

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13120 OF 2018

Anand D. Gadekar (since deceased
through his legal heirs)

- 1) Smt. Sangeeta Anand Gadekar
- 2) Shubham Anand Gadekar
- 3) Ku. Prajakta Anand Gadekar
- 4) Ku. Priya Anand Gadekar

...Petitioner

V/s.

Ku. Prathmesh Laxman Lagade, minor
present through his mother -Smt.
Manisha Laxman Lagade

...Respondent

Mr. Rajan S. Pawar with *Mr. Aryavrat Dube for the Petitioner.*

Mr. Amey Deshpande with *Mr. Harsh Nishar and Ms. Vandana Bait for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 10 SEPTEMBER 2026

Judgment pronounced on: 22 SEPTEMBER 2026

JUDGMENT:

- 1) The Petition is filed challenging order dated 4 September 2018 passed by the 8th Joint Civil Judge, Senior Division, Nashik allowing the Application at Exhibit-25 filed by the Plaintiff for DNA examination and directing the Regional Forensic Science Laboratory to conduct DNA examination of the Plaintiff and of one of the Defendant Nos. 2 to 4.

2) Special Civil Suit No.501 of 2016 is filed by Respondent/Plaintiff claiming that he is the illegitimate son of late Anand Dhondiram Gadekar (**Anand**) and seeking partition of the suit properties. The Defendants have denied Plaintiff's claim of being son of Anand by filing written statement. The Plaintiff filed application at Exhibit-25 for conduct of Plaintiff's DNA test alongwith Defendant Nos.2 to 4 for proving his status as the son of Anand. The Application was opposed by the Defendants. By impugned order dated 4 September 2018, the Trial Court has allowed the application at Exhibit-25 and has directed the Regional Forensic Science Laboratory to conduct DNA test of the Plaintiff and one of the Defendant Nos.2 to 4 and to submit the report before the Trial Court. The Defendants are aggrieved by the order of the Trial Court dated 4 September 2018 and have filed the present Petition.

3) Mr. Pawar, the learned counsel appearing for the Petitioners submits that the Trial Court has grossly erred in allowing Plaintiff's application for conduct of DNA test. That the Plaintiff is yet to lead evidence in support of averments of the Plaint and has directly proceeded to file an application for conduct of DNA test. That Plaintiff's father is alive and he is born during the legitimacy of wedlock between his mother and father and that therefore, there is a presumption of he being the legitimate child of his father. That the very claim of the Plaintiff about being illegitimate son of Anand is contrary to settled position of law. That direction for conduct of DNA test cannot be issued in a routine and casual manner. That the burden of proving the case is on the Plaintiff and without making any attempt to discharge that burden, directly DNA test cannot be ordered. In support of his contentions, he relies on judgment of this Court in **Sumayya Kaira Bairagdar and**

others Vs. Raju @ Yusuf Bashik Ahmad Kulkarni¹ and judgments of the Apex Court in **Ashok Kumar Vs. Raj Gupta and Others²**, **Banarsi Dass Vs. Teeku Duttta (Mrs) and Another³** and **Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another⁴**. He accordingly prays for setting aside of the impugned order.

4) Mr. Deshpande, the learned counsel appearing for the Respondent opposes the Petition submitting that the Trial Court has correctly directed conduct of DNA test. That the only way the Plaintiff can prove his status as illegitimate child of Anand is through conduct of DNA test. He takes me through averments in the Plaint in support of his contention as to how the Plaintiff is born out of relationship between Anand and Manisha. He submits that if DNA test is denied, the same would amount to denial of opportunity to the Plaintiff to prove his status. He submits that the DNA test is the only authentic way of determining the status of the Plaintiff. In support, he relies on judgment of the Apex Court in **Chaturbhuj Pradhan Vs. Amar Pradhan & Anr.⁵** He accordingly prays for dismissal of the Petition.

5) Rival contentions urged on behalf of the parties now fall for my consideration.

6) The Plaintiff/Respondent has filed Special Civil Suit No.501 of 2016 seeking 1/5th share in the suit property. There are numerous properties described in paragraph 1 of the Plaint. Paragraph 2 of the

1 2012 (2) Mh.L.J.

