

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6879 OF 2015

1. Rambhabai Marutirao Ghongde,
Age : 79 years, Occu. Agril.,
R/o: Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
2. Indubai Haribhau Divte,
Age: 62 years, Occu.:Agril.,
R/o Chapadgoank, Tq. Shevgaon,
Dist. Ahmednagar.

...PETITIONERS

versus

1. Uttam Laxman Kholase,
(Since deceased)
2. Vilas Uttam Kholase,
Age: 41 years, Occu: Agril,
R/o: Thakur Nimgaon, Tq. Shevgaon,
Dist. Ahmednagar.
3. Vishal Uttam Kholase,
Age: 27 years, Occu: Labour,
R/o Thakur Nimgaon, Tq. Shevgaon,
Dist. Ahmednagar.
4. Punjaram Laxman Kholase,
Age: 67 years, Occu. Agril.,
R/o :Thakur Nimgaon, Tq. Shevgaon,
Dist. Ahmednagar.
5. Nanda Vishnu Ghongde,
Age: 37 years, Occu.: Agril.,
R/o Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
6. Vandana Laxman Wakde,
Age: 41 years, Occu.: Agril.,
R/o Lonarwadi, Tq. Newasa,
Dist. Ahmednagar.

7. Kadubai Devrao Divte,
Age: 75 years, Occu: Agril.,
R/o Chapadgaon, Tq. Shevgaon,
Dist. Ahmednagar.

...RESPONDENTS

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Mr. S.V. Natu, Advocate for Petitioners
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th JULY, 2015

ORDER :-

1. Heard learned counsel for petitioners.
2. This petition has been moved by petitioners - original plaintiffs, aggrieved by order dated 02-05-2015 on Exhibit-173 in Regular Civil Suit No. 204 of 2008 passed by Civil Judge, Junior Division, Shevgaon whereunder their request for subjecting respondents No. 2 and 3 - original defendants and one Gangubai Uttam Kholase to DNA test has been turned down.
3. Regular Civil Suit No. 204 of 2008 has been filed by the petitioners seeking partition and separate possession, wherein defendant No. 1 was father of the petitioners. The petitioners claim that defendants No. 2 and 3 are not children born from deceased defendant No. 1- Uttam Laxman Kholase. It is not disputed position that Gangubai is wife of deceased defendant No. 1.
4. Defendants No. 2 and 3 have contended that they are children of deceased defendant No. 1 and Gangubai and it also appears that it is being considered that defendants had shown their willingness to undergo DNA test.

5. Application Exhibit - 173 had been moved for subjecting defendants No. 2 and 3 and Gungubai to DNA test. However, it appears that deceased defendant No. 1 himself in earlier litigation has admitted that Gangubai is his wife and defendants No. 2 and 3 are born from their wedlock. It further appears that Gangubai is not party to the present suit.

6. The trial court after considering aforesaid aspects and legal position observed that DNA test can be ordered only in exceptional and deserving cases and it cannot be directed in routine manner. Relevant considerations to that effect are in paragraph No. 6 of the impugned order. Under the circumstances, trial court has rejected the application.

7. Having regard to indisputable position that deceased defendant No.1 himself had accepted the position that defendants No. 2 and 3 are begotten from wedlock of deceased defendant No. 1 and Gangubai, it cannot be said that it would be open for the petitioners to contend otherwise. The trial court has considered that DNA test can be directed only where access between the husband and wife is proved to be not possible. In the present case, such are not circumstances, which have brought on record.

8. Having regard to reasons those weighed with the trial court, I do not find that the trial court has committed any error while rejecting application Exhibit-173. Writ petition, as such, stands rejected.

9. Needless to refer to that since scope of application Exhibit-173 having been restricted to DNA test, the observations of trial court as well as this court would be efficacious for and confined to the extent of DNA test only.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

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