

(2014) 09 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 8815 of 2014 (GM-CPC)

Hanumappa

APPELLANT

Vs

Yallakka

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10A, 100, 151
Constitution of India, 1950 — Article 21
Evidence Act, 1872 — Section 112, 4
Hindu Marriage Act, 1955 — Section 13(1)(iii)

Citation : (2014) 4 AKR 402 : (2014) 5 KarLJ 567

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Madhukar Nadig, Advocate for the Appellant; K.N. Nitish, Advocate for K.V. Narasimhan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The facts leading up to this petition are stated to be as follows:

Respondents 1 to 3 herein had filed a civil suit for partition and separate possession of the suit properties, as against the petitioner, who was arraigned as defendant no. 1 in the said suit, and others. Respondent no. 1, who was Plaintiff no. 1, claimed that the petitioner was her husband, who had deserted her and the other plaintiffs were her daughters, born to him.

The said suit in O.S. 105/2006, before the Court of the Additional Civil Judge, Hiriya, was contested and it was denied that there was any relationship between the plaintiffs and the first defendant, the petitioner herein. That contention was upheld and the suit was dismissed.

The respondents no. 1 to 3, the plaintiffs, have now filed an appeal against the said judgment and decree, in RA 11/2010, before the Court of the Civil Judge

(Senior Division), Hiriur. In the light of the suit having been dismissed for want of adequate evidence regarding the relationship of the plaintiffs with the first defendant and especially as regards the paternity of plaintiffs no. 2 and 3, an application under Order XXVI Rule 10-A of the Code of Civil Procedure, 1908 (Hereinafter referred to as the "CPC", for brevity) was said to have been filed, seeking the appointment of a Commissioner for collection of DNA samples of the concerned namely, the petitioner and respondents 2 and 3 herein, to determine their paternity. That application having been allowed, the petitioner is aggrieved and the present petition is filed.

2. The learned counsel for the petitioner would contend that the court below has allowed the above application without regard to the serious and sensitive nature of the proposed investigation, which is a direct violation of the petitioner's fundamental right under Article 21 of the Constitution of India.

It is contended that the plaintiffs, who are claiming to be the wife and daughters of the petitioner are aged 48, 24 and 22, respectively and it is hence inexplicable that they were unable to produce any kind of documentary evidence to even remotely establish that the petitioner and the first plaintiff had lived together as husband and wife, over the decades and that the other plaintiffs were born to them. It is therefore unjust and objectionable that the petitioner be subjected to any scientific investigation, against his will and when the respondents 1 to 3 have miserably failed to establish their case. It is contended that it is not a circumstance that though there was some evidence of a possible relationship, since there was some doubt created in the mind of the court, which had prompted it to make the appointment, and seeks that the impugned order be set at naught.

3. The learned counsel for the respondents, however, seeks to justify the impugned order.

4. It is noticed by this court that since recently courts have been routinely directing that parties be subjected to DNA tests and analysis. It is therefore necessary to revisit the topic as understood scientifically and the circumstances under which recourse should be had to the said measure, as expressed by the Apex court from time to time, to address whether the impugned order can indeed be justified.

DNA

Nearly all living things are composed of highly organized structures called cells. Every cell is made mostly of liquid protected by a thin membrane. The nucleus is the central part of the cell.

Almost all the cells in an organism carry a complete copy of that organism's Deoxyribose nucleic acid-or DNA, for brevity. Nucleic acids are of two kinds, named according to the type of sugar with which they are associated-ribose and deoxyribose. In organisms which have a separate cell nucleus, ribose nucleic

acid, or RNA, for brevity, is found in both the nucleus and the cytoplasm, the viscous fluid consisting of water and complex molecules surrounding the nucleus, whereas DNA is found only in the nucleus.

Inside the nucleus of the human cell there are 46 long invisible strands of DNA, the chromosomes. A chromosome is a long strand of tightly wound DNA, like a ladder twisted into a helix, carrying genes along its length. Genes are hereditary particles, they are records of biological history, each gene has the information to produce a functional product. The rungs of the ladder are made up of chemical compounds called bases, two per rung (called a base pair). There are four different types of base available (adenine, thymine, cytosine and guanine).

DNA as "Blue Print"

Although deoxyribonucleic acid (DNA) was discovered in 1868, scientists were slow to understand its role in heredity. During the early 1950s, James Watson and Francis Crick deduced the structure of DNA, ushering in a new era in the study of genetics. They found that adenine could pair only with thymine, while guanine could pair only with cytosine. This they saw enabled DNA to divide and yet produce perfect copies of itself, and that the order of the bases along the molecule could contain the genetic information. Such developments were seemingly of peripheral interest to forensic scientists until 1985, when research into the structure of the human gene by Alec Jeffreys and his colleagues at Leicester University, England, led to the discovery that portions of the DNA structure of certain genes can be as unique to individuals as are fingerprints. According to Jeffreys, the chance of two persons having identical DNA patterns is between 30 billion and 100 billion to 1.

In all life forms—with the exception of a few viruses—the basis for variation lies in genetic material called DNA. This DNA is a chemical "blueprint" that determines everything from hair colour to susceptibility to diseases. In every cell of the same human that contains DNA, this blueprint is identical, whether the material is blood, tissue, spermatozoa, bone marrow, tooth pulp, saliva, or a hair root cell. Thus, with the exception of identical twins, every person has distinctive DNA.

The Enderby Cases

The first use of DNA in a criminal case was in 1987 in England. In 1983 Lynda Mann, age 15, was raped and murdered near the village of Enderby. This case was unsolved. Three years later, another 15-year-old, Dawn Ashworth, was a victim in a similar offense. Comparing the DNA "fingerprints" derived from semen recovered from both victim's bodies, investigators realized that the same man had raped and killed both women. A 17-year-old man was initially arrested and a sample of his blood was subject to DNA analysis. This man's innocence, however, was clearly established by the lack of a DNA match, and he was released. Subsequently, all males in the Enderby area between 13 and 30 years of age were asked by the police to voluntarily provide blood samples for DNA typing. Of 5,500 men living in the area, all but two complied with the request. A

man then came forward and told the police that he had used false identification to supply a blood sample in the name of a friend. This friend, Colin Pitchfork, was subsequently arrested and convicted of Ashworth's murder, with DNA evidence playing a crucial role in the prosecution's case.

DNA Analysis

Deoxyribonucleic acid (DNA) consists of molecules that carry the body's genetic information and establish each person as separate and distinct. Until recently, DNA was found primarily within the nuclei of cells in the Chromosomes. DNA can now be extracted and processed from blood, tissue, spermatozoa, bone marrow, hair roots, saliva, skin cells, urine, feces, and a host of other biological specimens, all of which may be found at crime scenes. DNA has been recovered from fingerprints, cigarette butts, drinking cups, and hatbands and other articles of clothing.

DNA is generally found in cells that have a nucleus, hence the name nuclear DNA. However, some biological cells do not have nuclei, such as those forming fingernails, hair shafts, and teeth. What those cells do have is a more primitive form of genetic coding called mitochondrial DNA (mtDNA), found in the mitochondria, which are in the body of the cell. When a sperm and an egg join at conception, the new individual gets half of his or her nuclear genetic information from each parent. Conversely, mitochondrial DNA is inherited only from the mother. At conception, all of the new person's mitochondria come from the mother. Since mitochondrial DNA is passed directly through maternal relatives, it serves as a perfect identity marker for those relatives. Indeed, the mitochondrial-DNA sequencing technique was originally developed by anthropologists to help trace human ancestors.

Initially, DNA analysis required a fairly large sample, and the manual processing technique, called Restriction Fragment Length Polymorphism (RFLP), took up to 14 weeks, on average, to produce results. The RFLP "system is slow but produces good results. Technological advancements have led to a polymerase chain reaction (PCR), which takes small samples of DNA and reproduces as many copies as are needed for adequate analysis. Short tandem repeats (STRs), which are even smaller pieces of the DNA helix (ladder), can be reproduced using PCR to generate multiple copies in an instrument called a thermocycle. With the PCR-STR process, it takes about 24 hours to extract DNA from an evidentiary sample and only 2 to 3 hours to type the DNA using automation. It works well on degraded samples and on analysis of old cases.

