

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

SECOND APPEAL NO.391 OF 2019

(Sambha s/o Lataru Hajare and others ..vs.. Prabhakar s/o Sambha Hajare)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H.R. Gadhia, Counsel for the appellants.

CORAM : ROHIT B. DEO, J.

DATED : 13-09-2019

The defendants in Regular Civil Suit 124/2005 brought by respondent Prabhakar Hajare for partition and separate possession are in appeal under Section 100 of the Civil Procedure Code.

2. Prabhakar Hajare filed the suit contending that he is the son of appellant 1 Shri Sambha Hajare and is born from wedlock between Shri Sambha Hajare and late Ratnaprabha, which marriage was solemnized on 07-3-1972. Prabhakar Hajare contended that his mother Ratnaprabha was not treated well and the marriage ended in divorce as is evident from Deed of Divorce dated 23-10-1975 (Exhibit 52).

3. The defence simplicitor is that Prabhakar Hajare is not the son of Sambha Hajare. The paternity is denied and it is contended that Shri Sambha Hajare is not even aware of the identity of the plaintiff Prabhakar. It has come in evidence that Sambha married Leelabai on

07-6-1976 and the appellants 2 to 5-defendants 2 to 5 in the trial Court are the children born from the said wedlock.

4. Both the Courts below have recorded concurrent finding that Prabhakar has proved that he is the son of Sambha. During the course of the trial, Prabhakar preferred an application seeking DNA profiling and testing to establish that he is the son of Sambha. This application was objected to on the ground of delay. Be that as it may, since this Court was of the opinion that it would be in the interest of both Prabhakar and Sambha if the paternity is established either way, this Court passed the following order on 05-9-2019 :

- “Heard Shri H.R. Gadhia, the learned Counsel for the appellants at some length. The appellant 1-Shri Sambha is denying that the respondent Prabhakar – who is the original plaintiff, is the biological son.*
- 2. The application preferred by Shri Prabhakar before the trial Court for directing the DNA profiling came to be rejected.*
 - 3. In response to this Court's query whether Shri Sambha is agreeable for DNA profiling so that the issue of paternity can be put to rest and which would be in the interest of both Shri Sambha and Shri Prabhakar, Shri Gadhia is seeking time till 11-9-2019 to make a statement after obtaining instructions.*
 - 4. Stand over to 11-9-2019.”*

The learned Counsel for appellant 1-Sambha

however, states that he is not agreeable to DNA profiling and testing.

5. Be that as it may, perusal of the evidence would show that the findings of fact recorded do not suffer from any infirmity. Prabhakar produced on record his school leaving certificate which is admitted in evidence as Exhibit 53. The name of the father is recorded as Sambha Tijare. Interestingly, this evidence has gone totally unchallenged in the cross-examination. It is not even suggested to Prabhakar that the contents of the school leaving certificate are incorrect. Prabhakar has also produced on record the Deed of Divorce Exhibit 52 and the Marriage Invitation Card Exhibit 51. In so far as the Deed of Divorce is concerned, what is suggested to Prabhakar is that the said deed is not signed by Sambha Tijare. However, the evidence that Ratnaprabha married Prabhakar, that there was a divorce in the year 1975 etc. is not seriously challenged in the cross-examination. In any event, in exercise of jurisdiction under Section 100 of the Civil Procedure Code, it would be impermissible for this Court to disturb the pure finding of facts.

6. This Court is satisfied that the appeal does not involve any question of law much less substantial question of law and merits dismissal.

7. The appeal is dismissed.

8. If the execution has not been disposed of, the executing Court shall do so within ten weeks.

9. The registry is directed to communicate this order to the executing Court and the respondent herein within seven days.

JUDGE

adgokar