2 (2022) 1 SCC 20

3 (2005) 4 SCC 449

4 (2010) 8 SCC 633

5 2026 INSC 600

Plaint contains an averment that the suit properties were owned by Anand as his self-acquired properties. Plaintiff's further pleaded case is that his father Laxman Lagade used to conduct business in dairy products. He was detected with psoriasis in 2005 and was unable to move out of the house. Therefore, the business activities were taken over by his mother Manisha. During the course of conduct of business, Manisha came in contact with Anand, who was operating a hotel at Deolali. Manisha used to supply milk and milk products for the hotel. During the process, relation was established between Anand and Manisha and Anand started assisting Manisha in treatment of Plaintiff's father. There was an extra-marital relationship between Anand and Manisha due to which the Plaintiff was born on 20 February 2007. Anand passed away on 17 May 2016.

7) With the above pleadings, the Plaintiff has claimed status as Anand's illegitimate child and has claimed 1/5th share in the suit properties. Defendant No.1 is Anand's wife-Sangita and Defendant Nos.2 to 4 are children of Anand and Sangita. Written statements were filed by the Defendants in January and March-2017. Immediately thereafter, Plaintiff filed Application at Exhibit-25 on 15 March 2018 seeking conduct of DNA test for proving that he is the illegitimate child of Anand.

8) Thus, in the present case, the Plaintiff made no attempt to prove his assertions in the Plaint and has directly proceeded to file application for conduct of DNA test. It would be apposite to reproduce the averments in the Plaint in support of claim of the Plaintiff being illegitimate child of Anand. Paragraphs 3 and 4 of the Plaint read thus:

३. वादीचे वडील नामे लक्ष्मण गौरप्पा लगडे यांचा दुधापासून दही, ताक वनविण्याचा व्यवसाय आहे. सन २००५ मध्ये वादीचे वडीलांना सोरायसीसचा आजार झाल्यामुळे त्यांना घराबाहेर पडणे अशक्य झाले. त्यामुळे वादीचे वडीलांचा व्यवसाय सांभाळण्याची संपूर्ण जबाबदारी वादीची आई नामे मनिषा लक्ष्मण लगडे हिच्यावर आली. संसाराची जबाबदारी स्विकारून वादीच्या आईने सदरचा व्यवसाय चालविण्यास सुरुवात केली. मयत आनंद धोंडीराम गाडेकर यांचा हॉटेलचा व्यवसाय असून देवळाली गांवात हॉटेल सावता माळी या नावाने ते व्यवसाय करीत होते. तसेच त्यांचा गोठा सुध्दा होता. त्यामुळे वादीची आई करत असलेल्या व्यवसायास दुधाचा पुरवठा तसेच हॉटेलसाठी आवश्यक असणाऱ्या दही, ताकाची खरेदी मयत आनंद धोंडीराम गाडेकर हे वादीच्या आईकडून करीत होते. त्यामुळे वादीच्या आईचा व मयत आनंद धोंडीराम गाडेकर यांचे संबंध आले. तसेच मयत आनंद धोंडीराम गाडेकर यांच्या वडीलांकडे पुर्वीच्या काळी मनिषा लक्ष्मण लगडे हिचे वडील काम करत असल्यामुळे आनंद व मनिषा यांचे दरम्यान पूर्वीपासून ओळखीचे संबंध होते.

४. वादीचे वडीलांच्या आजारासाठी आवश्यक ती मदत जसे डॉक्टरांकडे घेवून जाणे, औषधोपचार करणे वगैरे वादीच्या आईस मयत आनंद धोंडीराम गाडेकर करत होते. तसेच व्यवसायाच्या कारणांमुळे सुध्दा वादीच्या आईचे व मयत आनंद धोंडीराम गाडेकर यांचे संबंध वाढले. सदर संबंधांमुळे व ओळखीमुळे वादीची आई व मयत आनंद धोंडीराम गाडेकर यांचे दरम्यान विवाहबाह्य संबंध निर्माण झाले. सदर विवाहबाह्य संबंधांची माहिती प्र. वादी नं. १ म्हणजेच आनंद धोंडीराम गाडेकर यांची पत्नी यांना होती व आहे. त्या विवाहबाह्य संबंधातूनच वादीच्या आईस: दिवस राहिले व वादीचा जन्म दि. २०/०२/२००७ रोजी नाशिकरोड, नाशिक येथे झालेला आहे. परंतू मनिषा लक्ष्मण लगडे यांचा विवाह अस्तित्वात असल्यामुळे वादीचे वडील म्हणून मनिषाचे पती लक्ष्मण गौरप्पा लगडे यांचे नाव वादीचे वडील म्हणून लावण्यात आलेले आहे. परंतू वादीचे जीवशास्त्रीय वडील हे आनंद धोंडीराम गाडेकर आहेत. त्याबाबतची माहिती मयत आनंद धोंडीराम गाडेकर यांचे कुटुंबियांना म्हणजेच प्र. वादींना होती व आहे. अशा प्रकारे मनिषा लक्ष्मण लगडे ही वादीची जनक माता असून आनंद धोंडीराम गाडेकर हे वादीचे जीवशास्त्रीय वडील आहेत.