Contamination

Just as contamination is an issue in the collection and packaging of evidence containing DNA, it is a very big issue in the handling of DNA during extraction and examination. It is also an issue that can affect the admissibility of, and credibility given to, DNA evidence in court. Coughing or sneezing while handling DNA evidence can cause contamination.

(Sources: (i) Genetics a Graphic Guide by Steve Jones and Borin Van Loon

(ii) All about us, by Joe Kaufman

(iii) Evolution, by Dorling Kindersley

(iv) Criminal Investigation by Swanson Chamelin and Territo Taylor)

5. We may now take stock of the following decisions of the apex Court on the subject.

Goutam Kundu Vs. State of West Bengal and another,

The appellant was married to the second respondent in January 1990. They lived together for some time. She left for her maternal home to prepare for her Higher Secondary Examination, which was during April-May 1990. She is said to have conceived in April 1990. The appellant and his family did not want her to beget a child. She was being forced to undergo an abortion. She had resisted and ultimately went away to her maternal home in October 1990. A female child was born to her in January 1991. Since her husband had neglected her and her child, she is said to have filed a petition for maintenance, for herself and her child. An exparte order was said to have been passed by the Magistrate awarding a sum of Rs. 300/- for her and Rs. 200/- for the child. The appellant is said to have filed a Revision Petition before the High Court. The appellant had also moved a Criminal Miscellaneous case seeking a blood group test of the second respondent and the child. The appellant had disputed the paternity of the child. That application was said to have been dismissed holding that there are other methods to disprove paternity and that a medical test is not conclusive of paternity. A Revision Petition against the said order was dismissed by the High Court holding that in view of Section 112 of the Evidence Act, 1872, where during the continuance of a valid marriage if a child is born that is a conclusive proof about the legitimacy.

In the appeal, the Apex Court examined the law as available in other jurisdictions thus:

"8. Before we deal with the arguments, we will examine the law as available in England. At the beginning of the century scientists established that human blood had certain characteristics which could be genetically transmitted. The first recognised system was ABO blood group. The blood group of a child is determined by the parents' genetic make-up but the number of possibilities is such, that it is not possible to prove that certain individuals are the father on the basis of comparing blood groups, only, that they are not the father.

9. By 1930s other immunological test became available. As a result the possibility of establishing paternity increased. An attempt by way of statutory provision to make blood test compulsory in England failed in 1938. However, in 1957 the Affiliation Proceedings Act was passed. Under that Act, it was assumed that a man was the father once a sexual relationship with the mother at the time of conception was proven unless he could show another man had intercourse

with her at that time. Failing the father's attempt, the mother's evidence had to be corroborated by facts such as blood test etc.

10. Under the Act either party could ask for a blood test and either was entitled to refuse to take part, although only the mother can apply for maintenance.

11. The Family Reforms Act, 1969 conferred powers on the court to direct taking blood test in civil proceedings in paternity cases. Courts were able to give directions for the use of the blood test and taking blood samples from the child, the mother and any person alleged to be the father. Since the passing of 1969 Act the general practice has been to use blood tests when paternity is in issue. However, it is to be stated the court cannot order a person to submit to tests but can draw adverse inferences from a refusal to do so. Now under the Family Reforms Act, 1987 in keeping with modern thinking on the continuing and shared responsibility of parenthood, "parentage" rather than paternity has to be determined before the court. Fathers as well as mothers can apply for maintenance. Therefore contests can include mothers denial of paternity. This Act finally removed the legal aid for corroboration of mother's statement of paternity.

12. Two cases may be usefully referred to: *Re L* Lord Denning M.R. [1968] 1 All ER 20 stated thus :

"but they can say positively that a given man cannot be the father, because the blood groups of his and the child are so different."

13. In *B.R.B. v. J.B.* [1968] 2 All ER 1023 applied this dictum and held as under:-

"The County court judge will refer, it to a High Court Judge as a matter suitable for ancillary relief; and the High Court Judge can order the blood test. Likewise, of course, a magistrate's court has no power to order a blood test against the will of the parties. The magistrate can only do it by consent of those concerned, namely, the grown-ups and the mother on behalf of the child; but, nevertheless, if any of them does not consent the magistrate can take that refusal into account. "I adhere to the view which I expressed in *Re. L.* that (6):

"If an adult unreasonably refuses to have a blood test, or to allow a child to have one, I think that it is open to the court in any civil proceedings (no matter whether it be a paternity issue or an affiliation summons, or a custody proceedings) to take his refusal as evidence against him, and may draw an inference there from adverse to him. This is simple common sense."

