



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 376 of 2023

1 - Hemant Kumar Sahu S/o Pyarelal Sahu Aged About 45 Years R/o Village-Hasda, Tahsil- MagarlodDefendant No. 1, District : Dhamtari, Chhattisgarh.

... Petitioner(s)**versus**

1 - Suniti Sahu W/o Hemant Sahu Aged About 40 Years R/o Village-Baherapal, Post- Borsi, Tahsil- RajimPlaintiffs.,

2 - Ku. Chanchal Sahu D/o Hemant Sahu Aged About 11 Years Minor Represented Through Mother Suniti Sahu Aged About 40 Years, W/o Hemant Sahu R/o Village- Baherapal, Post- Borsi, Tahsil- Rajim, District : Gariyabandh, Chhattisgarh

3 - Ku. Jigyasa Sahu D/o Hemant Sahu Aged About 16 Years Minor Represented Through Grandfather- Pyarelal Sahu S/o Suklal Sahu Aged About 71 Years. R/o Village- Hasda, Tahsil- Magarlod, District : Dhamtari, Chhattisgarh

4 - Pyarelal Sahu S/o Suklal Sahu Aged About 71 Years R/o Village- Hasda, Tahsil- Magarlod, District : Dhamtari, Chhattisgarh

5 - Chhannu Sahu S/o Santram Sahu Aged About 29 Years R/o Village-Hasda, Tahsil- Magarlod, District : Dhamtari, Chhattisgarh

6 - State Of Chhattisgarh Through The Collector Dhamtari, District : Dhamtari, Chhattisgarh

... Respondent(s)

For Petitioner	:	Shri DN Prajapati and Ms. Aditi Tripathi, Advocates.
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For State	:	Shri Rohan Shukla, Panel Lawyer.
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Hon'ble Shri Justice Ravindra Kumar Agrawal, J**Order on Board****20.03.2026**

- The present writ petition under Article 227 of the Constitution of India has been filed by the petitioner against the impugned order dated 22.02.2023 passed by Civil Judge, Class-I, Kurud, District Dhamtari, in

Civil Suit No.149-A/2021 whereby the application filed by the petitioner under Order 26 Rule 10 A of CPC read with Section 151 CPC for DNA test of plaintiff No.2 has been rejected.

2. Learned counsel for the petitioner would submit that the plaintiffs who are the respondent No.1&2 are prosecuting a civil suit for declaration of title and permanent injunction and also declaring the sale deed executed by the defendant No.1 dated 12.10.2021 in favour of defendant No.2 be declared as null and void with the pleading that plaintiff No.2 is borne from plaintiff No.1 and defendant No.1. The defendant No.1 denied that he is the biological father of the plaintiff No.2 and she has no right over the property of defendant No.1. Since the defendant No.1 is not the biological father of the plaintiff No.2, he filed an application for conducting the DNA test of plaintiff No.2 to establish that she is not borne from defendant No.1 side. He would further submit that the trial court has erroneously rejected the application after considering the birth certificate of plaintiff No.2 and other school record in which the parentage of defendant No.2 is shown that defendant No.1 is the father of plaintiff No.2. He would further submit that the defendant No.1 cannot be deprived from his property right by raising false claim by the plaintiffs and therefore the application filed by the defendant No.1 may be allowed and DNA Test by directed with respect to plaintiff No.2.
3. I have heard learned counsel for the petitioner and perused the material annexed with the petition.

4. From perusal of the plaint annexed with the petition it transpires that the plaintiffs are claiming property right over the property of defendants. The plaintiff No.1 is claiming that she is the legally wedded wife of defendant No.1 and plaintiff No.2 is his biological daughter. She borne out of their wedlock and plaintiffs have been neglected by the defendant No.1 by their maintenance and has performed the second marriage. The defendant No.1 had earlier married with the mother of defendant No.2 and due to harassment given she left her husband after giving birth to defendant No.2 and thereafter the defendant No.1 married with plaintiff No.1 and from their wedlock the plaintiff No.2 has been borne. In the application filed by the petitioner under Order 26 Rule 10 CPC, the defendant No.1 himself has averred that the defendant No.1 was earlier married with mother of defendant No.2 and since she left her husband, the defendant No.1 started residing with plaintiff No.1. Though the plaintiff No.2 was borne from the earlier husband of plaintiff No.1, yet in the documents the parentage has been shown to be of defendant No.1. No date have been mentioned in the application so that the access of the defendant No.1 with the plaintiff No.1 could be ascertained and to determine the scope of Section 112 of the Evidence Act.
5. While considering the application of the petitioner, the trial court has considered the judgment of Supreme Court in case of ***Banarsi Dass Vs. Teeku Dutta, 2005(4)SCC 449*** and after having gone through the entire records produced before it, considered that in the birth certificate issued on 20.05.2013, the date of birth of plaintiff No.2 is mentioned as

18.03.2010 and defendant No.1 is shown to be his father. In other documents of plaintiff No.2 with respect to her schooling, the name of defendant No.1 is mentioned as her father. After considering the documents available on record and also the facts and circumstances of the case the trial court declined to allow the application filed by the petitioner for conducting DNA test of plaintiff No.2, in which I do not find any scope for interference.

- 6.** Accordingly, the writ petition is dismissed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder