a few people will have bigger stomach and the petitioner believed them and did not doubt that the respondent is pregnant from somebody else before the marriage and she married by keeping it secret. On 10.10.2023 the respondent told the petitioner that her stomach is itching and therefore he took her to hospital and told the doctor that the respondent is having stomach pain. When the doctor enquired about age of pregnancy petitioner, respondent and her mother stated that pregnancy is of four months. At that time the doctors asked for earlier reports, then respondent gave reports to the doctor and thereafter the doctor informed that the respondent is having pregnancy of 9 months 5 days and she may be having delivery pain. Then this petitioner got shocked and came to know that keeping him in dark about the pregnancy of prior to marriage the respondent married the petitioner. The respondent gave birth to a female child on 11.10.2023 at 2-00 AM and she delivered fully grown baby. The



doctors gave scanning reports to the petitioner.

4. It is submitted that the petitioner along with his brother Naganna, Basavaraj his friend Bhimashankar and Mallikarjun went to Bijnalli and Panchayat was held regarding keeping secrete the pregnancy of the respondent by somebody before the marriage. The villagers accepted that nobody can give birth to a child within 5 months. The petitioner informed the elders that he never visited the respondent nor he had any relationship with the respondent before the marriage. Further, he demanded to undergo DNA test. For which the respondent's parents refused and threatened to file police complaint stating that the petitioner is doubting the character of the respondent. They even tried to assault the petitioner and the villagers prevented them from assaulting the petitioner. The parents and respondent went to Malkhed police station to give complaint against the petitioner and the police called the petitioner to the police station the police after knowing the truth took undertaking both from the petitioner and respondent and her parents and advised to go to civil court to get settled the matter. Hence, prays to allow the petition.

5. After service of notice the respondent has appeared through her advocate and filed objections. She has admitted that the marriage of the petitioner and the respondent took place on 22.05.2023. She has denied that their marriage was fixed on 16.12.2022 and submitted that their marriage was fixed on



22.05.2023. She has denied rest of the petition averments and submitted that the engagement of the petitioner and respondent took place on 16.12.2023. Thereafter, the petitioner and respondent were in living relationship and they are in cohabitation and the respondent got pregnant and the same was informed to the parents of the petitioner. Therefore, the parents of the petitioner agreed to perform the marriage as early and possible. As per the customs the marriage of the petitioner and the respondent was performed on 22.05.2023. At the time of marriage the respondent was pregnant of 2 and half months and the pregnancy was due to the relationship of the petitioner and the respondent.

**6.** It is submitted that all the above facts were within the knowledge of the petitioner, the respondent and their parents. On 11.10.2023 a baby girl was born and the said baby is the daughter of petitioner and the respondent. It is false to state that the respondent is not ready for DNA test and she is ready for DNA test. According to Section 112 of Evidence Act, if there is no sufficient evidence the presumption that, the child is that of petitioner and respondent unless it is disproved in accordance with law. The respondent and her daughter are now living with parents of the respondent and the petitioner is not ready to maintain them and arrange for their maintenance. It is the duty of the petitioner to maintain his wife and children. Now the



respondent is in need of Rs.6000/- per month for the maintenance of herself and her daughter. Therefore, maintenance may kindly be awarded to them. Hence, prays to dismiss the petition.

7. In order to prove his case, the petitioner has examined himself as PW 1 and got marked 3 document as Ex.P1 to 3. On the other hand the respondent has examined herself as RW.1 and got examined two witnesses as RW.2 and 3. The court commissioner/expert is examined as CW.1 and he has got marked one document as Ex.C.1.

8. Heard the arguments of the learned counsel for the petitioner and the respondent. Perused the materials on record.

9. The following points that would arise for my consideration:

- 1) Whether the petitioner proves that the respondent was at the time of the marriage pregnant by some person other than the petitioner?
- 2) Whether the petitioner is entitled for the reliefs prayed for?
- 3) What order?

