

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5962 OF 2019

1. Jafar Khan Ibrahim Khan,
 Aged about 60 years,
 Occupation-Agriculturist,
 R/o. Railway Station, Darwha,
 District-Yavatmal.

2. Hanifa Khatun Ali Sherkhah,
 Aged about 52 years,
 Occupation-Household,
 R/o. Talakpura, Ner,
 Tq. Ner, District-Yavatmal.

.. Petitioners
 (Ori. Defendants on R.A.)

.. Versus ..

1. Smt. Khurshidbi Ibrahim Khan,
 Aged about 74 years,
 Occupation-Household,
 R/o. c/o. Ahemad Khan,
 Mirza Colony, Darwha, Tq. Darwha,
 District-Yavatmal.

2. Muzzafar Khan Ibrahim Khan,
 Aged about 45 years,
 Occupation-Labour,
 R/o. c/o. Ahmed Khan, Mirza Colony,
 Darwha, Tq. Darwha,
 District-Yavatmal.

.. Respondents
 (Ori. Plaintiffs on R.A.)

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Shri Muhammed Ateeque, Advocate for the petitioners,
 Shri K.J. Tople, Advocate for respondent no.2.

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CORAM : MRS. VRUSHALI V. JOSHI, J.
DATE : 22.02.2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard the matter finally at the stage of admission.

2. The petitioners have challenged the order dated 02.05.2019 passed by the learned Civil Judge, Senior Division, Darwha in Regular Civil Suit No.46/2014 below Exh.1 and directed plaintiff no.2 and the defendants to undergo the DNA test.

3. The learned counsel for the petitioners has stated that the petitioners are the defendants in the Regular Civil Suit No.46/2014. The suit is filed by the respondents for partition and separate possession. During the pendency of the suit, the plaintiffs have filed the application to direct the plaintiff and defendant to undergo DNA test as the defendant has denied the relationship. Plaintiff no.1 is the stepmother and plaintiff no.2 is the stepbrother of the defendants. The plaintiff has not pressed the said application.

4. The evidence was recorded and the arguments were over. The matter was closed for judgment and thereafter the Court suo motu has

passed the order below Exh.1 directing the plaintiff and defendant to undergo the DNA test. Being aggrieved by the said order, the petitioners have filed this petition.

5. Learned counsel for the petitioners has placed reliance on the judgment of the Apex Court in the case of **Aparna Ajinkya Firodia .vs. Ajinkya Arun Firodia, decided on February 20, 2023 and Civil Appeal of 2023**, wherein the guidelines about DNA test are given. He further submitted that the court has not mentioned that the evidence on record is not sufficient to come to the conclusion about the relationship of the plaintiffs and the defendants. The Hon'ble Supreme Court has given the guidelines in the judgment (supra) to that effect. Hence, learned counsel prayed to set aside the order passed by the learned Civil Judge, Senior Division, Darwha.

6. Learned counsel for the respondents appeared and has stated that as defendant has denied the relationship, the order passed by the Trial Court is correct. He has relied on the judgment of this Court in the case of **Sumayya Kaira Bairagdar and others .vs. Raju @ Yusuf Bashik Ahmad Kulkarni and others, 2012 (2) ALL MR 458**, wherein it is held that the DNA test could have only been ordered if the Trial Court comes to the conclusion that the evidence on record is insufficient to prove the

relationship between the parties. In the instant case without the said course of action being followed, straightaway the DNA test has been ordered. The said cause of action is now required to be followed in the light of the affidavits being filed by the Defendants as aforesaid. Learned counsel for the respondents also relied on the judgment of Andhra Pradesh High Court in the case of **Buridi Vanajakshmi .vs. Buridi Venkata Satya Varaha Prasad Gangadhar Rao and another**, 2010 (5) ALL MR (Journal) 22.

7. In partition suit after completing the entire evidence and completing the argument at the stage of judgment, the order was passed by the Trial Court suo motu directing the parties to undergo the DNA test. The Hon'ble Apex Court is very clear about DNA test that merely because something is permissible under the law cannot be directed as a matter of course to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person. It is also observed by the Apex Court in above said judgment, placing the reliance on judgment passed by co-ordinate bench in civil matter. Such direction would violate the privacy right of the persons subjected to such tests. It is also observed by this court in 2012 (2) ALL MR 458 (supra) that the DNA test could have only been ordered if the Trial Court comes to the conclusion that the evidence on record is insufficient to prove the

relationship between the parties.

8. After going through the order passed by the trial Court, it does not reflect that the evidence on record is not sufficient to come to the conclusion about the relationship. In the circumstances of the present case, I am unable to accept that a DNA test would be the only way in which the truth of the matter can be established. In the light of above, the impugned order is required to be set aside and is accordingly set aside. The petition is allowed and disposed of.

[MRS. VRUSHALI V. JOSHI, J.]

Gulande