

KAMS500001322022



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC  
NANJANGUD**

**Present :** **Sri. Kamalaksha D., B.A., LL.B.,**  
Senior Civil Judge & J.M.F.C.,  
Nanjangud.

**Dated this the 28<sup>th</sup> day of July 2025**

**R.A./6/2022**

**Appellant:**

K.N.Mahesh,  
aged about 45 years,  
S/o late Nanjappa @ Nanjanaika,  
residing at Dodda Beedhi,  
Kalale Village,  
Kasab Hobli,  
Nanjangud Taluk,  
Mysuru District.

**-V/s-**

**Respondents:**

1. Basavaraju @ Basavarajanaika,  
aged about 76 years,  
S/o late Devanaika,
2. Subbanaika @ Subbanna,  
aged about 68 years,  
S/o late Devanaika,

Respondents No.1 and 2 are residing at Dodda Beedhi, Kalale Village, Kasaba Hobli, Nanjangud Taluk, Mysuru District.

3. Rathnamma  
W/o Chikkahonnanaika,  
aged about 37 years,  
D/o late Ankanaika @ Ankanna
4. Ankanna,  
aged about 35 years,  
S/o late Ankanaika @ Ankanna.

Respondents 3 and 4 are residing at Sindhuvalli Village, Kasaba Hobli, Nanjangud Taluk, Mysuru District.

5. Shivamma,  
aged about 59 years,  
W/o late Ankanaika @  
Ankanna (2<sup>nd</sup> wife)  
since dead represented by  
respondents No.6 & 7.
6. Kumari,  
aged about 36 years,  
D/o late Ankanaika @ Ankanna,
7. Manju,  
aged about 34 years,  
S/o late Ankanaika @ Ankanna.

8. Mahadevamma,  
aged about 79 years,  
D/o late Devanaika,  
W/o Subbanaika,

respondents No.5 to 8 are  
residing at Dodda Beedhi,  
Kalale Village,  
Kasaba Hobli,  
Nanjangud Taluk,  
Mysuru District.

Since dead represented by

- (a) Doddachikkanaika  
S/o late Subbanaika,  
aged about 57 years,
- (b) Subbanaika S/o late Subbanaika,  
aged about 55 years,  
respondents No.8(a) and (b) are  
residing at Dodda Beedhi,  
Kalale Village,  
Kasaba Hobli,  
Nanjangud Taluk,  
Mysuru District.
9. Ankamma,  
aged about 71 years,  
D/o late Devanaika,  
W/o Madanaika,  
residing at Sindhuvalli Village,  
Kasaba Hobli,  
Nanjangud Taluk,  
Mysuru District.

10 Chikkadevamma,  
aged about 61 years,  
D/o late Devanaika,  
W/o Mahadevanaika.

All are having common address:  
residing at Nayakara Beedhi,  
Heggotare Village,  
Chamarajanagara Taluk and District.

**I.A. VI**

**Applicant** : Mahesh K.N.

..Appellant  
(By Sri. K.R.G., Adv.)

**-V/s-**

**Opponent** : Basavaraju and others

... respondents  
(By Sri. B.P.K., Adv. for R.1 to 4, 9 & 10  
Sri. M.J.S., Adv. for R.8(a & b))

**ORDERS ON I.A.VI FILED UNDER ORDER XXVI  
RULES 10 & 10-A OF CPC R/W ORDER XXXIX RULES  
1 & 2 OF CPC R/W SECTION 151 OF CPC**

The appellant/ plaintiff filed this application to direct the appellant and the respondents i.e., plaintiff and defendants in the original suit to appear before the Commissioner appointed by this court to draw blood to be referred to the Forensic Laboratory, Bengaluru to conduct the D.N.A. profiling test and to submit the report.

2. In the affidavit it is sworn that, plaintiff filed the suit before the Trial Court for partition and separate possession. The matter was contested disputing the relationship of the appellant/ plaintiff with the defendants/ respondents. But unfortunately the matter was dismissed by the Trial Court, finding that the biological relationship of the plaintiff with the defendants is not proved. Aggrieved by the same the plaintiff preferred this appeal. In fact there are many overt and covert admissions with regard to the birth of the plaintiff and origin connecting to the defendants biologically including that of a couple of documents that cannot be disputed that are marked in the evidence of the plaintiff's side. However, the Trial Court has dismissed the suit for partition and separate possession. Just because of the fate's cruel mischief played in the life of plaintiff, the plaintiff subjected to such harassment and indignation refuting his origin that is an affront to his mother also, as heaped upon the plaintiff by the defendants. It is further sworn that the proposed DNA test by an expert from the approved Forensic Laboratory is

very essential and imperative to prove his origin and succession, but also to highlight and prove his mother's dignity as well. The defendants cannot refuse or deny to co-operate with the order of this court in this regard if they are honest and true in their allegations against the plaintiff. The plaintiff had tried everything possible before arriving at the last and final course of action to prove his contention linking him to the defendant's family biologically and this is the only way that is not only scientific but also fool-proof. It is also submitted that, if the application is allowed no loss, hardship or injury will be caused to the defendants and on the other hand if the application is not allowed the plaintiff will be put to greater loss, hardship and injury that cannot be compensated in terms of money and it will avoid him to get legitimate share in the suit schedule property if he is entitled. Therefore, he prays to allow the application.