10. On perusal of the records and after hearing the arguments, my finding to the above points are as under:



- 1)IN THE AFFIRMATIVE
- 2)IN THE AFFIRMATIVE
- 3)AS PER THE FINAL ORDER

for the following:

### **REASONS**

**11. POINT No.1:-** The main ground raised in the petition was that a female child was born to the respondent/wife within 6 months after the marriage after the normal period of pregnancy and therefore, according to the husband, it was apparent that the wife was pregnant at the time of marriage from some other person and this fact was not disclosed to him. The respondent/wife contested the case mainly on the ground that petitioner had sexual intercourse with her before their marriage and according to her, the child was born from the loins of the husband. The learned senior counsel for the respondent vehemently argued that in view of Section 112 of the Indian Evidence Act the paternity of the child could not be called in question.

**12.** The undisputed facts are that the marriage between the parties took place on 15-5-1997. According to the husband, the first coitus between him and his wife took place on 17-5-1997. According to the wife, the first coitus took place on 16-5-1997. A girl child was born to the wife on 14-11-1997. It is apparent that the child was born within 182 days of the husband and wife first having sexual intercourse. The plea of the husband is that the child is not his and the child was born after a normal period of



pregnancy of 9-12 months and therefore, it is obvious that the wife was pregnant at the time of marriage by some other person and this fact had not been disclosed to him. The plea of the wife as noticed above is that the petitioner had sexual intercourse with her before their marriage.

**13.** To appreciate the rival contentions of the parties, it would be appropriate to refer to Section 112 of the Indian Evidence Act, which reads as follows:

*"S. 112. Birth during marriage conclusive proof at legitimacy-The fact that any person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that (that (he)) is the legitimate son of that man, unless it can be shown that (the parties to the marriage) had no access to (each other) at any time when (he) could have been begotten."*

**14.** The law presumes strongly in favour of legitimacy of an off spring. as it is birth that determines the status of a person. The section recognizes and embodies the well settled principle of common law that a child born during the subsistence of the marriage or during 280 days after its delivery shall be conclusive proof that it is a legitimate child, unless it is proved by clear and strong evidence that the husband and wife did not or could not



have any access at the time when the child could have been begotten. The word 'begotten' has been used synonymously with conception. The presumption of legitimacy arises from birth in wedlock and not from conception. A very strong protection is provided for the lawfully constituted family and to the progeny born out of such wedlock. The only exception to this is if the husband can show that he had no access to the wife at the time when the child could have been begotten. "Non-access" in this section not only means lack of physical access but also may include other factors and such physical disability rendering it impossible to procreate.

**15.** It is a well settled principle that the law leans in favour of validity of marriage and in favour of legitimacy and not illegitimacy or bastardy. However, the section itself provides an exception to the rule. The latter part of the section indicates that conclusive proof will not arise and shall not be made under Section 112, if it is shown and established by the person denying the paternity that the parties to the marriage had no access to each other at the time when the child could have been begotten. Very convincing evidence has to be brought on record to rebut this presumption. The evidence must be strong, distinct, clear, satisfactory and conclusive.

**16.** At this stage it is worth to refer the decision of the Hon'ble Supreme Court in the case of Mahendra Manilal v.



Sushila Mahendra Nanavati, AIR 1965 SC 364, the apex Court held as follows:-

*"In a petition for annulment of marriage on the ground mentioned in S. 12(1)(d), the petitioner has in order to succeed, to prove beyond reasonable doubt that the respondent was pregnant by someone else at the time of marriage. It is, however, not correct in law in holding that the Court, in these proceedings, could in no circumstances base its decision on an admission of the parties. What the Court has to see in these proceedings is whether the petitioner has proved beyond reasonable doubt that the respondent was pregnant by some one else at the time of the marriage. The petitioner has to establish such facts and circumstances which would lead the Court either to believe that the respondent was pregnant at the time of marriage by someone else or to hold that a prudent man would, on those facts and circumstances, be completely satisfied that it was so.*

XXX

XXX

XXX

XXX

*The usual period of gestation from the date of the first coitus is between 265 and 270 days and delivery is expected in about 280 days from the first day of the menstruation period prior to a woman conceiving a child. Where the child was born after 171 days of the*



*first coitus between the husband and wife, and the child and the delivery was normal, normally the Court should hold that the child was not a child born after 171 days gestation and was not the child of the husband, unless there is evidence which would justify the Court in holding otherwise."*

The Court also held that it was not necessary to challenge the character of the mother to rebut the conclusion arrived at from various circumstances.

**17.** The law has been summed up by the apex Court in *Smt. Kamti Devi v. Poshi Ram*, AIR 2001 SC 2226, as follows:-

*"10. But Section 112 itself provides an outlet to the party who wants to escape from the rigour of that conclusiveness. The said outlet is, if it can be shown that the parties had no access to each other at the time when the child could have been begotten the presumption could be rebutted. In other words, the party who wants to dislodge the conclusiveness has the burden to show a negative, not merely that he did not have the opportunity to approach his wife but that she too did not have the opportunity of approaching him during the relevant time. Normally, the rule of evidence in other instances is that the burden is on the party who asserts the positive, but in this instance the*



*burdeh is cast on the party who pleads the negative. The raison d'etre is the legislative concern against illegitimatizing a child. It is a sublime public policy that children should not suffer social disability on account of the laches or lapses of parents.*

**18.** In the present case, as is apparent from the material on record, the child was born within 182 days from the first coitus between the parties. The normal period of delivery is 280 days or 40 weeks which is equivalent to 12 lunar months. The menstrual circle of a normal woman is 28 days and if the period is longer or shorter in a particular woman, the period of pregnancy may also be less or more. However, even after making allowances for such variations, the normal period of pregnancy is between 260 to 300 days.

**19.** It is in the light of the aforesaid law and established medical opinion that I shall consider the evidence led by the parties in this case.

**20.** The petitioner in order to prove his case has examined himself as PW.1 and he has filed affidavit U/O 18 Rule 4 of CPC containing his examination in chief by reiterating the petition averments and got marked 3 documents as Ex.P.1 to P.3. The marriage invitation card is at Ex.P.1, wherein it is seen that the petitioner and respondent got married on 22.05.2023. The



marriage of the parties is not in dispute. According to the husband, the first coitus between him and his wife took place on 25.05.2023. According to the wife, the first coitus took place on 24.05.2023. A girl child was born to the wife on 11.10.2023. The Ultra-Sonography of Pregnancy Scanning report dated 20.07.2023 is at Ex.P.3, wherein the respondent was subjected to Ultra- Sonagraphy and pregnancy of 24 weeks 6 days was confirmed. The Ultra-Sonography of Pregnancy Scanning report dated 08.10.2023 shows that the respondent was subjected to Ultra- Sonagraphy and pregnancy of 35 weeks was confirmed. The above documents go to show that as on the date of the marriage i.e., 22.05.2023 the respondent was pregnant and the pregnancy was of 24 weeks 6 days and as on 20.07.2023. In the cross examination of PW.1 the PW.1 has stated that the marriage was fixed on 16.12.2022 and marriage was performed on 22.05.2023 and there was a gap of almost 5 months in between the engagement and the marriage. He has admitted that respondent's mother is residing in Bangalore and her father is residing at Bijnalli village. He has also admitted that his wife and her father are residing at Bijnalli village. He has denied the suggestion that after the marriage he used to go to the house of the respondent and used to talk with her on phone. He has admitted that he is resident of Sedam and Sedam is 15 K.m. away from the Bijnalli village. He has denied that after the engagement he went to the house of the respondent 2-3 times and met the



respondent and had talks with her. He has denied the suggestion that when he met the respondent he instigated her to have sexual intercourse and due to it as on the date of the marriage the respondent was one and half months pregnant. The above suggestions go to show that the respondent has also admitted that as on the date of the marriage she was pregnant.

**21.** In the cross examination the PW.1 as denied that the girl baby born to the respondent on 11.10.2023 is his baby. Further when it is suggested that now also the respondent is ready for DNA test he has stated that he is also ready for DNA test.

**22.** In order to prove her case the respondent has examined herself as RW.1 and she has filed affidavit U/O 18 Rule 4 of CPC containing her examination in chief by reiterating the objection statement. In her cross-examination the RW.1 has admitted that their marriage was fixed on 16.12.2022 and their marriage was solemnized on 22.05.2023 and their first nuptial knot took place on 24.05.2023/25.05.2023. She has further admitted that the petitioner respondent and her mother went to hospital and she informed the doctor that she is 4 months pregnant and at that time the doctor looking to the report stated that she is 9 months pregnant. The RW.1 has denied the suggestion that as on the date of marriage she was 5 months pregnant and voluntarily stated that she was 2 months pregnant.



