

MHSO130004612015



R.C.S. No.209/2015
Padmin Vs. Shivaji & Ors.

ORDER BELOW EXHIBIT-68

This is an application for conducting the Deoxyribonucleic acid (in short referred as “DNA” for brevity) test of the plaintiff and defendant No.1. The plaintiff submitted that she is the daughter of defendant No.1. However, defendant No.1 by filing written statement denied the paternity. When defendant No.1 denied paternity, it is necessary to get DNA report to decide the controversy of the present suit. Hence, prayed accordingly. Defendant No.1 strongly opposed the application. He submitted that the present application is filed only to prolong the suit. Now both the parties have led the evidence and when the case is at fag end of the trial, the plaintiff moved this application. Thus, prayed for rejection of the application. He further submitted that if the Court comes to the conclusion that DNA test is necessary then costs be imposed upon the plaintiff.

02. Heard both parties. No doubt, this application is filed by the plaintiff when almost evidence of both the parties have been completed. In this case, this Court framed additional issues at Exh.20 on 25/07/2023, then the plaintiff moved this application.

03. I have perused the plaint and written statement filed by defendant No.1. The plaintiff in plaint para No.2 submitted that she is the daughter of defendant No.1 which begotten from the first wife namely Gayabai of defendant No.1. However, defendant No.1 denied the relationship between the plaintiff and defendant No.1. He submitted that the plaintiff is neither legitimate nor illegitimate daughter of defendant No.1. He further submitted that there is no marriage between defendant No.1 and Gayabai.

04. This means defendant No.1 denied the paternity of the plaintiff. Even he denied the relationship of defendant No.1 and Gayabai. He also denied about the marriage between him and Gayabai. This Court framed the issues at Exh.20 and cast the burden upon the plaintiff to prove that she is daughter of defendant No.1.

05. As per section 112 of the Indian Evidence Act, 1872, there is presumption of legitimacy between the parties when it is proved that there was access between the parties and the child born from such access. When there is presumption then the burden is upon the other party to prove that the parties to the marriage had no access to each other at any time either during continuous of a valid marriage or within 280 days after its dissolution. In this case, defendant No.1 entirely denied the paternity as well as marriage between him and Gayabai. When defendant No.1 denied the marriage and paternity then there is

no role of presumption under section 112 of the Indian Evidence Act.

06. The Hon'ble Supreme Court in ***Goutam Kundu vs. State of West Bengal and another, (1993) 3 SCC 418*** held that;

“(1) That Courts in India cannot order blood test as a matter of course. (2) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained. (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. (4) The Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. (5) No one can be compelled to give sample of blood for analysis.”

07. Looking to the guiding principle laid down supra, the Court should examine whether the DNA test is necessary. The Court should not in a routine manner pass order for DNA test. The Court also see the consequences or effect that if the test would be negative then that child will be called as bastard or that woman will be called as unchaste woman.

08. In this case, defendant No.1 has mentioned that he was serving life sentence in the jail as he was held guilty for the offence of murder. If he was in jail then there would be

some possibility that there was no access between the parties to the marriage. So when the plaintiff is claiming paternity of defendant No.1 and when defendant No.1 entirely denied the relation then I am of the opinion that both parties to face the test of DNA and the plaintiff to face the consequence of result of DNA test if any. Hence, the present application deserves to be allowed. It is proper to direct the plaintiff to bear the expenses of DNA test and it is also proper to direct defendant No.1 to give or remain present for DNA test. Thus, I proceed to pass following order;

ORDER

1. An application Exh.68 is allowed.
2. It is directed to the plaintiff and defendant No.1 to remain present before the Head of the Department of the Government Forensic Laboratory, Cantonment Board, Aurangabad, for DNA Test.
3. It is directed to the plaintiff to bear the expenses of DNA test and deposit the expenses of DNA test to the Head of the Department of the Government Forensic Laboratory, Cantonment Board, Aurangabad, and furnish the receipt of payment in the Court.
4. It is directed to the Head of the Department of the Government Forensic Laboratory,

Cantonment Board, Aurangabad, to follow due procedure for conducting the DNA test.

5. Issue writ to the above said laboratory.
6. It is directed to the Head of the Department of the Government Forensic Laboratory, Cantonment Board, Aurangabad, to furnish the report within two months from the date of receipt of requisition letter.

(Dictated and pronounced in open Court.)

Barshi.
Date: 01/03/2024

(S.B. Vijaykar)
Jt. Civil Judge J.D., Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Shri. S.B.Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Dictated on	:	01/03/2024
(d)	Transcription completed on	:	01/03/2024
(e)	Judgment /Order signed by P.O. on	:	02/03/2024
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