The conclusion of the whole matter is that a judge of the High Court has power to order a blood test whenever it is in the best interests of the child. The judges can be trusted to exercise this discretion wisely. I would set no limit, condition or bounds to the way in which judges exercise their discretion. The object of the court always is to find out the truth. When scientific advances give us fresh means of ascertaining it, we should not hesitate to use those means whenever the occasion requires.

Having heard full argument on the case, I am satisfied beyond any reasonable doubt (to use the expression used in rebutting the presumption as to legitimacy) that LORD DENNING, M.R., was right in saying that such an order may be made in any case where the child is made a party to the proceedings and in the opinion of the judge of the High Court it is in the child's best interests that it should be made."

14. As regards United States the law as stated in Forensic Sciences edited by Cyril H Wecht is as under:-

" Parentage testing is the major (but not the exclusive) involvement of forensic serology in civil cases. The majority of disputed parentage cases involve disputed paternity, although an occasional disputed maternity, or baby mix-up case does arise, and can be solved using the tools of forensic serology described in this chapter. Blood typing has been used to help resolve paternity cases since the mid-1920's. According to Latters, there were 3,000 cases tested in Berlin in 1924, and Schiff and Boyd said that the first case went to court in Berlin in 1924. Ottenberg, in this country published paternity exclusion tables in 1921, as did Dyke in England in 1922. It took somewhat longer to satisfy the courts, both in Europe and in country, that parentage exclusions based upon blood grouping were completely valid. Wiener said that he had obtained an exclusion in a paternity case in this country which reached the courts early in 1933. In January of 1934, Justice Steinbrink of the New York Supreme Court in Brooklyn ordered that blood tests be performed in a disputed paternity action, using as precedent a decision by the Italian Supreme Court of Cassation, but his order was reversed upon appeal. Soon afterward, however, laws were passed in a number of states providing the courts with statutory authority to order blood testing in disputed paternity cases.

Paternity testing has developed somewhat more slowly in the United States than in certain of the European countries, but today the differences in the number of systems employed, and judicial acceptance of the results, are no longer than great. A number of authorities have recently reviewed the subject of paternity testing in some detail, and in some cases have summarized the results of large number of cases that they have investigated.

Walker points out that failure to exclude a man, even at the 95 percent level of paternity exclusion does not mean that the alleged father is proven to be biologic father, because absolute proof of paternity cannot be established by any known blood test available. Although this fact is well known and appreciated by workers in the field of blood grouping and by attorneys active in this area, it is not generally understood by the lay public. However, blood group serology, using proven genetic marker systems, represents the most accurate scientific information concerning paternity and is so recognised in the United States, as well as in a number of countries abroad."

15. In India there is no special statute governing this. Neither the Criminal

Procedure Code nor the Evidence Act empowers the court to direct such a test to be made. In 1951 (1) Madras Law Journal p.580 Polavarapu Venkteswarlu, minor by guardian and mother Hanumamma v. Polavarapu Subbayya in that case the application was preferred u/s 151 of the CPC invoking the inherent powers of the Court to direct a blood test. The learned judge was of the following view:-

"Section 151, Civil Procedure Code, has been introduced in to the Statute book to give effect to the inherent powers of Courts as expounded by Woodroffe, J., in *Hukum Chand Boid Vs. Kamalanand Singh*, Such powers can only be exercised *ex debito justitiae* and not on the mere invocation of parties or on the mere volition of courts. There is no procedure either in the CPC or in the Indian Evidence Act which provides for a test of the kind sought to be taken by the defendant in the present case. It is said by Mr. Ramakrishna for the respondent before me that in England this sort of test is resorted to by Courts where the question of non-access in connection with an issue of legitimacy arises for consideration. My attention has been drawn by learned counsel to page 69 of Taylor's Principles and Practice of Medical Jurisprudence, Volume 8, where it is stated thus:

"In *Wilson v. Wilson*, *Lancet* [1942] 1. 570, evidence was given that the husband's group was OM, that the wife's was BM and that the child's was ABN. The Court held that the husband was not the father of child, and granted a decree for nullity."