She has admitted that after 4 months from the marriage baby was born and the baby was fully grown 9 months baby. The above oral and documentary evidence reveal that as on the date of marriage the respondent was pregnant of almost 4 months and the pregnancy was due to the sexual intercourse had in the middle of January 2023. The RW.1 in her cross-examination has stated that after one and half months of their engagement the respondent came to her. It is to be noted that one and half months from the date of engagement fell in the month of February 2023. It means according to the petitioner also the respondent met her only after January 2023.

**23.** The respondent in support of her case has examined two witnesses as RW.2 and 3 and they have filed affidavits U/O 18 Rule 4 of CPC in lieu of their examination in chief and stated that they know the petitioner and the respondent and they are husband and wife. After the engagement the respondent visited the house of the petitioner 6-7 times and some times stayed in her house. They are having houses adjacent to the house of the petitioner and therefore know the above facts. The RW.2 in her cross-examination has pleaded ignorance to the question that when she came to know that the respondent became pregnant. The RW.3 in her cross-examination has stated that she came to know that the respondent was pregnant only after she delivering the child. It is pertinent to note that the act of nuptial knot or



sexual intercourse between the husband and wife is private and confidential matter. Further, it does not mean that if would be comes to the house of his fiancée they had sexual intercourse. Therefore, the evidence of RW.2 and 3 is not relevant and material to decide the issue involved in this case.

**24.** The respondent in her cross-examination has admitted that at the time of marriage she was pregnant and she gave birth to baby after 4 months of the marriage and the baby was 9 month fully grown baby. The scanning reports also disclose that the respondent was pregnant of almost 4 months as on the date of the marriage.

**25.** The above discussion makes it clear that in this case the respondent gave birth to a child after completion of 38 weeks i.e., about 9 months and it was normal delivery and it was not premature delivery.

**26.** In the objection statement the respondent has submitted that she is ready to subject the child for DNA examination. During pendency of the petition the petitioner has filed IA U/O 26 Rule 10(A) of CPC on 24.07.2024 and sought to conduct the DNA test of the petitioner and the child delivered by the respondent and the counsel for the respondent has submitted no objection to the I.A. After hearing both sides this court directed for DNA test and accordingly the court commissioner Dr.Anand



Kumar Senior Specialist District Hospital, Kalaburagi and Mohammed Ali Senior Lab Technician GIMS Kalaburagi appeared before the court on 24.10.2024 and collected blood samples of the petitioner and the child of the respondent in the open court and the blood samples were sent to Deputy Director, DNA Center, Hubli. This court received the DNA report and this court opened the sealed cover in the open court and looked into the report. Sri.N.R. Advocate for the petitioner has submitted no objection to the report and learned counsel for respondent has filed objections to the court commissioner report.

**27.** The learned Senior counsel for the petitioner has argued that what the court has to see in these proceedings is whether the petitioner has proved beyond reasonable doubt that the respondent was pregnant by some one else at the time of marriage. The petitioner has to establish such facts and circumstances which would lead the court either to believe that the respondent was pregnant at the time of marriage by someone else or to hold that a prudent man would, on those facts and circumstances, be completely satisfied that it was so.

**28.** It is to be noted that the notional period of pregnancy is calculated from the first day of the menstruation preceding the conception and it is on this account that 14 days are added to the period of pregnancy from the actual date of conception. On the basis of notional calculation, the fully mature child is born after



280 days. On the basis of the date of conception, the child is born between 265 and 270 days. The development of the foetus undoubtedly depends on its age as counted from the date of conception and it is for this reason that the books on Obstetrics mostly deal with the development of the foetus on the basis of, days or weeks after conception, for a period of about 2 months and thereafter they begin to note its development with respect, to the end of the 3<sup>rd</sup> and consecutive months. This must be due to fact that by that time a difference of about a fortnight in the period of gestation does not bring about a substantiate difference in tile description of the development of the foetus. After all, the entire knowledge with respect to the development of the foetus with respect to the period of gestation is based on a consideration of a large number of cases and then arriving at some generalized conclusion about the development of the foetus corresponding to its age from the date of conception. It would not therefore be very correct to add 1 lunar month to the ascertained period of gestation in cases of a known date of conception merely on the ground that when books speak of a foetus of a certain number of months that foetus might be due to a conception taking place on any day of the lunar month corresponding to the menstruation prior to the conception and the miss period after conception.

