

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11061 OF 2025

Shri. Bayaji Hariba Waghmode,
Age: 85 yrs., Occ: Nil,
All R/o. Gondvale, Tal. Man,
Dist. Satara.

..Petitioner
(Ori. Defendant No.1.)

Versus

1. Sou. Suman Vitthal Shingade,
Age: 64 yrs., Occ: Agri. & Household,
R/o. Shingadwadi, Tal. Khatav,
Dist. Satara.
2. Sou. Changuna Kisan Sarak,
Age: 62 yrs., Occ: Agri. & Household,
R/o. Nandal, Tal. Phaltan,
Dist. Satara.

..Respondents
(Ori. Plaintiffs)

...

Mr. Vishwanath S. Talkute a/w Mr. Pratik Bhojane and Mr. Mahesh Bhosale, Advocate for Petitioner.

Mr. Dhananjayrao Rananaware a/w Mr. Shubham S. Dhoble, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 26th NOVEMBER, 2025.

FINAL ORDER:-

1. The petitioner impugns order dated 25.07.2025 passed by Civil Judge Senior Division, Vaduj below Exhibit-40 in Regular Civil Suit No.37/2024, by which application filed by respondents/plaintiffs for DNA Test of petitioner has been allowed.
2. The petitioner is defendant in Regular Civil Suit No.37/2024. The plaintiffs instituted suit seeking decree of partition and separate

possession in respect of suit property contending that petitioner is their biological father. The plaintiffs have right to seek partition and separate possession in suit properties. According to plaintiffs, their mother Jagubai was married to petitioner and they have been born out of matrimonial relationship between Jagubai and petitioner. Jagubai had left matrimonial home due to ill-treatment adverted by petitioner. Jagubai resided at her maternal home till her death and plaintiffs have been born and brought up by their maternal grand-parents. The petitioner had contracted second marriage with defendant no.3.

3. The petitioner refuted plaintiffs' claim. He has specifically denied his relationship with plaintiffs or their mother. In this backdrop, plaintiffs filed application Exhibit-40 in Regular Civil Suit No.37/2024 seeking DNA examination of plaintiffs and petitioner/defendant no.1 to find out paternity. Although petitioner opposed said application, Trial Court allowed application vide impugned order dated 25.07.2025. Hence, this Writ Petition.

4. Mr. Vishwanath Talkute, learned Advocate appearing for petitioner would submit that at the time of institution of suit plaintiffs were aged about 62 and 64 years. The contention of plaintiffs is not supported by any documentary evidence. The petitioner is aged about 85 years and specifically denied relationship with plaintiffs. The Trial Court entertained application for DNA Test at premature stage. In absence of *prima facie* material to indicate relationship between

plaintiffs and defendant no.1, prayer for DNA Test could not have been entertained.

5. Per contra, Mr. Dhananjayrao Rananaware, learned Advocate appearing for respondents supports impugned order. He would submit that when defendant no.1 has flatly denied relationship with plaintiffs, presumption under Section 112 of Indian Evidence Act cannot be pressed into service. The only remedy to unearth truth was to subject the plaintiffs and defendant no.1 to DNA Test.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiffs are claiming that defendant no.1 is their biological father born out of matrimonial relation with their mother Jagubai. Except pleading in plaint, no other material is placed into service in support of such contentions. The plaintiffs will have to lead evidence to discharge burden to prove aforesaid facts during course of Trial. If evidence tendered by plaintiffs is sufficient to draw *prima facie* inference or possibility of relationship between plaintiffs and defendant no.1, DNA Test can be directed to aid of plaintiffs. It is well settled that, DNA Test cannot be casually ordered. The Court has to first find out DNA Test is indispensable to bring truth before Court. At the same time, due regard must be given to defendant's fundamental right to privacy. At

this stage, reference can be given to observations of Supreme Court in case of ***Ivan Rathinam Vs. Milan Joseph***¹, which reads as under:

“38. 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”

*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.”

7. In light of aforesaid observations, this Court finds that impugned order is passed at premature stage. The plaintiffs can bring on record best possible evidence available with them to substantiate their contention. Thereafter, if Trial Court finds that DNA Test is indispensable, such directions can be issued. Hence, following order:

ORDER

a. Writ Petition is partly allowed in terms of prayer Clause (a) with liberty in favour of respondents/plaintiffs to reiterate their prayer for conduct of DNA examination after recording evidence.

¹ (2025) AIR (SC) 1004.

b. The Trial court would then consider same on its own merits in light of observations made hereinabove.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/November-2025