9) The Plaintiff will have to thus prove various averments in paragraphs 3 and 4 of the Plaint. He will have to lead evidence to prove whether his father was indeed in the business of dairy and milk products, whether he suffered from psoriasis in 2005, whether his mother-Manisha started conducting the business or came in contact with Anand. The Plaintiff will have to prove supply of milk and milk products by mother-Manisha to Anand and development of any relationship between them. The Plaintiff will also have to lead some evidence about existence of extra-marital relationship between Manisha and Anand. Since Manisha's husband-Laxman is alive and marriage between them was in subsistence at the time of birth of the Plaintiff on 20 February 2007, the Plaintiff will have to lead some concrete evidence that his birth is attributable only to

the relationship between Manisha and Anand. Without making any attempt to lead the evidence, the Plaintiff straightaway proceeded to file application at Exhibit-25 seeking conduct of DNA test. Mere assertion of the Plaintiff and denial thereof by Defendants cannot be a reason for the Court to undertake the exercise of collection of evidence by directing parties to DNA test.

10) The law on the issue of conduct of DNA test is by now well settled. In *Banarsi Dass* (supra), the Apex Court has held that DNA test is not to be directed as a matter of routine. In case before the Apex Court, the Petition was filed for grant of succession certificate claiming that the Respondent therein was daughter and only surviving Class I legal heir of the deceased, who died intestate, but had five brothers. The brothers objected to grant of succession certificate disputing the claim of Respondent No.1 that she is the daughter of the deceased. The objectors claimed that the Respondent was the daughter of another person. Evidence was led by parties in support of their respective claims. The objectors filed application for conduct of DNA test to conclusively establish the paternity of the Respondent. The application was allowed by the Trial Court, but the order of the Trial Court was reversed by the High Court. Relying on its judgment in *Goutam Kundu Vs. State of West Bengal and Another*⁶, the Apex Court held in paragraphs 8 and 14 as under:-

8. In *Goutam Kundu v. State of W.B.* this Court held, inter alia, as follows: (SCC p.428, para 26)

"26 (1) That courts in India cannot order blood test as a matter of course;

6 (1993) 3 SCC 418

- (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.”

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14. The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to parties paying debts to representatives of deceased persons. All that the Succession Certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A Succession Certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a Certificate under the Act, or is compelled by the decree of a Court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. In order to succeed in the succession application the applicant has to adduce cogent and credible evidence in support of the application. The respondents, if they so chooses, can also adduce evidence to oppose grant of succession certificate. The trial court erroneously held that the documents produced by the respondents were not sufficient or relevant for the purpose of adjudication and DNA test was conclusive. This is not a correct view. It is for the parties to place evidence in support of their respective claims and establish their stands. **DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in Goutam Kundu's case (supra). Present case** does not fall to that category. High Court's judgment does not suffer from any infirmity. We, therefore, uphold it. It is made clear that we have not expressed any opinion on the merits of the case relating to succession application.