**29.** Therefore, in a petition filed under section 12(1)(d) of the Act the court has to determine whether the wife was, at the



time of the marriage, pregnant by some person other than the petitioner. For the said purpose, date of the marriage and the date of the birth of the child are to be taken into consideration. In the normal course the period required for the birth of a fully matured child is 280 days. Even if a child is born in the 7<sup>th</sup> month, the minimum period required is 210 days. In this background the court has to calculate the period between the conception and birth of the child. The notational period of pregnancy is calculated from the first day of the menstruation preceding the completion and it is on this account that 14 days are added to the period of pregnancy from the actual date of conception. On the basis of notional calculation, the fully matured child is born after 280 days. The development of the foetus undoubtedly depends on its age as counted from the date of conception and it is for this reason that the books on the obstetrics mostly deal with the development of the foetus on the basis of days or weeks after conception for a period of about 2 months and thereafter they begin to note its development with respect to the end of the 3<sup>rd</sup> and consecutive months. Even if a child is born after 7 months it can be only after 210 days from the 1<sup>st</sup> day of menstrual cycle preceding conception. In other words, no child can be born before 210 days from the 1<sup>st</sup> day of last menstrual cycle preceding the conception and under no circumstances, a child can be born on 160<sup>th</sup> day from the 1<sup>st</sup> day of last menstrual period preceding conception.



**30.** It is in this background, I have appreciated the evidence on record. At the cost of repetition I would like to refer that the evidence of the respondent is that their marriage of solemnized on 3.3.2016 and nuptial ceremony was fixed on 6.3.2016. Their marriage was consummated. Due to their marriage she gave birth to a child on 27.10.2016. This court already concluded that the respondent gave birth to the baby after completion of 9 months.

**31.** The petitioner-husband in his evidence has stated that after the marriage, the respondent did not allow him to have intercourse stating that she is not keeping good health. As per the petitioner there was a cohabitation on 25.05.2023 and as per the respondent they cohabited on 24.05.2023. Whatever it may be admittedly the date of marriage is 22.05.2023 and the date of nuptial ceremony was 24-25/5/2023 and as per the medical evidence at Ex.P.3 as on 20/7/2023 she was pregnant for almost 24 weeks 6 days. It means there was more than 4 months advance pregnancy.

**32.** This court at the request of both the petitioner and respondent has obtained the DNA report, which reads as under:

*“Reasons:*

*From the comprehensive analysis of the test results as shown in Annexure I it is found that:*

*In the DNA profile results of Anvita, sample blood sent in*



*item no.2, the alleles present in the loci **D3S1358, D16S539, D21S11, D18S51, FGA, Penta E, Penta D, D12S391, D2S1338** and **TPOX** are not matching with that of the alleles present in the DNA profile results of Gundappa S/o Basavaraj, sample blood sent in item no.1, under 23 STR (short tandem repeats) loci.*

**OPINION**

*From the DNA profile results of the samples sent, it is found that;*

*Gundappa S/o Basavaraj, sample blood sent in item no.1 is **excluded** from being the **biological father** of Anvita, sample blood sent in item no.2.*

