

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
WRIT PETITION NO.13341 OF 2024**

Babaso Anandrao Desai,  
Age-72 Year, Occu.- Agriculture,  
R/o. Beside Shirol Gram Panchayat,  
Behind Vithal Mandir, Shirol,  
Dist.-Kolhapur

..Petitioner  
(Orig. Defendant No.1)

Versus

1. Veerendra Babaso Desai,  
Age 50 years, Occu. Service,  
Vishvashri Chowk, Near Zari  
Masjid, Miraj-416 410, Dist-Sangli

2. Rajnanda Babaso Desai,  
Age 67 years, Occu. Household,

3. Dhairysheel Babasaheb Desai,  
Age 45 years, Occu. Agriculture,

4. Vasumati @ Shivani Babasaheb Desai,  
Age 37 years, Occu. Household,  
Respondent Nos.2 to 4  
R/o., Beside Shirol Gram Panchayat  
Behind Vithal Mandir, Tal.Shirol  
Dist. - Kolhapur

5. Vadnyseni Sangramsihn Jahagirdar  
Age 45 years, Occ. Household  
R/o. Pileev, Tal. Malshiras1  
Dist. - Solapur

..Respondents  
(Respondent No.1/Orig. Plaintiff)

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Mr. N. J. Patil i/by Mr. Akshay N. Patil, Advocate for Petitioner.  
Mrs. A. R. S. Baxi, Advocate for Respondents.

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**CORAM : S. G. CHAPALGAONKAR, J.  
DATED : 14<sup>th</sup> NOVEMBER, 2025.**

**FINAL ORDER:-**

1. The petitioner impugns order dated 06.05.2024 passed by Civil  
Judge Junior Division, Jaysingpur in Regular Civil Suit No.57/2017,

whereby application filed by respondent no.1/plaintiff to direct DNA Test of plaintiff and defendant no.1 has been allowed. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1 (original plaintiff) instituted suit for partition and separate possession contending that he is son of late Rubi born from petitioner/defendant no.1. According to plaintiff, defendant no.1 married with his mother Rubi. He born on 15.06.1974 at Dr. Mazrelo Hospital at Miraj. On 06.05.1984, his mother expired. The suit properties are ancestral properties of defendant no.1. The plaintiff has 1/5<sup>th</sup> share in suit properties. He issued legal notice dated 22.12.2016 to defendant no.1 asking for partition and separate possession of his share. However, defendant no.1 failed to effect partition and hand over 1/5<sup>th</sup> share of suit properties to him.

3. The defendant nos.1 to 3 filed their written statements and refuted claim of plaintiff. It is contended that defendant no.2 is legally married wife of defendant no.1. Their marriage took place on 10.05.1973. The defendant nos.3 and 4 are born out of wedlock between defendant nos.1 and 2.

4. The plaintiff filed an application below Exhibit-30 seeking direction to refer defendant no.1 and plaintiff for DNA Test, since defendant no.1 denied his paternity. The Trial Court by his order dated

22.10.2021 directed that plaintiff's application be kept in abeyance till plaintiff adduced primary evidence, as plaintiff is heavily burdened with issue no.1 and required to adduce primary evidence at first instance. Thereafter, plaintiff filed his evidence affidavit alongwith certain documents, particularly birth certificate issued by Sangli, Miraj and Kupwad City Corporation, hospital record regarding medical treatment advanced to Rubi, certain letters exchanged between Rubi and defendant no.1 and her death certificate issued by Miraj Municipal Council dated 19.08.1985. At this stage, plaintiff filed application below Exhibit-77 reiterating prayer for referring plaintiff and defendant no.1 for DNA Test by allowing application filed at Exhibit-30. The Trial Court allowed said application vide order dated 29.04.2024 (corrected and signed on 06.05.2024) and directed DNA Test of plaintiff and defendant no.1-Babaso. The defendant no.1 was directed to choose laboratory to give necessary samples.

5. Mr. Patil, learned Advocate appearing for petitioner would submit that plaintiff is required to discharge burden to prove paternity of defendant no.1. The plaintiff relied upon documentary evidence like birth certificate, school record, driving license, Adhaar Card and hospital record tendered alongwith evidence affidavit. It is for him to prove those documents. The Court is required to balance right of person seeking to establish relationship based on defendants DNA Test and privacy of person whose DNA Test is sought. The Court has to

record satisfaction as to eminent need for just decision in matter. Unless Court examined proportionality of legitimate aim, a person cannot be compelled to undergo a DNA test.

6. Per contra, Mrs. Baxi, learned Advocate appearing for respondent supports impugned order. She would submit that defendants have specifically denied plaintiff's claim regarding paternity of defendant no.1. The plaintiff has tendered evidence affidavit alongwith documents in support of his claim. In this background, it is just and desirable to bring truth before Court and refer plaintiff and defendant no.1 for DNA Test. The Trial Court has considered relevant aspects of matter and passed impugned order. Hence, no interference is required in Writ jurisdiction.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff claims his birth out of matrimonial relationship between his mother Rubi and petitioner/defendant no.1. The defendant no.1 has denied paternity and also matrimonial relationship with Rubi. The plaintiff has filed his evidence affidavit alongwith supporting documents, which includes his birth certificate, hospital record and death certificate of his mother Rubi. The plaintiff has to prove aforesaid documents and bring on record best possible evidence in his endeavour to discharge burden as against issue no.1. After plaintiff records such evidence, if Court finds that DNA Test is indispensable to bring truth before Court, it is always

within discretion of Court to issue such direction. In case of **Ivan Rathinam Vs. Milan Joseph**<sup>1</sup>, Supreme Court observed in paragraph no.38 as under:

*“In this context, while permitting an enquiry into a person’s paternity vide a DNA test, we must be mindful of the collateral infringement of privacy. For this, the court must satisfy itself that the threshold for the above-mentioned three conditions is satisfied. If even one of these conditions fails, it is considered an unwarranted invasion of privacy and consequently, of life and personal liberty as embodied in Article 21 of the Constitution”*

8. Further, in paragraph nos.46 and 47, it is observed that:

*“46. When dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and **must consider whether it is possible to reach the truth without the use of such a test.***

*47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.”*

9. In light of aforesaid observations of Supreme Court, this Court finds that impugned order is passed at premature stage. First of all plaintiff must lead best possible evidence available with him to establish paternity. In present case, plaintiff has tendered his evidence affidavit. He will have to go under cross-examination. Thereafter, he is at liberty to prove other documents by leading necessary evidence.

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<sup>1</sup> (2025) AIR (SC) 1004.

Once plaintiff completes recording of his evidence and finds it necessary to bring evidence in nature of DNA Test, he would be at liberty to persuade Court to pass such order. The Court would positively consider such prayer at appropriate stage, if it is indispensable to bring truth on record.

10. In that view of matter, impugned order 06.05.2024 passed by Civil Judge Junior Division, Jaysingpur in Regular Civil Suit No.57/2017 is quashed and set with liberty in favour of plaintiff to press his Application Exhibits-30 and 77 after producing best possible evidence before Court. Looking to age of petitioner/defendant no.1 and conspectus of matter, Trial Court shall endeavour to expeditiously decide suit and in any case within period of one year from today.

11. Writ Petition stands partly allowed and disposed of in aforesaid terms.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**