

IN THE COURT OF THE MUNSIFF OF TALIPARAMBA

Present: Smt. Athulya A, Munsiff

Monday, the 30th day of March, 2026
(9th day of Chaitra, 1948)

ORIGINAL SUIT No. 321 OF 2022

Shayana K., D/o Kunhiraman N., 27 years,)
No occupation, Neelankole House, Thalora,)
Kuttyeri amsom, Residing with in the limit of) Plaintiff
Kuttyeri Post Office, Taliparamba Taluk, Kannur)
District, Pin – 670 141.)

Vs.

1. Sreekumar T., S/o Kumaran, 38 years, Coolie,)
Thora House, Theeyannur, Panniyoor amsom,)
Residing with in the limit of Kanhirangad Post)
Office, Taliparamba Taluk, Kannur District,)
Pin – 670 141.)
2. Lineesh K.C., S/o Preman, 39 years, Coolie,)
Taliyil, Andoor amsom, Kalyasseri P.O., Kannur)
District, Pin- 670652.) Defendants
- Supplemental defendants:)
3. Adi Lakshmi (Minor), 4 years, D/o Lineesh K.C.)
Taliyil, Andoor amsom, Kalyasseri P.O., Kannur)
District, Pin- 670652.)
[Supplemental defendant No.3 necessary parties)
impleaded and amended as per order in)
I.A.02/2023 and 03/2023 dated 07.02.2024].)

This suit coming on 12th day of March, 2026 for final hearing before me in the presence of Sri.P.M.Nandakumar, Advocate for the Plaintiff, of Smt..R.K.Saranya, Advocate for the defendant No.2 & 3; defendant No.1 is called absent, set exparte; and having stood over to this day for consideration; the court delivered the following:

JUDGMENT

The suit is for declaration.

2. **Plaint averments, in brief, are as follows:-** The plaintiff submits that she was married to the first defendant on 27.11.2013 at her residence in accordance with the customary rites and practices of the Hindu community. After the marriage, the plaintiff and the first defendant lived together as husband and wife. In the said marital relationship, a female child named Shivada was born on 02.12.2014. The plaintiff further submits that the first defendant used to subject the plaintiff to physical and mental cruelty. Due to the said conduct and other related reasons, the marital relationship between the plaintiff and the first defendant became strained and the parties started living separately, both physically and emotionally. The plaintiff submits that thereafter, she developed intimacy with the second defendant and they became emotionally and physically close. During the subsistence of the marriage between the plaintiff and the first defendant, the plaintiff had physical relations with the second defendant on several occasions. As a result of the said relationship, the plaintiff became pregnant and later gave birth to a female child on 24.05.2019. The said minor child is named Adilakshmi and she is arrayed as the third defendant in this suit. The plaintiff further submits that the first defendant was aware of the relationship between the plaintiff and the second defendant. Subsequently, the plaintiff and the first defendant jointly approached the Family Court, Kannur by filing OP No.130/2020 seeking dissolution of their marriage by mutual consent. As per order dated 05.08.2020 passed by the Family Court, Kannur, the marriage between the plaintiff and the first defendant was dissolved. The plaintiff further submits that thereafter she married the second defendant on 07.08.2020 and since then the plaintiff has

been residing together with the second defendant along with the children. The plaintiff states that the minor child Adilakshmi, the third defendant herein, was born out of the physical relationship between the plaintiff and the second defendant and the second defendant is the biological father of the said child. The plaintiff further submits that when she approached the Municipal authorities for obtaining the birth certificate of the minor child Adilakshmi for the purpose of admitting the child in an Anganwadi, the plaintiff mentioned the name of the second defendant as the father of the child. However, the municipal authorities informed the plaintiff that since the child was born at a time when the marriage between the plaintiff and the first defendant was subsisting, the name of the first defendant could be entered as the father in the birth records. The plaintiff further submits that she explained before the municipal authorities that the second defendant is the biological father of the minor child Adilakshmi. However, the authorities were not willing to record the same unless the first defendant gives a sworn affidavit stating that he is not the father of the child. The plaintiff further submits that she approached the first defendant and requested him to give such an affidavit before the municipal authorities stating that the second defendant is the biological father of the minor child. However, the first defendant refused to give the said affidavit. In the above circumstances, the plaintiff has been constrained to approach this Hon'ble Court seeking a declaration that the second defendant is the biological father of the minor child Adilakshmi, the third defendant herein, who was born on 24.05.2019.

3. Despite receipt of notice by the 1st defendant, he remained absent and the suit is proceeded ex parte against him.

4. D2 entered appearance and filed conceding statement admitting the paternity of D3.

5. The 3rd defendant, who is a minor is represented by Lineesh K.C., the 2nd defendant also filed a written statement admitting the paternity of D3.

6. Heard both sides.

7. The present suit is one filed by the plaintiff seeking a declaration that the second defendant is the biological father of the minor child Adilakshmi, the third defendant, who was born on 24.05.2019. The first defendant, who is the legally wedded husband of the plaintiff was set ex parte. The second defendant has filed a conceding statement stating that the minor child Adilakshmi is his biological daughter and that he has no objection in granting the declaration sought for in the plaint. However, merely because the first defendant has been set ex parte and the second defendant has filed a conceding statement, the Court cannot automatically grant the declaration sought for by the plaintiff. In a suit seeking declaration regarding paternity of a child, the burden lies upon the plaintiff to establish the claim with satisfactory evidence.

8. From the averments in the plaint itself, it is evident that the plaintiff had married the first defendant on 27.11.2013 and that their marriage was dissolved only later by order dated 05.08.2020 in O.P.No.130/2020 of the Family Court, Kannur. The plaint further reveals that the minor child Adilakshmi was born on 24.05.2019. Thus, it is clear that the child was born during the subsistence of the valid marriage between the plaintiff and the first defendant. In this regard I would like to bring Sec.112 of Indian Evidence Act., which is now Sec.116 of Bharatiya Sakshya Adhinyam, which says that,

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.

*9. In this regard, I am placing reliance of the Hon'ble Supreme Court in **Ivan Rathinam v Milan Joseph (Crl. A.No.413 of 2025 before the Hon'ble Supreme Court)** wherein it was held that **Sec.112 of the Indian Evidence Act**, 'The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity. The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts illegitimacy' to prove it only through 'non-access.'"*

29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations. To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence.

10. The provision thus creates a conclusive presumption of legitimacy in favour of a child born during the subsistence of a valid marriage. The object of the provision is to protect the status and legitimacy of a child and to prevent children from being stigmatized as illegitimate. The presumption under Section 112 can be displaced only by proving non-access between the spouses during the relevant period. The burden of proving such non-access lies heavily upon the person who seeks it. The law further dictates that the burden will not be discharged by mere preponderance of probabilities. Rather, the burden of proof that is to be discharged is that of strong preponderance of probabilities. In other words, the evidence of non-access for the purpose of repelling it must be strong, distinct, satisfactory and conclusive. Hence a bare explanation though plausible in nature would not be sufficient rather the proof in terms of the word "proved" as it appears in Section 3 of the Act is required. In this regard, I would like to place the reliance in *Kanti Devi v. Poshi Ram 2001(4) SCC 78*, wherein para 19, the Hon'ble Supreme Court held that, "*The presumption under Section 112 is one of the strongest and most solemn presumptions known to law. To rebut it, the evidence must be clear, cogent, and satisfactory. Mere allegation of non-access or living separately is not enough. Direct proof of non-access is required.*" In *R.Rajendra v Kamar Nisha and others CRIMINAL APPEAL NO.1013 OF 2021* (Before Honble Supreme Court) where it was held in Para 23, 24, 25, 26 is as follows: "*It is evident from the statutory language of the provision, that it establishes a conclusive presumption in favour of legitimacy of a child born during the subsistence of a valid marriage. Embedded in this presumption is the legal recognition that the husband is deemed to be the father of the child born to his wife. This presumption also operates as a safeguard against unwarranted intrusion into the legally protected status of legitimacy,*

thereby ensuring stability in familial relationships and the protection of child's legal and social identity.

