

2 Petitioner no.1 Vijay Madhukar Jadhav is non
applicant no.1 in the pending proceedings. His son Vishwas Vijay
has passed away. Non applicants no.1 and 2, namely Vijay
Madhukar and Smt. Vimal Vijay are the parents of deceased
Vishwas. The parents of the deceased claim that Vishwas was
married to Priya and non applicant no.3 Gaurav is the son of

Vishwas and Priya. The applicant before the trial Court is Minakshi who claims to have married Vishwas. Applicant no.2 Priya, aged 9 years, is said to be a biological daughter of Smt.Minakshi and deceased Vishwas.

3 Applicants Smt. Minakshi and daughter Priya have moved the trial Court under Section 372 of the Indian Succession Act in Succession Enquiry Application No. 214 of 2017.

4 The non-applicants vehemently opposed the claim of Minakshi that she married Vishwas. As Vishwas is no more, they moved application Exhibit-26 praying for conducting a DNA test. The record reveals that Minakshi is getting maintenance under an order passed by the Court in Criminal Misc. Application No. 592 of 2009. The pleadings of the parties indicate that the date of birth of daughter Priya is 21.02.2008 and Vishwas deserted Minakshi on 09.04.2008.

5 The learned advocate for the petitioners relies upon a Commentary on DNA tests titled Criminal Investigation Trial And Paternity Disputes, authored by Mr. Yashpal Singh, IPS, who retired as the Director General of Police, State of Uttar Pradesh.

The foreword to the said book is by Justice Imtiyaz Murtaza, Judge, Allahabad High Court and Mr. Rodney, D. Ryder, advocate Supreme Court and author of Cyber Laws and an Advisor to the Government of India, Japan, Malaysia, Sri Lanka and South Africa. On page no. 44 of the said book, it is stated that the DNA is inherited from the mother and the father. Genetics is the science pertaining to genes. It is a science of the hereditary and evolutionary similarities and differences of related organism. Gene is the basic unit of heredity. A gene is a sequence of DNA nucleotides on a chromosome. It is further stated that a DNA test can prove as to who were the grand parents of the child or a person.

6 It is informed that as the grand parents are alive, the DNA testing of Smt. Minakshi and daughter Priya with grand parents Vijay Madhukar and Smt. Vimal Vijay would render assistance to the Court.

7 The learned advocates for the respective sides are agreeable to such DNA testing by the parties, which is now possible at Bombay and Pune. Smt. Minakshi and Priya reside at Ahmednagar whereas the grand parents are residing at Pune.

8 Considering the above, this petition is allowed. The impugned order dated 07.01.2019 is quashed and set aside. Application Exhibit-26 stands allowed.

9 The petitioners no. 1 and 2 – Vijay Madhukar and Smt. Vimal Vijay and the respondents Smt. Minakshi and daughter Priya, shall remain present before the Deputy Director, Regional Forensic Science Laboratory, Maharashtra State, Ganesh Khind Road, Opposite Raj Bhavan, Near ChaturShringi Police Station, Pune, on 20.09.2019 at 12.00 noon. The trial Court at Ahmednagar would forthwith issue a letter to Vijay Madhukar and Smt. Minakshi, based on this order, so as to carry the said letter to the concerned hospital for collection of their blood samples. Petitioner no. 1 Vijay Madhukar Jadhav would deposit the entire amount required for such DNA tests. The concerned hospital is directed to submit the DNA test report in a sealed envelope addressed to the 4th Joint Civil Judge, Senior Division, Ahmednagar in CMA No. 214 of 2017.

RAVINDRA V. GHUGE
JUDGE