

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

FAMILY COURT APPEAL NO.20 OF 2006

WITH

CIVIL APPLICATION NO.6118 OF 2005

Bhagwan S/o Kisanrao Nagre,
Age - 40 years, Occu. Nil,
R/o Jai Bhawani Nagar, CIDCO,
Aurangabad.

... **Appellant**

Versus

1. Jaishree D/o Bhagwan Nagre,
Age - 12 years, Occu. Nil, (Minor),
2. Bhagyashree D/o Bhagwan Nagre,
Age - 10 years, Occu. Nil, (Minor),
3. Vanashree D/o Bhagwan Nagre,
Age - 8 years, Occu. Nil, (Minor),

Through guardian -
Anjali D/o Hiranman Kamble,
Age - 33 years, Occu. Service,
R/o Bhimpura, Near Osmanpura,
Aurangabad.

... **Respondents**

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Mr. R.R.Sancheti h/f Mr. R.R.Mantri, Adv. for Appellant
Mrs. Swati S. Langote, Adv. for Respondent Nos.1 to 3

...

WITH

FAMILY COURT APPEAL NO.2 OF 2008

1. Anjali W/o Bhagwan Nagre,
Age - 34 years, Occu: Nil,
R/o Bhimpura, Near osmanpura,
Aurangabad.

2. Jaishree D/o Bhagwan Nagre,
Age – 12 years, Occu. Minor,
U/g of mother - appellant No.1.
3. Bhagyashree D/o Bhagwan Nagre,
Age - 10 years, Occu. Occu. Minor,
U/g of mother - appellant No.1.
4. Vanashree D/o Bhagwan Nagre,
Age – 8 years, Occu. Minor,
U/g of mother - appellant No.1. ... **Appellants**

Versus

Bhagwan Kisanrao Nagre,
Age – 41 years, Occu. Business,
R/o Jaibhawaninagar, CIDCO,
Aurangabad. ... **Respondent**

...

Mrs. Swati S. Langote, Advocate for Appellant Nos.1 to 4
Mr.R.R.Sancheti h/f Mr.R.R.Mantri, Adv. for Respondent

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**CORAM : T.V.NALAWADE AND
ARUN M. DHAVAL, JJ.**

DATED : 11th October, 2017

ORAL JUDGMENT :-

1. The proceeding is filed to challenge the Judgment and Decree of Hindu Marriage Petition No. B-26 of 2003, which was pending before Principal Judge of Family Court, Aurangabad. The said proceeding was filed by

the appellant for declaration that the marriage between him and Respondent - Smt. Anjali is null and void. The Family Court has given the decree. He wanted one more declaration that the children born to Anjali are not born from him i.e. he was challenging the paternity in respect of Respondent Nos.2 to 4. Finding is given against him on that point and so he has filed the appeal. Other Appeal No.2 of 2008 is filed against the same decision by Anjali as her marriage with Respondent of Appeal No.2 of 2008 is declared null and void.

2. The learned counsel for Anjali, during argument, submitted that in view of subsequent developments the appellant is not at all interested in challenging the decision of declaration that the marriage is null and void. It appears that the husband was able to prove that his first wife was alive when he came in contact with Anjali. Learned Counsel for Anjali submitted that Respondent No.2 of Appeal No.20 of 2006 is married.

3. The learned counsel for husband Bhagwan submitted that the respondents to whom maintenance

is granted in proceeding filed under Section 125 of the Criminal Procedure Code are married and by misusing the finding that they are the children of Bhagwan, they will continue to get the maintenance and they will not admit that they are married. The submissions made and the record show that, the husband had applied for DNA Test, but he could not succeed in it. The co-habitation was proved and so the Trial Court has refused the decree giving declaration that the children are not born from him. It appears that one of the three issues of Anjali is now married. Learned counsel for Bhagwan submitted that one more daughter is also married. In that case, it will be open to him to file an application for cancellation of maintenance order in respect of that respondent-daughter, who is now married. As such step is possible, there is no need to go into the details of the evidence and the husband can achieve the relief by filing appropriate proceeding like the proceeding for cancellation for maintenance order made in favour of daughter, who is now married.

4. With these observations, both the appeals stand dismissed. Civil Application disposed of.

(ARUN M. DHAVALÉ, J.)

(T.V.NALAWADE, J.)

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vmk/-