3. Per contra, the respondents No.1 and 2 have filed objection stating that the application is not maintainable

either in law or on facts. The application is filed at the stage of appeal and at the same time there was no pleading or prayer or application for DNA test in the Trial Court. The scope of enquiry in the appeal is limited to re-appreciation of the oral and documentary evidence available on record. In special circumstances, the appellate court may allow the parties to file additional documents, which the parties could not file at the trial stage. The appellate Court has not got the power to order for D.N.A. test. D.N.A. test is not a right of the party and it cannot be ordered against the consent of the parties. There is no suggestion during the evidence about the D.N.A. test. The appellant remains silent not only during the evidence in the Trial Court but also remains silent nearly two years before this court. So, respondents No.1 and 2 prayed to reject the application.

4. Heard. Perused pleadings and materials placed on record. The points that arise for consideration are:

1. Whether the appellant / plaintiff has made out suitable grounds for order to direct the respondents/defendants to assist to draw blood sample to prove the biological relationship between the plaintiff and defendants?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the affirmative

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

### **REASONS**

6. **Point No.1:-** O.S.124/2011 was filed before the Trial Court for partition and separate possession. The first issue of that suit is, “whether plaintiff proves that he is the son of late Nanjappa @ Nanjanaika and that he himself together with defendants constitute members of joint family and that the suit schedule properties are their ancestral properties?” For which the Trial Court has discussed in page No.24 of its judgment that, “But the defendants have seriously disputed that plaintiff is not the son of late Nanjappa @ Nanjanaika. They have totally denied the plaint averment that plaintiff is son of Nanjappa

@ Nanjanaika and Mallamma. It is their specific contention that Nanjappa @ Nanjanaika was married to one Nagamma @ Chikkarangamma and they were issueless. They also denied that they brought up plaintiff till he was 15 years old. They contend that plaintiff is no way related to them and he is a stranger.” So, the reading of plaint averments and judgment of the Trial Court show that the defendants have continuously disputed the relationship of the plaintiff. The Trial Court negatively answered to issue No.1 and finally opined that the plaintiff has utterly failed to prove the relationship with the defendants. The reading of the judgment of the Trial Court shows that, the suit of the plaintiff was dismissed because the plaintiff failed to prove his relationship with the defendants. The reading of the averments of the written statement and judgment of the Trial Court further go to show that the defendants have not denied the nature of the schedule property as ancestral property, but they have seriously objected the relationship stating that the plaintiff has utterly stranger to their family.

7. Now the question arises that, whether this court being the Appellate Court can facilitate the plaintiff to furnish additional evidence. The learned counsel for the respondents argued that, the jurisdiction of this court to collect the evidence is very narrow. However, it may be said that, the First Appellate Court got every power of trial i.e., Trial Court, because as per the Order 41 Rule 23 C.P.C. the Appellate Court can collect oral evidence, whereas Order 41 Rule 27 C.P.C. provides Appellate Court to get additional evidence, whether oral or documentary. So, Order 41 Rule 23 and 27 of C.P.C. are the area by which the Appellate Court can collect evidence just like Trial Court. So, the First Appellate Court is designated as fact finding and law finding court. So, the First Appellate Court requires special care and attention, because the First Appellate Court should discuss the evidence in detail. The said principle of law has been held in the case of **Leela K.Pansare and others Vs. B.B.Ithape** reported in **AIR 2014 SC 2867** in para Nos.5 and 6. The Hon'ble Supreme Court in the case of **Shasidhar Vs. A.U. Mathad** reported

in **AIR 2015 SC 1139** discussed very lengthily explaining that every court has duty bound to examine the nature of the property and co-related facts in partition suit. So, finally the Hon'ble Apex Court of India in that case held that, *"Being the first appellate Court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41, Rule 31 of CPC."* So, there is no scope in the objection raised by the respondents No.1 and 2 on the question that the First Appellate Court has got very limited power to collect limited evidence, because the First Appellate Court has got very wide power just like Trial Court to collect additional oral and documentary evidence as per Order 41 Rule 23 and 27 of C.P.C. So, the objection raised by the respondents No.1 and 2 in this regard has to be rejected. So, the objection mentioned in para No.3 will lose its weight.