**33.** The learned counsel for the respondent has filed objections to commissioner report and contended that the collections of sample was not done in accordance with the procedure prescribed under the law. The DNA testing was not conducted by certified technician and the test was not conducted scientifically. DNA report does not include supporting scientific data. Hence, prays to reject the DNA report. In order to substantiate her objections the respondent filed I.A. U/O 16 rule 6 of CPC and sought to summon the expert/commissioner to give evidence and this court by its order dated: 14.08.2025 allowed the I.A. and summoned the expert. In pursuance of witness summons witness by name Dr.Rahul Senior Scientific Officer Regional Forensic Scientific Laboratory Gokul Road Huballi appeared



before the court and he was examined as CW.1. In his examination in chief he has deposed that he received blood samples on 25.10.2024 and subjected the samples for examination and extracted the DNA and amplified it through genetic analyzer and separated PCR products. He has sworn the DNA result in the table annexed to the report. The report was marked Ex.C.1. He has stated that as per DNA report Gundappa S/o Basavaraj is not father of Anvita. The learned counsel for the respondent has subjected the CW.1 for cross-examination and disputed his competence to conduct DNA test. Further, he has subjected that to conduct DNA isolation of DNA, purification of DNA and DNA analyze requires to be done and in the report there is mention of isolation of DNA. For that the CW.1 answer that extraction and isolation are one and the same. On careful perusal of entire cross-examination of CW.1 it reveals that in the cross-examination of CW.1 nothing worthwhile is elicited from the mouth of CW.1. Therefore, there is no reason to disbelieve the report at Ex.C.1.

**34.** The DNA report is also consistent with the oral and documentary evidence on record and the same reveals that the petitioner is not biological father of the child born to the respondent and the petitioner had no access to the wife at the time when the female child was begotten.

**35.** A marriage under the Hindu Law is not purely a



contract. A reading of Sections 5 and 7 make it clear that a Hindu marriage has both religious as well as secular attributes. Therefore, the marriage has to be treated both as a sacrament and a contract. It is sacrament because certain customary rights and ceremonies as described in Section 7 of the Hindu Marriage Act have to be performed for the completion of marriage. It is a contract, as Section 5 deals with the capacity of the spouse to enter into an alliance for a marriage.

**36.** Section 12 of the Hindu Marriage Act, 1955 dealing with voidable marriages reads as under:

*“12. Voidable marriages-(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds namely:-*

*(a) to (c) xx            xx                            xx*

*(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.*

*(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-*

*(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-*

*(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;*

*(ii) that proceedings have been instituted in the case of a*



*marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and*

*(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.”*

**37.** Section 12(1)(d) of the Act, therefore, provides that any marriage solemnized, whether before or after the commencement of this Act. Shall be voidable and may be annulled by a decree of nullity on the ground that the respondent was pregnant at the time of marriage by some person other than the petitioner. Section 12(2)(b) of the Act makes it clear that if a decree for nullity is to be passed on the aforesaid ground, the petitioner further has to prove that he was, at the time of marriage, ignorant of the fact alleged and that the marital intercourse, has not taken place with the consent of the petitioner.

**38.** Therefore, the petitioner is not entitled to a decree of nullity merely on the ground that the respondent was at the time of marriage pregnant by some person other than the petitioner. To grant a decree of nullity of marriage under this provision, the following conditions must exist:

i) The wife, at the time of marriage should be pregnant by some person other than the petitioner;



ii) The petitioner was, at the time of the marriage ignorant of the said pregnancy;

iii) he should not have marital intercourse with consent, after the discovery of the existence of the said ground i.e., pregnancy.

**39.** In a matrimonial dispute, the burden of proof is not like in a criminal case. The petitioner who is seeking the relief of decree of nullity, is not liable to prove the ground under Section 12(1)(d) of the Hindu Marriage Act beyond reasonable doubt. But at the same time, the proof that is required to declare a marriage as nullity, has to be something more than the preponderance of probabilities required under the Civil Law. The reason is that the result of a finding under Section 12(1)(d) would have the effect of;

a) bastardizing the child or declaring it as an illegitimate child;

b) it would have the effect of casting aspersions on the wife's chastity, integrity and status;

(c) it would have the effect of declaring the marriage solemnized as nullity.

**40.** Therefore, the proof that is required in a civil case in order to succeed on the ground that the respondent was at the time of marriage pregnant by some person other than the petitioner is something more than the probability of the case and something less than the proof beyond reasonable doubt. However the



petitioner has to prove beyond reasonable doubt that the respondent was pregnant by some one else at the time of the marriage.