It is also pointed out by learned counsel that in the text books on Medical Jurisprudence and Toxicology by Rai Bahadur Jaising P. Modi, (8th Edition), at page 94, reference is made to a case decided by a Criminal Court at Mercara in June, 1941, in which the paternity and maternity of the child being under dispute, the Court resorted to the results of the blood grouping test.

That may be. But I am not in any event satisfied that if the parties are unwilling to offer their blood for a test of this kind this Court can force them to do so."

16. The same, view was taken by the Kerala High Court in *Vasu v. Santha* 1975 Ker LT 533 as:-

"A special protection is given by the law to the status of legitimacy in India. The law is very strict regarding the type of the evidence which can be let in to rebut the presumption of legitimacy of a child. Even proof that the mother committed adultery with any number of men will not of itself suffice for proving the illegitimacy of the child. If she had access to her husband during the time the child could have been begotten the law will not countenance any attempt on the part of the husband to prove that the child is not actually his. The presumption of law of legitimacy of a child will not be lightly repelled. It will not be allowed to be broken or shaken by a mere balance of probability. The evidence of non-access for the purpose of repelling it must be strong, distinct, satisfactory and conclusive (See *Morris v. Davies*, (1837) 5 Cl. & Fin. 163). The standard of proof in this regard is similar to the standard of proof of guilt in a criminal case. These

rigours are justified by considerations of public policy for there are a variety of reasons why a child's status is not to be trifled with. The stigma of illegitimacy is very severe and we have not any of the protective legislations as in England to protect illegitimate children. No doubt, this may in some cases require a husband to maintain children of whom he is probably not their father. But, the legislature alone can change the rigour of the law and not the court. The court cannot base a conclusion on evidence different from that required by the law or decide on a balance of probability which will be the result if blood test evidence is accepted.

There is an aspect of the matter also. Before a blood test of a person is ordered his consent is required. The reason is that this test is a constraint on his personal liberty and cannot be carried out without his consent. Whether even a legislature can compel a blood test is doubtful. Here no consent is given by any of the respondents. It is also doubtful whether a guardian ad litem can give this consent. Therefore, in these circumstances, the learned Munsiff was right in refusing the prayer for a blood test of the appellant and respondents 2 and 3. The learned Judge is also correct in holding that there was no illegality in refusing a blood test. The maximum that can be done where a party refuses to have a blood test is to draw an adverse inference (See in this connection Subayya Gounder Vs. Bhoopala Subramanian,), and the earlier decision of the same court in Venkateswarlu v. Subbayya AIR 1951 Madras 910 (1). Such an adverse inference which has only a very little relevance here will not advance the appellants case to any extent. He has to prove that he had no opportunity to have any sexual intercourse with the 1st respondent at a time when these children could have been begotten. That is the only proof that is permitted under S. 112 to dislodge the conclusive presumption enjoined by the Section."

17. In Hargovind Soni Vs. Ramdulari, held as:-

"The blood grouping test is a perfect test to determine questions of disputed paternity of a child and can be relied upon by Courts as a circumstantial evidence. But no person can be compelled to give a sample of blood for blood grouping test against his will and no adverse inference can be drawn against him for this refusal."

18. Blood grouping test is a useful test to determine the question of disputed paternity. It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child. However, it requires to be carefully noted no person can be compelled to give sample of blood for analysis against her will and no adverse inference can be drawn against her for this refusal

19. In Raghunath v. Shardabai 1986 AIR Bombay 386 (388), it was observed blood grouping test have their limitation, they cannot possibly establish paternity, they can only indicate its possibilities.