8. Now the respondents further set up defence that D.N.A. test is not a right of party, it cannot be ordered

against the consent of the parties. In this regard, the learned counsel for the respondents relies the judgment of the Hon'ble Supreme Court decided in **Civil Appeal No.6153/2021** in the case of **Ashok Kumar Vs. Raj Gupta and others**. The said case was also to decide the relationship of the parties. So, the ambit and scope of D.N.A. test has been broadly discussed. In that case, the defendants/applicants for conducting D.N.A. Test for the plaintiff was disposed by the Trial Court in C.S.No.53/2013 for declaration of ownership of property, left behind by late Trilok Chand Gupta and late Sona Devi. Where the defendants have denied that the plaintiff is the son of their parents. Since the plaintiff of that case has refused to give D.N.A. sample the view taken that the court cannot force the plaintiff to provide D.N.A. sample and according to the defendants the application came to be dismissed. Finally the Hon'ble Apex Court held that, *"It cannot be overlooked that in the present case, the application to subject the Plaintiff to a DNA Test is in a declaratory suit and the plaintiff has already adduced*

*evidence and is not interested to produce additional evidence (DNA), to prove his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial Court dismissed the defendants application and we feel that it was the correct order.”* The Hon'ble Supreme Court of India considering the timing and filing application in the different nature of suit for declaration and ownership was dismissed. So, the learned counsel for the respondents herein taking shelter of this judgment argued to reject the application. However, it is the humble opinion of this court that, the nature of that case and present case are not one and the same, because the Hon'ble Supreme Court of India decided the role of D.N.A. test in the declaratory suit, whereas the present applicant has filed the suit for partition and separate possession before the Trial Court. The learned counsel for the respondents further argued that timing of filing of this application is very late, because it is filed at belated stage. However, it may be said that, the first issue

in the original suit to prove the relationship of the plaintiff with the defendants. Now the question arises that whether the privacy of the defendants will be effected, if order is passed to draw blood sample for D.N.A. test.

9. In this connection the learned counsel for the appellant relies the judgment of our Hon'ble High Court of Karnataka in **R.S.A. 2523/2007** in the case of **Smt. Jayalakshamma Vs. Anjinappa and others**. The Hon'ble High Court has framed three points for discussion, among these, second one was to decide the scope of the application filed under Order 26 Rule 10 r/w Section 151 of C.P.C. to direct the respondent No.1(b) and respondent No.2 to submit their blood samples for conducting an Avuncular DNA profiling with that of appellant. The Hon'ble High Court of Karnataka answered in favour of the applicant of that R.S.A. directing the respondents to submit their blood samples to draw D.N.A. to establish the relationship. While discussing, the Hon'ble High Court of Karnataka held that suppose direction is issued against

the respondents to submit their blood sample to draw D.N.A. Test would not violate their privacy, because the purpose of blood sample to determination of the relationship of the plaintiff and his share upon the disputed property. While discussing the Hon'ble High Court of Karnataka also taken consideration of the judgment decided in **Aparna Ajinkya Firodia vs Ajinkya Arun Firodia's** case, it was taken note while discussing the consideration of DNA test in the Writ Petition which has been disposed of by the Hon'ble High Court of Karnataka only. Finally the Hon'ble High Court of Karnataka opined that, suppose direction is issued against the defendants to submit their blood samples definitely would not violate their privacy and fundamental rights. The respect to the judgment of the Hon'ble High Court of Karnataka as above referred it may be said that the suit of the plaintiff before the Trial Court was for partition and separate possession. As mentioned supra, there is no dispute by the defendants about the nature of the suit property, but their dispute that the plaintiff is very

stranger to their family. Suppose the plaintiff is the family member of the defendants, he will have right to claim share upon the suit schedule property. Mere denial of application definitely cause unbearable hardship to the plaintiff, because it would amount to reject the legitimate share of the plaintiff over the suit schedule property. So, the defendants are permitted to submit their blood samples for D.N.A. profiling test would not violate their private right or privacy, whereas suppose the relationship is proved through D.N.A. test, it will help to answer the very crucial question of relationship between the parties. So, ultimately the opinion of this court that, the order by way of direction to the defendants to draw blood sample for D.N.A. Profiling Test is definitely correct way of collecting evidence to determine the very complex question of relationship. Therefore, **point No.1** is answered **in the affirmative**.

10. **Point No.2:-** In view of the findings on the above point, this Court proceeds to pass the following:

**ORDER**

I.A.VI filed by the appellant under Order XXVI Rule 10 and 10-A of C.P.C. r/w Order XXXIX Rules 1 and 2 of C.P.C. r/w Section 151 of C.P.C. is allowed.

In view of the above order, the plaintiff is hereby directed to mention the name of one of the defendants from whom the blood samples is to be drawn and by whom the proposed samples to be collected.

*(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 28<sup>th</sup> day of July 2025).*

**(Kamalaksha D.)**  
Senior Civil Judge & J.M.F.C.,  
Nanjangud.