(emphasis added)

- 11) The judgments in *Banarsi Dass* and *Goutam Kundu* (supra) have been followed by the Apex Court in *Bhabani Prasad Jena* (supra) and it is held in paragraphs 19, 22 and 23 as under:-

19. In *Banarsi Dass v. Teeku Dutta & Anr.*, this Court was concerned with a case arising out of succession certificate. The allegation was that Teeku Dutta was not the daughter of the deceased. An application was made to subject Teeku Dutta to DNA test. The High Court held that trial court being a testamentary court, the parties should be left to prove their respective cases on the basis of the evidence produced during trial, rather than creating evidence by directing DNA test. When the matter reached this Court, few decisions of this Court, particularly, *Goutam Kundu* was noticed and it was held that even the result of a genuine DNA test may not be enough to (2005) 4 SCC 449 escape from the conclusiveness of Section 112 of the Evidence Act like a case where a husband and wife were living together during the time of conception. This is what this Court said :

"13. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Evidence Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above."

It was emphasized that DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test.

23. There is no conflict in the two decisions of this Court, namely, *Goutam Kundu* and *Sharda*. In *Goutam Kundu*, it has been laid down

that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of *Sharda* while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA can be given by the court only if a strong prima facie case is made out for such a course.

12) In ***Ashok Kumar*** (supra) the Apex Court has held in paragraphs 14 and 15 of the judgment as under:

14. It was also the view of the Court that the normal rule of evidence is that the burden is on the party that asserts the positive. But in instances where that is challenged, the burden is shifted to the party, that pleads the negative. Keeping in mind the issue of burden of proof, it would be safe to conclude that in a case like the present, the court's decision should be rendered only after balancing the interests of the parties i.e. the quest for truth, and the social and cultural implications involved therein. The possibility of stigmatising a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy.

15. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in *K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India* [*K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India*, (2019) 1 SCC 1], wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA test.

13) In ***Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia***⁷ the Apex Court has summarised the principles and has enumerated the

⁷ (2024) 7 SCC 773

circumstances under which DNA test of a minor child can be directed to be conducted. The Apex Court held in paragraphs 43 to 43.5 as under:

“43. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:

43.1. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.

43.2. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.

43.3. A court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.

43.4. Merely because either of the parties have disputed a factum of paternity, it does not mean that the court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the court can direct such test.

43.5. While directing DNA tests as a means to prove adultery, the court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc.”

(emphasis and underlining added)

14) In **Evan Rathinam vs. Milan Joseph**⁸ the Apex Court has held in paragraphs 35, 36, 46 and 47 of the judgment as under:

“35. In the peculiar circumstances of this case, this Court must undertake an exercise to ‘balance the interests’ of the parties involved and decide whether there is an ‘eminent need’ for a DNA test. This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.

36. On one hand, courts must protect the parties' rights to privacy and dignity by evaluating whether the social stigma from one of them being declared ‘illegitimate’ would cause them disproportionate harm. On the other hand, courts must assess the child's legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test.

...

46. When dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and must consider whether it is possible to reach the truth without the use of such a test.

47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. **Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test : (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.”**

(emphasis added)

15) In **Sumayya Kaira Bairagdar** (supra), a coordinate Bench of this Court has held that DNA test cannot be ordered as a matter of course and that DNA test can be ordered only if evidence that would be adduced is insufficient to establish the relationship. This Court held in paragraphs 3 and 4 of the judgment as under:

3 Since the relationship between the plaintiff and the said Bashir Kulkarni was denied by the Defendant Nos.1 to 6, the Plaintiff filed the

instant application Exhibit 72 for subjecting himself and the Defendant Nos.2 to 6 who are the daughters of the said Bashir Kulkarni and his step sisters, to the DNA test. The said application came to be allowed by the impugned order dated 17/6/2011. The said order has been assailed in the present petition, primarily on the ground that DNA test cannot be ordered as a matter of course and that it is only if the evidence that would be adduced is insufficient to establish the relationship between the Plaintiff and the said Bashir Kulkarni, that the DNA test could be ordered. Reliance was sought to be placed on the Judgment of the Apex Court laying down the said proposition. However, the Learned Counsel for the Respondent No.1 herein i.e. the original Plaintiff draws my attention to the affidavits dated 23-9-2011 filed in the Trial Court in the said Suit, by the Defendant No.1 Jannat Shaikh Bashir Ahmed Kulkarni, Defendant No.2 Summaya Kaira Bairagdar and the Defendant No.3 Najneen Naushad Ambekari. The said affidavits have been filed after the impugned order was passed. By the said Affidavits, the said Defendants have accepted the relationship between the Plaintiff and the said Bashir Kulkarni. Whereas the Jannat Shaikh Bashir Kulkarni has stated that the Plaintiff is her step son and is born out of the marriage between her husband Bashir Kulkarni and his first wife Noorbi i.e the Plaintiff's mother and therefore, accepts that the Plaintiff as her step son. In so far as Defendant No.2 and Defendant No.3 are concerned, they have also accepted the fact that the Plaintiff is begotten from the first wife of their father Noorbi and the Plaintiff therefore is their step brother.

