

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

**Civil Application No.15152 of 2015
In
Second Appeal No.404 of 2004**

Sheetal Rajendra Shinde
And Another.

.. Applicants.

Versus

Rajendra Tulshiram Shinde.

.. Respondent.

Lex Aquila - Smt. Madhaveshwari D Thube Mhase,
Advocate, for applicant.

Shri. R.B. Deshmukh, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 8th AUGUST 2016

ORDER:

1) The application is filed for calling expert as witness for the purpose of his examination. DNA Fingerprinting report is given by the expert and it is against the appellants. Both the sides are heard.

2) Regular Civil Suit No.535/1996 was filed for maintenance by the present appellants against the

respondent. Appellant No.1 is daughter of appellant No.2. Appellant No.2 is claiming that she is wife of respondent and during her cohabitation with respondent, appellant No.1 was born to her from respondent. Respondent took defence that he has not married with appellant No.2, original plaintiff No.2, and there was no cohabitation or living together between him and plaintiff No.2. Thus he denied the access and he denied the paternity. The trial Court had given maintenance in favour of both the appellants under the provisions of the Hindu Adoptions and Maintenance Act. The District Court has set aside the decision of the trial Court and the District Court has held that the factum of marriage between plaintiff No.2 and the defendant is not proved and the paternity in respect of plaintiff No.1 is also not proved.

3) The District Court has considered the evidence of the expert as he was examined in the trial Court on DNA Fingerprinting report prepared by him. This report was called on the basis of application moved by the husband, defendant. Though the report is against the present appellants, the trial Court had held that report is

not sufficient to draw inference against the plaintiffs that the defendant is not father of plaintiff No.1. In the present proceeding it appears that application was moved by the plaintiffs themselves for sending the blood samples for getting another DNA Fingerprinting report and this time to different laboratory, laboratory from Hyderabad. As both the sides agreed to it, this Court, other Hon'ble Judge, had allowed the application and now report of the expert is received that the defendant, respondent is not the biological father of plaintiff No.1.

4) In view of nature of relief claimed and the nature of contentions, it can be said that for getting maintenance, plaintiff No.2 was required to prove the factum of marriage. The circumstance that plaintiff No.1 is daughter born to her from defendant could have helped plaintiff No.2 also to some extent for proving the factum of marriage and cohabitation. But in any case for the plaintiff No.2 it is necessary to prove the factum of marriage and plaintiff No.1, daughter of plaintiff No.2 is required to show that defendant is her father and for that she could have used provision section 112 of the Evidence Act.

Thus, the evidence of her mother on marriage and cohabitation would have helped her for such proof.

5) The aforesaid circumstances show that already one DNA Fingerprinting report is against the plaintiffs and now second DNA Fingerprinting report is also against the plaintiffs. Thus it can be said that calling of expert as witness cannot serve any purpose as the evidence on second report also may not make difference like adding some material in favour of the plaintiffs. It can be said that present application itself is misconceived.

6) Learned counsel for the appellants placed reliance on following cases reported as (1) **1922 B.L.R. 803 Vol. XXIV (Emperor v. Ahilya Manaji)**; (2) **AIR 1960 SC 1006 (Petlad Turkey Red Dye Works Company Ltd. v. Dyes and Chemical Workers Union)**; and, (3) **2012 (6) Mh.L.J. 469 (Vishram vs. Nanu)**. On the other hand learned counsel for the respondent placed reliance on a case reported as **AIR 2015 SC 418 (Dipanwita Roy v. Ronobroto Roy)**. Facts of all these cases are different. Relevant facts of the present matter are already

mentioned. In the reported case, on which learned counsel for respondent has placed reliance, the husband was interested in getting divorce on the ground of adultery and so for that purpose it was held that sending blood for DNA Fingerprinting report was not uncalled for. In the result, the present application is rejected.

7) Learned counsel for the applicants wants to challenge the order passed by this Court. To enable her to challenge the order, list the second appeal on 23rd September 2016.

Sd/-
(T.V. NALAWADE, J.)

rsl