24) The presumption under Section 112 of the Evidence Act operates as "Conclusive Proof" of the legitimacy of a child born during the subsistence of a valid marriage, by presuming that the parents had access to each other at the relevant time. Section 4 of the Evidence Act defines "conclusive proof" as follows:

"Conclusive proof".—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it." This presumption endures unless it is affirmatively established, by strong and unambiguous evidence, that the parties to the marriage had no access to each other at any time when the child could have been begotten, or following the dissolution of the marriage while the mother remains unmarried. Since the law favours legitimacy and frowns upon the illegitimacy, the burden is cast upon the person who asserts "illegitimacy" to displace the presumption.

25) "Access" or "non-access" under Section 112 of the Evidence Act must be understood in a very narrow and specific sense, referring to possibility of sexual relations between the spouses. Non-access denotes the impossibility, not merely the absence or lack of such opportunity. Even where cohabitation exists, non-access may arise due to impotency, serious illness, physical incapacity or absence during the relevant period. Conversely, the lack of cohabitation alone does not establish non-access, nor does the existence of extramarital relations, separate residences, or non-communication.

26) Allegations of multiple or simultaneous access by third parties do not negate the access between the spouses or establish non-access. Likewise,

infidelity on the wife's part does not, by itself, displace the presumption of legitimacy if the husband had access. The focus remains on the child's birth, while the time of conception is relevant only to determine whether access between the spouses existed."

11. In the present case, apart from the averments in the plaint that the marital relationship between the plaintiff and the first defendant had become strained and that the plaintiff had developed intimacy with the second defendant, there is absolutely no evidence placed before the Court to establish that the plaintiff and the first defendant had no access to each other during the relevant period as discussed in the decision placed above. It is pertinent to note that the first defendant has been set ex parte and no ex parte evidence has been adduced against him. Even in cases where the defendant is set ex parte, the plaintiff is not relieved from the burden of proving the case. The Court must still be satisfied that the plaintiff has established the claim by adducing acceptable evidence. In the present case, the plaintiff has not examined any witness nor produced any documentary evidence in support of the claim. No attempt has also been made to adduce any scientific evidence or other reliable material to establish that the second defendant is the biological father of the child. Though the second defendant has filed a conceding statement admitting that he is the biological father of the minor child, such admission by itself cannot displace the statutory presumption under Section 112 of the Evidence Act. It is also relevant to note that the case was *suo motu* reopened for hearing, thereby affording the plaintiff an opportunity to adduce evidence. Even thereafter, the plaintiff has not taken any steps to substantiate the claim by adducing evidence and moreover, in the plaint, it is seen contended that D1, who was the legally wedded husband (earlier) had denied to file affidavit before the Municipal Authority stating that

D2 is the biological father of D3 (minor child). In this circumstances and also in the absence of any evidence establishing non-access between the plaintiff and the first defendant during the relevant period, the statutory presumption under Section 112 of the Evidence Act continues to operate. The plaintiff has failed to rebut the said presumption by strong probable evidence. In such circumstances, this Court is not in a position to grant the declaration sought for by the plaintiff merely on the basis of the pleadings and the conceding statement of the second and third defendants. The plaintiff has failed to discharge the burden of proof required in this case. Therefore, this Court finds that the plaintiff is not entitled to the declaration that the second defendant is the biological father of the minor child Adilakshmi.

12. Thus based on the above discussion made and reliance placed this suit is dismissed. Considering the facts and circumstances of the case, there is no order as to costs.

In the result, the suit is dismissed. No costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this on the 30th day of March, 2026.)

Sd/-
MUNSIFF

APPENDIX OF EVIDENCE

- NIL -

Sd/-
MUNSIFF