**41.** At this stage it is worth to refer the decision of the Hon'ble Supreme Court in the case of Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Anr reported in 2014 (2) SCC 576, wherein the Hon'ble Supreme Court held as under;

*Now we have to consider as to whether the DNA test would be sufficient to hold that the appellant is not the biological father of respondent no. 2, in the face of what has been provided under [Section 112](#) of the Evidence Act, which reads as follows:*

*“112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.” From a plain reading of the aforesaid, it is evident that a child born during the continuance of a valid marriage shall be a conclusive proof that the child is a legitimate child of the man to whom the lady giving birth is married. The provision makes the legitimacy of the child to be a conclusive proof, if the conditions aforesaid are satisfied. It can be denied only if it is shown that the parties to the marriage have no access to each other at any time when the child could have been begotten. Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her. The wife has admitted that she had left the matrimonial home but again joined her husband. Unfortunately, none of the courts below have given any finding with regard to this plea of the husband that he had or had not any access to his wife at the time when the child could have been begotten.*



*As stated earlier, the DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl- child. However, at the same time, the condition precedent for invocation of [Section 112](#) of the Evidence Act has been established and no finding with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten has been recorded. Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of [Section 112](#) of the Evidence Act conclusively prove that respondent No. 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstance, which would give way to the other is a complex question posed before us.*

*We may remember that [Section 112](#) of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although [Section 112](#) raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.*

*We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. [Section 112](#) of the Evidence Act does not create a legal fiction but provides for presumption.*

*The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her*



*mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice.*

**42.** In view of the above provision of law the arguments canvased by the learned senior counsel for the respondent that in view of Section 112 of the India Evidence Act the paternity of the child could not be called in question cannot be accepted.

**43.** Keeping in view the aforesaid facts and discussions, I am of the view that in the present case, the husband has led cogent, reliable and convincing evidence to prove beyond reasonable doubt that he had no access to the wife at the time when the female child was begotten. In my considered view, it stands proved on record that the child was born after a normal period of gestation and since the child was born within six months of the marriage, the respondent/wife was pregnant at the time of the marriage and this fact was not disclosed by her to her husband and his family and, therefore, the husband is entitled for a decree of annulment of the marriage. Hence, I answer point No.1 in the Affirmative.

**44. POINT No.2:-** For the forgoing reasons it is ordered that that the marriage entered into between the parties solemnized on 22.05.2023 is annulled by granting a decree of annulment on the ground that the respondent-wife was at the time of marriage pregnant by some person other than the husband.



Hence, I answer point No.2 in the Affirmative.

**45. POINT No.3:** For the foregoing reasons I pass the following:

**ORDER**

The petition filed by the petitioner U/s.12(1) (d) of Hindu Marriage Act is hereby allowed.

It is declared that the marriage of the petitioner and the respondent solemnized on 22.05.2023 at Mallikarjun Temple Bijnalli, Tq: Sedam is void and nullity in the eyes of law.

Draw decree accordingly.

(Dictated to the Stenographer Grade-III directly and typed by him on computer, the same revised, corrected and pronounced in the open court on this **12<sup>th</sup> day of March-2026**)

(SAGAR GURUGOUDA PATIL)  
Senior Civil Judge & JMFC, Sedam

**ANNEXURE**

**LIST OF WITNESSES EXAMINED:**

FOR PETITIONER/S

PWs        1    :    Gundappa S/o Late Basawaraj

FOR RESPONDENT/S

Rws        1    :    Chennamma W/o Gundappa

Rws        2    :    Nagamma W/o Chandrashekhar

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MC No.37/2023

Rws 3 : Hanamanthrao S/o Revansiddappa

**LIST OF DOCUMENTS MARKED:**

FOR PETITIONER/S

Exs.P1 & 2 : Marriage Invitation Cards  
P3 : Medical Report

FOR RESPONDENT/S

-NIL-

**LIST OF WITNESSES EXAMINED ON BEHALF OF COURT:**

FOR COURT COMMISSIONER/S

CW 1 : Dr.Rahul S/o Narsanna

**LIST OF DOCUMENTS MARKED:**

FOR COURT COMMISSIONER/S

Ex.C1 : DNA Report

Senior Civil Judge & JMFC, Sedam.

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