



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 4614 OF 2022

Walmik Jayram Kajale  
VERSUS  
Jalindar Jayram Kajale And Others

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- Mr. A. B. Kale, Advocate for the Petitioner
- Mr. U. S. Patil, Advocate for the Respondent No. 1
- Mr. Rohit Dhongde h/f Mr. S. S. Kulkarni, Advocate for Respondent Nos. 2, 7, 8, 13 and 14

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CORAM : R. M. JOSHI, J  
DATE : MARCH 26, 2025

PER COURT :

1. This Petition takes exception to the order passed below Exh. 199 in RCS No. 126/2016 whereby the Trial Court has directed Plaintiff and Defendant Nos. 3 and 4 to undergo DNA profiling test.

2. This Petition is filed by Original Defendant Nos.1. Defendant Nos. 3 and 4 have not challenged the order impugned. Though they are made party Respondents to the present Petition, they chose not to appear and supporting the Petitioner. Learned Counsel for contesting Respondent No. 1/Original Plaintiff, therefore, submits that even if any interference is

caused in the impugned order, it shall be done to the extent of Petitioner only.

3. RCS No. 126/2016 came to be filed by contesting Respondents/original Plaintiffs for partition of ancestral properties. He admits that Defendants therein to be brothers and sisters. Defendant Nos. 1, 3 and 4 have filed written statement denying the fact that the Plaintiff is son of their father Jayram. On the ground, it is contended that Plaintiff is not entitled for any share in the suit properties. Plaintiff laid his evidence. He filed application Exh. 199 for seeking direction for DNA test of Plaintiff and Defendant Nos. 1, 3 and 4 in order to ascertain that they are children of Jayram.

4. Learned Counsel for Petitioner submits that it was not open for the Court to pass order of directing the Defendants to undergo DNA test casually. According to him, Plaintiff has never disputed the fact that the Defendants are children of Jayram. It is his submission that it was open for the Plaintiff to prove his contention about he being son of Jayram by leading

independent evidence.

5. Learned Counsel for Respondent No. 1/Plaintiff supported the impugned order. According to him, once the dispute is raised by the Defendants about the Plaintiff being son of Jayram and when there is no evidence to prove so, the Plaintiff is justified in seeking order of DNA test.

6. Since there is no challenge to impugned order by Defendant Nos. 3 and 4, this Court restricts the challenge thereof to the extent of Petitioner only. Here in this case, Plaintiff admits Defendants to be children of Jayram. Though Defendant Nos.1, 3 and 4 have challenged the status of Plaintiff to be son of Jayram, the same can be proved by independent evidence. Admittedly, the suit properties are ancestral properties and it will not suffice the purpose of the Plaintiff by simply by proving that he is son of Jayram unless he proves that he begotten from the legal wedlock of Jayram.

7. In such circumstances, Petition stands partly

allowed. Impugned order stands set aside to the extent of Petitioner only. The other Defendant Nos. 3 and 4 since have not challenged the said order, this Court finds substance in the contention of learned Counsel for contesting Respondent that these Defendants have accepted the order impugned.

8. Since the suit is of year 2014, the learned Trial Court to decide the same expeditiously.

(R. M. JOSHI, J.)