20. In Dr. (Smt.) Bharti Raj Vs. Sumesh Sachdeo and Others, held as (Paras 28 and 32):-

"Discussing the evidentiary value of blood tests for determining paternity, Rayden on Divorce, (1983) Vol. 1) p. 1054 has this to say:-

"Medical Science is able to analyse the blood of individuals into definite groups: and by examining the blood of a given man and a child to determine whether the man could or could not be the father. Blood tests cannot show positively that any man is father, but they can show positively that a given man could or could not be the father. It is obviously the latter aspect that proves most valuable in determining paternity, that is, the exclusion aspect for once it is determined that a man could not be the father, he is thereby automatically excluded from considerations of paternity. When a man is not the father of a child, it has been said that there is at least a 70 per cent chance that if blood tests are taken they will show positively he is not the father-, and in some cases the chance is even higher: between two given men who have had sexual intercourse with the mother at the time of conception, both of whom undergo blood tests, it has likewise been said that there is a 80 per cent chance that the tests will show that one of them is not the father with the irresistible inference that the other is the father.

The position which emerges on reference to these authoritative texts is that depending on the type of litigation, samples of blood, when subjected to skilled scientific examination, can sometimes supply helpful evidence on various issues, to exclude a particular parentage set up in the case. But the consideration remains that the party asserting the claim to have a child and the rival set of parents put to blood test must establish his right so to do. The court exercises protective jurisdiction on behalf of an infant. In my considered opinion it would be unjust and not fair either to direct a test for a collateral reason to assist a litigant in his or her claim. The child cannot be allowed to suffer because of his incapacity; the aim is to ensure that he gets his rights. If in a case the court has reason to believe that the application for blood test is of a fishing nature or designed for some ulterior motive, it would be justified in not acceding to such a prayer."

21. The above is the dicta laid down by the various High Courts. In matters of this kind the court must have regard to section 112 of the Evidence Act. This section is based on the well known maxim *pater est quem nuptiae demonstrant* (he is the father whom the marriage indicates). The presumption of legitimacy is this, that a child born of a married woman is deemed to be legitimate, it throws on the person who is interested in making out the illegitimacy, the whole burden of proving it. The law presumes both that a marriage ceremony is valid, and that every person is legitimate. Marriage or affiliation (parentage) may be presumed, the law in general presuming against vice and immorality."

22. It is a rebuttable presumption of law that a child born during the lawful wedlock is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities.

23. In Smt. Dukhtar Jahan Vs. Mohammed Farooq, , this court held(Para 12):

"Section 112 lays down that if a person was born during the continuance of a valid marriage between his mother and any man or within two hundred and eighty days after its dissolution and the mother remains unmarried, it shall be taken as conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at anytime when he could have been begotten. This rule of law based on the dictates of justice has always made the courts incline towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimation of the child would result in rank injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman."

24. This section requires the party disputing the paternity to prove non-access in order to dispel the presumption. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation.

25. The effect of this section is this: there is a presumption and a very strong one though a rebuttable one. Conclusive proof means as laid down u/s 4 of the Evidence Act.

26. From the above discussion it emerges:-

- (1) that courts in India cannot order blood test as matter of course;
- (2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
- (3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act.
- (4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
- (5) No one can be compelled to give sample of blood for analysis.

27. Examined in the light of the above, we find no difficulty in upholding the impugned order of the High Court, confirming the order of the Addl. Chief Judicial Magistrate, Alipore in rejecting the application for blood test. We find the purpose of the application is nothing more than to avoid payment of maintenance, without making any ground whatever to have recourse to the test. Accordingly the SLP will stand dismissed. Petition dismissed. "

Smt. Kanti Devi and Another Vs. Poshni Ram,

The facts were that the marriage between the appellant Kamti Devi and

respondent Poshhi Ram was solemnised in the year 1975. For almost fifteen years thereafter Kamti Devi remained childless and on 4.9.1989, she gave birth to a male child (his name is Roshan Lal). The long period in between was marked by internecine legal battles in which the spouses engaged as against each other. Soon after the birth of the child it was sought to be recorded in the Register under the Births, Deaths and Marriages Registration Act. Then the husband filed a civil suit for a decree declaring that he is not the father of the child, as he had no access to the appellant Kamti" Devi during the period when the child would have been begotten.

The trial court, on the basis of admitted facts that the parties are spouses of a valid marriage and that the marriage subsisted on the date of birth of the child, relied on the conclusive presumption mentioned in Section 112 of the Act. The trial court further held that the husband failed to prove that he had no access to his wife Kamti Devi during the relevant period. Accordingly the suit was dismissed.