4. In my view, apart from the aforesaid fact of the filing of the affidavits, by the said three defendants accepting the relationship, the DNA test could have only been ordered if the trial Court comes to the conclusion that the evidence on record is insufficient to prove the relationship between the parties. In the instant case without the said course of action being followed, straightaway the DNA test has been ordered. The said course of action is now required to be followed in the light of the affidavits being filed by the defendants as aforesaid.

16) On the other hand, Mr. Deshpande has relied upon recent judgment of the Apex Court in ***Chaturbhuj Pradhan*** (supra), in which a suit was filed seeking a declaration by Respondent No.1 therein that he is son of Chaturbhuj Pradhan and was entitled to one-third share in his property. In application by Respondent No.1, the Trial Court directed Chaturbhuj to undergo DNA test to determine the paternity of the first Respondent. Order was upheld before the High Court and this is how the matter travelled to the Hon'ble Apex Court. Referring to various

judgments including the judgment in **Goutam Kundu** (supra), the Apex Court held in paragraph 6 of the judgment as under:

6. It is clear from the above judgments that when the Court is confronted with the question whether or not to order a DNA test, the only test to be satisfied is whether the result of the DNA test is directly in issue and whether any other evidence-on-record can substitute for the answer that may be arrived at through this scientific process. Also, whether it is in the best interest of the parties and/or justice.

6.1 In the present case, the alleged relationship between CP and the second respondent was in January 1999 and Amar was born in September 1999. CP has consistently denied paternity and there is no other evidence that can provide a categorical answer. It is nobody's case that the second respondent had ever had an intimate relationship with someone else.

6.2 Although there have been findings that state that the second respondent has been unable to establish any link between CP and Amar, those findings were not as a consequence of the full-dress trial. The civil suit filed by Amar is for this very purpose and as such, the question of paternity is directly in issue. On this count as well, we find in favour of the respondent.

6.3 In view of the above observation, the question of res judicata also is closed. As far as the right of privacy is concerned, we are balancing, in this case CP's privacy with Amar's desire for closure on a question that has loomed large on his life throughout. He has seen, right from childhood, his mother assert that CP is the father but the authorities, consistently found otherwise. If no positive answer is ever found out to the question, it is quite possible that Amar would forever be denied the rights he may otherwise be entitled to by virtue of being CP's son.

(emphasis added)

17) After considering the ratio of various judgments particularly the judgments in **Goutam Kundu**, **Aparna Ajinkya Firodia** and **Evan Rathinam** (supra), following principles emerge:

- (i) DNA test is not to be directed as a matter of routine.
- (ii) The Courts must first consider the existing evidence to assess the presumption of legitimacy.

(iii) Only if evidence on record is not sufficient to come to a finding of legitimacy, then the Court can consider ordering a DNA test.

(iv) Even if insufficiency of evidence is established, the Court must also consider whether order of DNA test is in the best interest of the parties. The Court must also ensure that it does not cause undue harm to the parties.

18) Thus insufficiency of evidence and positive finding regarding balance of interests are the two parameters on which application for conduct of DNA test needs to be adjudicated. Mere dispute created by either of the parties about factum of paternity is not a ground to direct the DNA test as a matter of course. To resolve the controversy, parties should be first directed to lead direct evidence to prove the factum of paternity and only if the Court is unable to draw an inference based on such evidence and comes at a conclusion that it is impermissible to resolve the controversy, it may direct DNA test, but not otherwise. The DNA test can be directed to be conducted only in exceptional and deserving cases where the evidence is insufficient to resolve the controversy. The Court must also not permit a DNA test to be used as a means of fishing or roving enquiry in absence of a sufficient factual foundation.

