

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

WRIT PETITION NO. 6886 OF 2015

Nandabai W/o Vishnu Ghongde,
Age: 36 years, Occu.: Household,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.

...PETITIONERS

versus

Uttam Laxman Kholase,
(Since deceased)

1. Vandana W/o Laxman Wakde,
Age: 47 years, Occu.: Household,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
2. Gangubai W/o Uttam Kholase,
Age: 65 years, Occu.: Household,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
3. Sarika W/o Sanju Totre,
Age: 45 years, Occu.: Household,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
4. Vilas Uttam Kholase,
Age: 41 years, Occu.: Agril,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.
5. Vishal Uttam Kholase,
Age: 27 years, Occu.: Labour,
R/o : Thakur Nimgaon, at
and post Shingori, Tq. Shevgaon,
Dist. Ahmednagar.

...RESPONDENTS

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

DATED : 15th JULY, 2015

Order :-

1. Heard learned counsel for petitioner.
2. This petition has been moved by petitioner - original plaintiff, aggrieved by order dated 05-01-2015 on Exhibit-175 in Regular Civil Suit No. 183 of 2007 passed by joint Civil Judge, Junior Division, Shevgaon whereunder her request for subjecting respondents No. 2 to 5 - original defendants No. 1B to 1E to DNA test has been turned down.
3. Regular Civil Suit No. 183 of 2007 has been filed by the petitioner – Nandabai, for simplicitor injunction. Deceased defendant No. 1 was grandfather of present petitioner.
4. Application Exhibit - 175 has been moved for subjecting defendants No. 1B and 1E to DNA test alleging that defendants No. 1C to 1E are not born from of the wedlock of deceased Uttam and defendant No. 1B-Gangubai.
5. The court considered that present suit is for simplicitor injunction and the issue of paternity may be relevant in Regular Civil Suit No. 204 of 2008, which is for partition and separate possession. Issue about paternity has also been raised in Regular Civil suit No. 204 of 2008 and the court has considered that question of paternity is relevant in that suit and can be well agitated in said suit.

6. In the present suit, issue of possession is material and, as such, paternity may not be germane to be considered for said purpose. The court for the aforesaid reasons as well as for the other reasons as are appearing in the impugned order went on to reject the request under Exhibit-175.

7. I have already considered that application Exhibit-173 in Regular Civil Suit No. 204 of 2008 with regard to subjecting defendants No. 2 and 3 - therein to DNA test, in writ petition No. 6879 of 2015 and have rejected said petition. The observations therein apply to this petition with greater thrust.

8. In view of the same, nothing further survives for consideration in present writ petition. Writ petition, as such, stands rejected.

9. Needless to refer to that since scope of application Exhibit-175 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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