But the first appellate court, after re-evaluating the entire evidence, found that the husband plaintiff succeeded in discharging the burden for rebutting the presumption by proving that he had no access to the mother of the child during a very long stretch of time covering the relevant period. On the strength of the said finding the first appellate court allowed the appeal and decreed the suit declaring that the plaintiff is not the father of the child Roshan Lal. The High Court refused to interfere with the aforesaid finding in the second appeal on the premise that "the question whether Roshan Lal is the son of the plaintiff is a pure question of fact which calls for no interference by the Court in the second appeal u/s 100 of the Code of Civil Procedure.

It was contended that the lower court was in error in not formulating a substantial question of law whether the burden of the husband to prove that he had no access to his wife was as heavy as the burden of prosecution in a criminal case.

It was answered thus:

"7. Earlier there was a controversy as to what is the true import of the word access in Section 112 of the Act. Some High Courts held that access means actual sexual intercourse between the spouses. However, the controversy came to a rest when the privy Council held in AIR 1934 49 (Privy Council) that the word access connotes only existence of opportunity for marital intercourse. The said legal principle gained approval of this Court when a three judge bench had held *Chilukuri Venkateswarlu Vs. Chilukuri Venkatanarayana*, that the law has been correctly laid down therein.

8. When the legislature chose to employ the expression that a certain fact "shall be conclusive proof" of another fact, normally the parties are disabled from disrupting such proof. This can be discerned from the definition of the expression "conclusive proof" in Section 4 of the Act:

"4. "Conclusive proof.-When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it."

9. But Section 112 itself provides an outlet to the party who wants to escape from the rigour of that conclusiveness. The said outlet is, if it can be shown that the parties had no access to each other at the time when the child could have been begotten the presumption could be rebutted. In other words, the party who wants to dislodge the conclusiveness has the burden to show a negative, not merely that he did not have the opportunity to approach his wife but that she too did not have the opportunity of approaching him during the relevant time. Normally, the rule of evidence in other instances is that the burden is on the party who asserts the positive, but in this instance the burden is cast on the party who pleads the negative. The *raison d'être* is the legislative concern against illegitimizing a child. It is a sublime public policy that children should not suffer social disability on account of the laches or lapses of parents.

10. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with Deoxy Nucleic Acid (DNA) as well as Ribonucleic Acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act, e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain un rebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above.

11. Whether the burden on the husband is as hard as the prosecution to prove the guilt of the accused in a trial deserves consideration in the above background. The standard of proof of prosecution to prove the guilt beyond any reasonable doubt belongs to criminal jurisprudence whereas the test of preponderance of probabilities belongs to civil cases. The reason for insisting on proof beyond reasonable doubt in criminal cases is to guard against innocent being convicted and sent to jail if not to extreme penalty of death. It would be too hard if that standard is imported in a civil case for a husband to prove non-access as the very concept of non-access is negative in nature. But at the same time the test of preponderance of probability is too light as that might expose many children to the peril of being illegitimatised. If a court declares that the husband is not the father of his wife's child, without tracing out its real father the fall out on the child is ruinous apart from all the ignominy visiting his mother.

The bastardized child, when grows up would be socially ostracised and can easily fall into wayward life. Hence, by way of abundant caution and as a matter of public policy, law cannot afford to allow such consequence befalling an innocent child on the strength of a mere tilting of probability. Its corollary is that the burden of the plaintiff-husband should be higher than the standard of preponderance of probabilities. The standard of proof in such cases must at least be of a degree in between the two as to ensure that there was no possibility of the child being conceived through the plaintiff-husband.

12. In Goutam Kundu Vs. State of West Bengal and another, this Court after considering an early three-Judge Bench decision in Smt. Dukhtar Jahan Vs. Mohammed Farooq, held (at SCC p. 427 para 22) that "this presumption can only be displaced by a strong preponderance of evidence, and not by a mere balance of probabilities."

13. In the present case the first appellate court, which is the final fact finding court, after evaluating the entire evidence, came to the following conclusion:

"In the present case the plaintiff has examined all the evidence which he possibly could do in the circumstances. He has proved by convincing evidence, that he did not visit his village or house where the defendant was allotted one room. He has further proved that the defendant also never visited him at Mandi where he had been living for more than 2 year before the child was born to Kamti Devi. In other words he has proved that he had no access or opportunity for sexual intercourse with defendant No. 1 for more than 280 days before Roshan Lal (defendant No. 2) was begotten by the defendant No. 1 ".

