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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR-5920-2024

Reserved on:21.02.2025

Pronounced on:01.03.2025

RAJWINDER KAUR & ORS.

...PETITIONERS

VS.

INDERPAL SINGH AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ashish Aggarwal, Advocate
for the petitioners.

None for respondent No.1.

**Service of respondents No.2 & 3 was ordered to be
dispensed with by this Court vide order dated 16.01.2025.**

SUVIR SEHGAL, J.

1. Petitioners have approached this Court assailing order dated 25.09.2024, Annexure P-5, whereby an application for conducting DNA test of respondent No.1/plaintiff, has been rejected.



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2. Counsel for the petitioners states that there is a property dispute between the parties and respondent No.1/plaintiff has filed a suit for declaration to the effect that he is a joint owner in the agricultural land left behind by Narinder Singh, deceased, on the basis of inheritance. He submits that the paternity of respondent No.1 has been disputed by the petitioner in the written statement. In order to ascertain the truth, counsel asserts that an application, Annexure P-3, was filed for conducting the DNA profiling of respondent No.1/plaintiff and comparing it with that of his biological parents as well as of petitioner No.1, which has been erroneously rejected by the Trial Court. He has placed reliance upon the judgments of this Court in

- (i) **Smt. Raj Gupta and another Vs. Ashok Kumar and others 2019 (2) Law Herald 1551;**
- (ii) **Bibly Monica Vs. Vir Vikram Kumar @ Jason Victor Steele and another 2020 (2) PLR 130;**
- (iii) **Neelam Rani and others Vs. Smt. Mainka @ Maina Devi and another 2014 (2) RCR (Civil) 560;** and
- (iv) **Sube Singh Vs. Smt. Shanti Devi and others 2015 (5) RCR (Civil) 684.**

3. Despite service, there is no appearance on behalf of respondent No.1.

4. I have heard counsel for the petitioners and considered his submission besides examining the paper-book.



5. The question that arises for consideration is as to whether in a declaratory suit, where the plaintiff is claiming ownership of property on the basis of inheritance, he can be subjected to a DNA test against his wishes.

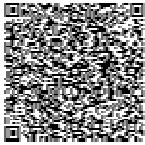
6. The answer to this question is in the negative. In **Banarsi Dass Vs. Teeku Dutta (Mrs.) and another (2005) 4 SCC 449**, Supreme Court has held that DNA test is not to be directed as a matter of routine but only in deserving cases. Due regard has to be given to Section 112 of the Indian Evidence Act, which is based on the well known maxim pater est quem nuptiae demonstrant (he is the father whom the marriage indicates). The presumption of legitimacy that a child born of a married women is deemed to be legitimate and the burden of proving illegitimacy is on the person who is interested in establishing otherwise. It has been observed that Courts in India cannot order blood test as a matter of routine and such prayer cannot be granted to conduct a roving inquiry. There must be a strong prima facie case and the court must carefully examine as to what would be the consequence of ordering of blood test.

7. Summing up the case law, in **Aparna Ajinkya Firodia Vs. Ajinkya Arun Firodia (2024) 7 SCC 773**, Supreme Court culled out the circumstances under which a DNA test of a minor child may be directed to be conducted and held that merely because one of the parties have disputed the factum of paternity, it does not mean that Court should direct DNA test or such other test to resolve the controversy. The parties must be directed to lead evidence to prove or disprove the factum of paternity and only if the



Court finds that it impossible to draw an influence based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct such a test and not otherwise. In other words, Supreme Court clarified that it is only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such a test.

8. In the present case, respondent No.1/plaintiff has filed a suit for declaration to the effect that he is the joint owner in possession of 1/6th share of agricultural land measuring 18 kanals 2 marlas situated in the revenue estate of village Bhaka Tara Singh, Tehsil Ajnala, District Amritsar. He claimed to be the son of Narinder Singh (deceased) and Rajwinder Kaur, petitioner/defendant No.1. In their joint written statement, Annexure P-2, the defendants denied that respondent No.1/plaintiff was the son of Narinder Singh and Rajwinder Kaur. A stand was taken that his biological parents are Lakhwinder Singh and Balwinder Kaur. Alleging that in connivance with his natural parents, he had hatched a criminal conspiracy and had entered his name in the various documents, an application, Annexure P-3, was filed for DNA profiling of respondent No.1, which has been declined vide order impugned herein. From the legal position noticed above, it is evident that it is for the plaintiff to lead evidence in support of his case. He has to stand on his own legs by producing cogent evidence to prove his assertion. He cannot be compelled to undergo a DNA profiling test as this test cannot be ordered as a matter of routine. Court cannot order a DNA test so as to conduct a roving inquiry and to collect evidence for the parties. The judgments of this



Court relied upon by the counsel for the petitioners are not applicable in view of the legal position noticed. There is no irregularity or illegality in the order passed by the Trial Court.

9. Finding no merit in the petition, it is dismissed with no order as to costs.

01.03.2025
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No