

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7133 OF 2018**

Kisan Govind Bombe Petitioner

Vs.

Maya Santosh Yewale & Ors Respondents

Mr. Himanshu Kode a/w Ruchi Kadam a/w Janhavi Karnik for
Petitioner.

Mr. Dilip Bodake Respondent Nos. 1 and 2

Coram : NITIN W. SAMBRE, J.

Date : 24TH FEBRUARY, 2021

P.C.:

1. In a suit for partition by Respondent No.1, Petitioner/Defendant moved an application, Exhibit 52 seeking D.N.A. test of the Plaintiff in exercise of powers under Order XXVI. Rule 9 of CPC. by granting Court commission. After having heard this matter for some, time, on instructions, a motion is made for withdrawal of the Writ Petition. The petition is disposed of as withdrawn.

2. However, the Petitioner is at liberty to move afresh before the trial Court in the light of the judgment of the Apex Court in the

matter of Goutam Kundu Vs. State of West Bengal, reported in 1993 DGLS (SC) page 484, as according to him, he shall in his evidence dispel the presumption provided under Section 112 of the Indian Evidence Act. If the trial Court is of the view that the Petitioner has dispelled the presumption under Section 112 of the Indian Evidence Act, the claim of the Petitioner for D.N.A. test, if so fresh moved, be considered in accordance with law.

(NITIN W. SAMBRE, J.)