

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.10315 OF 2023**

1. Shri. Dattatraya Krushnat Pandav,
Age-40 yrs, Occu-Baour,
 2. Shri. Dipak Krushnat Pandav,
Age-37 yrs, Occu-Labour,
Both R/o. Mauje Rukadi,
Tal-Hatkanangale, Dist-Kolhapur.
- ..Petitioners
(Ori. Plaintiffs)

Versus

1. Shri. Jahangir Jalal Mujawar,
Age-60 yrs, Occu- Business
R/o-Near Rukdi Darga, Rukadi,
Tal-Hatkanangale, Dist-Kolhapur.
 2. Smt. Sushila Krushnat pandav,
Age-55 yrs, Occu-NIL,
R/o- Mauje Rukadi, Rohidas Chowak,
Tal-Hatkanangale, Dist-Kolhapur.
- ..Respondents
(Ori. Defendants)

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Mr. Anand Patil a/w Mr. Soham Pawar, Advocate for Petitioners.
Mr. Sandeep Koregave a/w Mrs. Pallavi A. Karanjkar, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 09th SEPTEMBER, 2025.

PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners impugn order dated 14.03.2023 passed by Civil Judge Junior Division, Ichalkaranji below Exhibit-59 in Regular Civil

Suit No.221/2015, thereby declining prayer of petitioners/plaintiffs to direct plaintiffs as well as defendant no.1 to undergo DNA test.

3. The petitioners are original plaintiffs in Regular Civil Suit No.221/2015. The suit is filed for relief of declaration and permanent injunction. The plaintiffs sought declaration that defendant no.1 is their biological father. The defendant no.1 filed written statement and denied claim as to paternity and relationship with plaintiffs. In wake of such denial, petitioners/plaintiffs filed application below Exhibit-59 seeking direction that plaintiffs as well as defendant no.1 shall undergo DNA test to prove paternity. The Trial Court refused to entertain said application. Hence, this Writ Petition.

4. Mr. Anand Patil, learned Advocate appearing for petitioners submits that plaintiffs as well as their mother specifically contended that defendant no.1 is their biological father. However, defendant no.1 denied aforesaid contentions. Under such circumstances, only way available to bring truth before Court is DNA test of parties. The paternity cannot be decided on the basis of available evidence. No prejudice would be caused to defendant no.1 if DNA test is ordered. According to petitioners, in present case, presumption under Section 112 of Indian Evidence Act would not play any role. The plaintiffs want to establish their paternity by scientific method. The Supreme Court has approved powers of Court to order DNA test, where evidence adduced is insufficient to establish relationship. It is, therefore,

submitted that this was a fit case to order DNA test. However, Trial Court declined to exercise jurisdiction vested with him in judicious manner. Hence, Writ Petition deserves to be allowed.

5. Per contra, Mr. Sandeep Koregave, learned Advocate appearing for respondents vehemently opposes prayers in petition. He would submit that Trial Court by recording elaborate reasons and after taking note of law laid down by Supreme Court, rejected petitioners' application. Hence, no interference is required under Writ jurisdiction of this Court.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, issue that arises for consideration in present case is as to whether in facts and circumstances, DNA test required to be ordered, thereby directing petitioners and respondent no.1 to submit themselves to DNA test.

7. Before venturing into legal position, it is significant to note here that undisputedly petitioners have been born during subsistence of wedlock between their mother Sushila with Krushnat Pandav. The present suit is filed when plaintiffs are aged about 40 years and 37 years respectively. Whole basis of contentions of petitioners is that their mother informed them she had illicit relationship with respondent no.1 and plaintiffs are born out of such relationship. According to plaintiffs, Krushnat Pandav and their mother never resided together and they had no physical relationship, but they are born out of illicit

relationship between defendant nos.1 and 2. It is contentions of petitioners that defendant nos.1 and 2 were openly residing together for 35 year at village Rukadi and their relationship was well known to entire village. The defendant no.2 was deserted lady, whereas defendant no.1 was respected and rich person. On his insistence, name of Krushnat Pandav is recorded as father of plaintiffs.

8. The aforesaid pleading shows that birth of petitioners took place during subsistence of marriage between their mother and Krushnat Pandav. For more than 35 years before institution of suit, they are carrying name of Krushnat Pandav as their father. In this background, this would be fit case where presumption under Section 112 of Indian Evidence Act would arise.

9. In this background, reference can be given to observations of Supreme Court in case of *Ivan Rathinam Vs. Milan Joseph*¹. In that case also plaintiff and his mother had filed suit seeking decree declaring that defendant is plaintiffs' father and sought relief of mandatory injunction directing defendant to submit, application to include his name as father of plaintiff in relevant register. It was pleaded that mother of plaintiff was married to Raju Kurian. However, she was involved in extra marital relationship with defendant due to which plaintiff was begotten. It was also joint suit filed by son and mother claiming that defendant had illicit relationship with mother during subsistence of her marriage with her husband and out of such

¹ (2025) AIR (SC) 1004.

relationship son is born. In wake of aforesaid background, Supreme Court observed that in peculiar circumstances of that case Court must undertake exercise to “balance the interests” of parties involved and decide whether there is an “eminent need” for DNA test. This pertains not simply to interests of child, but also interests of appellant. The Court further observed that right to privacy has been recognized in case of *K. S. Puttaswamy Vs. Union of India*. The privacy is concomitant to rights of individual to exercise control over his or her personality. Privacy includes, at its core, the preservation of personal intimacies, sanctity of family life, marriage procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the safeguarding of individual autonomy and ability of an individual to control vital aspects of his life.

10. In this background, Supreme Court has observed that while dealing with requirement of eminent need for DNA test to prove paternity, Court must balance interests of those involved and must consider whether it is possible to reach the truth without use of such test.

11. The first and foremost, Courts must consider existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to finding, only then should the Court consider ordering DNA test. Once insufficiency of evidence is established, Court must consider whether ordering DNA test is in the best interests of parties involved

and must ensure that it does not cause undue harm to parties. There are thus, two blockades to ordering DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding balance of interests.

12. If aforesaid tests are applied in present case, *prima facie*, in wake of admitted facts in plaint itself there is material for raising presumption of legitimacy. Therefore, unless plaintiffs brings on record material indicating that there is confusion as to whether presumption under Section 112 of Indian Evidence Act would apply in facts of case, order mandating DNA test cannot be passed, as it is likely to have a disproportionately adverse impact on plaintiffs, so also their mother.

13. In light of aforesaid exposition of law, in facts of case, at present there is no material to hold that there is any confusion as to application of presumption under Section 112 of Indian Evidence Act. However, after leading necessary oral and documentary evidence, if Court finds that sufficient material is rendered in this regard, plaintiffs can be given liberty to apply afresh for order of DNA test.

14. In that view of matter, no jurisdictional error or infirmity can be found in impugned order. In result, Writ Petition stands rejected with liberty as observed in aforesaid paragraphs.

15. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE