



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 13341 OF 2024

Babaso Anandrao Desai

...Petitioner

vs.

Veerendra Babaso Desai

...Respondent

Mr. N. J. Patil i/by Mr. Akshay N. Patil	Advocate for the Petitioner
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CORAM : S. M. MODAK, J.

DATE : 13th NOVEMBER 2024

P.C. :-

1. Heard learned Advocate for the Petitioner-Defendant No. 1.
2. There is suit for partition filed by Respondent No. 1 against the present Petitioner. The Plaintiff claims to be a son begotten to one Ruby out of relationship with Defendant No. 1. This is denied by Defendant No. 1. The issues were framed, and the Plaintiff has filed an affidavit of examination-in-chief. In the written statement, defendant No. 1 has objected to the valuation done by the Plaintiff. When the suit came up for hearing, he filed separate application challenging the valuation. Even the valuer is appointed and report is yet to be

submitted.

3. The Plaintiff has filed an affidavit of examination-in-chief. In the meantime, he requested the trial Court to issue direction to defendant no. 1 to offer himself for DNA examination. The trial Court issued that direction as per Order dated 29/04/2024. This is challenged on behalf of the Defendant No. 1.

4. According to learned Advocate, the Plaintiff has to prove his case on his own. Whereas except the oral statement, there are no documentary evidence. He placed reliance on the observations in case of *Ashok Kumar Vs. Raj Gupta and Others*¹. It is true that the Hon'ble Supreme Court has observed, '*DNA test can be resorted not as a first step, but only when there is no documentary evidence*'. In view of that this has to be verified, what type of evidence the Plaintiff has given including the documentary evidence.

5. In view of that Petitioner is at liberty to file copy of the affidavit of the examination-in-chief by the Plaintiff.

6. Issue notice before admission to Respondent No. 1 returnable on 11th December 2024. Additionally, private notice is allowed, and

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service affidavit be filed.

7. Matter be kept on **11th December 2024**.

8. In the meantime, the Petitioner is at liberty to inform the trial Court about filing of the petition and to seek for adjournment.

[S. M. MODAK, J.]