19) Applying the above principles to the facts of the present case, there was absolutely no warrant for directing conduct of DNA test in the facts of the present case. As observed above, the Plaintiff is yet to open his case by leading evidence. Even before making any attempt to prove his pleaded case, the Plaintiff straightaway sought conduct of DNA test.

DNA test is directed to be conducted as a matter of course by the Trial Court merely because the Plaintiff asserted his status as Anand's son and Defendants denied the said assertion. The only reason recorded by the Trial Court is in paragraph 4 of the impugned order, which reads thus:-

४) वादीने प्रस्तुतचा दावा तो आनंद गाडेकर यांचा अनावरस मुलगा असल्याचे कथन करून त्यांचे स्वकष्टार्जित मिळकतीमध्ये त्याचे हिश्याचे वाटप होउन मिळण्याकरीता केला आहे. प्रतिवादीने वादी आनंद गाडेकर यांचा मुलगा असल्याचे नाकारले आहे. आनंद गाडेकर हे मयत आहे. प्रतिवादी २ ते ४ हि आनंद गाडेकर यांची कायदेशिर मुले आहेत. कायदेशिर व मान्य मुलांच्या डीएनए प्रोफाईलची पडताळणी केल्यानंतर वादी आनंद गाडेकर यांच्यापासुन झालेला मुलगा आहे का हे सिध्द होउ शकते. त्यासाठी वादीला डीएनए चाचणी करण्याची संधी देणे योग्य होईल. त्यामुळे न्यायालयाला वादाचा गुणदोषावर निर्णय देण्याकरिता मदत होणार आहे. तरी मी खालीलप्रमाणे आदेश करत आहे.

20) In my view therefore, the Plaintiff has not made out any case for conduct of DNA test without even making any attempt to prove his pleaded case. It is only after parties lead evidence and court finds it impossible to arrive at a definitive conclusion that it can consider directing conduct of DNA test. If after considering the evidence on record, the Court is able to decide factual controversy based on evidence, it may not be even necessary to conduct DNA test. The Trial Court also needs to keep in mind the fact that the Plaintiff has not sought any declaration that he is illegitimate son of Anand. He has straightaway filed Suit for partition of properties of Anand. At this stage, it is too early to predict whether the Plaintiff can be successful in the Suit without seeking declaration of his status as son of Anand. I do not wish to delve deeper into this aspect at this stage. Suffice it to observe now that in absence of declaration sought about Plaintiff's status as son of Anand and without leading evidence, it was wholly impermissible for the Plaintiff to seek conduct of DNA test.

21) If Plaintiff fails to prove that his mother-Manisha conducted business of milk and milk products or that she supplied any products to Anand, the whole edifice of the claim of the Plaintiff would crumble. Similarly, if there is absolutely no evidence to suggest development of any intimate relationship between Anand and Manisha, the foundation of the Plaintiff's claim would disappear. Therefore, before the parties are directed to undergo DNA test, the Plaintiff first needs to lead evidence in support of the foundation on which his entire claim is based. He cannot expect the Court to collect the evidence for reaching a final conclusion without making any attempt to first prove the assertions made in the Plaint. The Trial Court will also have to keep in mind the provisions of Section 112 of the Indian Evidence Act, 1872 (*Section 116 of the Bharatiya Sakshya Adhiniyam, 2023*) while deciding the issue of need to conduct the DNA Test.

22) In view of the above discussion, impugned order passed by the Trial Court directing parties to subject themselves to DNA test is clearly unsustainable and liable to be set aside. However, setting aside the impugned order would not preclude the Plaintiff from filing fresh application for conduct of DNA test after completion of evidence nor would it preclude the Trial Court from making an order for conduct of DNA test if it arrives at a conclusion that it is impossible to resolve the controversy in absence of scientific evidence in the form of DNA test.

23) The Petition accordingly succeeds and I proceed to pass the following order:

- (i) Order dated 4 September 2018 passed by the 8th Joint Civil Judge, Senior Division, Nashik on Application at Exhibit-25 filed in Special Civil Suit No.501 of 2016 is set aside.
- (ii) The Plaintiff would be at liberty to file fresh application for conduct of DNA test after completion of evidence and by demonstrating that evidence on record makes it impossible for the Trial Court to decide the controversy involved in the Suit.

24) Writ Petition is allowed and disposed of in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

MEGHA
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