

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.661 of 2013

1. Sunder, S/o Shri Bagas @ Baba Satnami, aged about 42 years,
 2. Bagas Satnami, S/o Late Bisheshar Satnami, aged about 64 years,
- R/o Village & Post Gorakhpur, Tahsil & Thana Kawardha, Civil & Revenue District Kabirdham (C.G.)
- (Defendants)
---- Petitioners

Versus

1. Laxmi Narayan, S/o Shri Sunder Satnami, aged about 18 years.
 2. Laxmi Chand, S/o Shri Sunder Satnami, aged about 16 years, Minor through natural guardian Mother Smt. Chandra Bai,
 3. Smt. Chandra Bai, W/o Shri Sunder Satnami, aged about 40 years,
- All R/o Village & Post Pipriya, Tahsil & Thana Kawardha, Civil & Revenue Distt. Kabirdham (C.G.)
- (Plaintiffs)
4. The State of Chhattisgarh, through Collector, Kawardha, Distt. Kabirdham (C.G.)
- Respondents

For Petitioners: Mr. Rewa Shankar Patel, Advocate.
 For Respondents No.1 to 3: -
 Mr. Devesh Chandra Verma, Advocate.
 For Respondent No.4 / State: -
 Mr. Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/01/2019

1. The plaintiffs/respondents No.1 to 3 herein filed a suit for declaration of title and partition stating inter alia that plaintiffs No.1 & 2 are sons of defendant No.1 and plaintiff No.3 is legally wedded wife of defendant No.1 and they are entitled for partition and possession in the suit property. In the said suit, defendants No.1 & 2 filed an application for DNA test of defendant No.1 and plaintiffs No.1 & 2 in order to

determine the paternity of plaintiffs No.1 & 2 which has been rejected by the learned trial Court by the impugned order against which this writ petition has been preferred.

2. Mr. R.S. Patel, learned counsel appearing for the petitioners herein / defendants No.1 & 2, would submit that the trial Court is absolutely unjustified in rejecting the application.
3. On the other hand, Mr. D.C. Verma, learned counsel appearing for the plaintiffs / respondents No.1 to 3 herein, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.
5. In the written statement filed by the defendants, defendant No.1 has admitted the fact of marriage with plaintiff No.3 Chandra Bai and further stated that plaintiff No.3 stayed with defendant No.1 only for one night and thereafter, she left for her matrimonial home by stating as under: -

1- यहकि, प्रतिवादी क्रमांक 1 सुंदर एवं वादी क्रमांक 3 चंद्राबाई का विवाह आज से 24-25 (चौबीस पच्चीस) वर्ष पूर्व हिंदू रीति रिवाज के अनुसार हुआ था तथाविवाह के साथ साथ गवना का रस्म भी किया गया । विवाह के बाद माघ माह मे समाज मे प्रचलित प्रथा के मुताबित अपनी पत्नी (वादी क्रमांक 3) को प्रतिवादी क्रमांक 1 (एक) लिवाकर अपने गृह ग्राम लाया तथा वादी क्रमांक 3 (तीन) चंद्राबाई मुश्किल से अपने ससुराल मे एक रात रही उसके बाद दूसरे दिन सुबह बिना बताये अपने सामान को थैला मे रख कर अपने मायके भाग कर आ गयी ।

6. Thus, the fact of marriage between plaintiff No.3 and defendant No.1 is an admitted fact.
7. Section 112 of the Indian Evidence Act, 1872 states about the legitimacy of any person born during the continuance of a valid marriage and it provides as under: -

“112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

8. The learned Family Court has clearly recorded a finding that since the fact of marriage is admitted between plaintiff No.3 and defendant No.1 in the pleading itself, burden lies on defendant No.1 to prove non-access and as such for determining the paternity of plaintiffs No.1 & 2, no DNA test can be directed. Such a finding recorded by the Family Court is in accordance with law. It is neither perverse nor contrary to the record. I do not find any merit in the writ petition. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).
9. A copy of order be sent to Family Court by fax/E-mail.

Sd/-
(Sanjay K. Agrawal)
Judge