14. The said conclusion was reached on the strength of the evidence adduced by both sides and the first appellate court was satisfied in a full measure that the plaintiff-husband had no opportunity whatsoever to have liaison with the defendant mother. The finding thus reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding. "

Shri Banarsi Dass Vs. Mrs. Teeku Dutta and Another,

The facts were as follows:

Teeku Dutta had filed a petition for grant of succession certificate in respect of properties of one Iqbal Sharma, claiming as his daughter and the only surviving class I legal heir, under the Hindu Succession Act, 1956. Sharma is said to have died intestate leaving behind five brothers of whom Banarsi Dass, the appellant objected to the petition on the ground that the respondent was not the daughter of Iqbal Sharma. Evidence was also tendered in this regard. Thereafter an application was filed seeking a DNA test to prove her paternity. The same having been allowed by the trial court. The order having been challenged before the High Court, The High Court held that it was not a case where a. DNA test should have been ordered. And it was not for the court to create evidence by directing a

DNA test.

In appeal, the Apex Court while placing reliance on the views expressed in Goutam Kundu, Dukhtar Jahan and Amarjit Kaur and Kamti Devi held thus:

"14. The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to parties paying debts to representatives of deceased persons. All that the Succession Certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A Succession Certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a Certificate under the Act, or is compelled by the decree of a Court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk. In order to succeed in the succession application the applicant has to adduce cogent and credible evidence in support of the application. The respondents, if they so chooses, can also adduce evidence to oppose grant of succession certificate. The trial court erroneously held that the documents produced by the respondents were not sufficient or relevant for the purpose of adjudication and DNA test was conclusive. This is not a correct view. It is for the parties to place evidence in support of their respective claims and establish their stands DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given, as was noted in Goutam Kundu's case (supra). Present case does not fall to that category. High Court's judgment does not suffer from any infirmity. We, therefore, uphold it. It is made clear that we have not expressed any opinion on the merits of the case relating to succession application.

15. Above being the position, the direction for DNA test as was given by the trial court is clearly unsustainable and the High Court has rightly set it aside.

16. Appeal is dismissed with no orders as to costs. "

Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another,

On a complaint by the wife of the appellant before the Orissa State Commission for Women, complaining that she was estranged from her husband on account of cruelty meted to her and claimed maintenance. On notice of the proceedings, the appellant husband denied the relationship.

The chair person is said to have issued several directions to the husband to meet various expenses of the respondent during her pregnancy. The husband had

challenged the orders of the Commission before the High Court. Though the Court stayed the orders of the Commission partly, the appellant was required to undergo a DNA test.

The appellant was hence before the Apex Court.

It was held thus:

" In Goutam Kundu v. State of W.B. this Court was concerned with a matter arising out of maintenance for child claimed by the wife. The husband disputed the paternity of the child and prayed for blood group test of the child to prove that he was not the father of the child. This Court referred to Section 4 and Section 112 of the Evidence Act and also the decisions of English and American Courts and some authoritative texts including the following statement made in Ray den's Law and Practice in Divorce and Family Matters (1983), Vol. I, p. 1054 which reads thus:

"Medical Science is able to analyse the blood of individuals into definite groups; and by examining the blood of a given man and a child to determine whether the man could or could not be the father. Blood tests cannot show positively that any man is father, but they can show positively that a given man could or could not be the father. It is obviously the latter aspect that proves most valuable in determining paternity., that is, the exclusion aspect, for once it is determined that a man could not be the father, he is thereby automatically excluded from considerations of paternity. When a man is not the father of a child, it has been said that there is at least a 70 per cent chance that if blood tests are taken they will show positively he is not the father, and in some cases the chance is even higher; between two given men who have had sexual intercourse with the mother at the time of conception, both of whom undergo blood tests, it has likewise been said that there is a 90 per cent chance that the tests will show that one of them is not the father with the irresistible inference that the other is the father."

16. This Court then finally concluded, thus: (Goutam Kundu Vs. State of West Bengal and another,)

"(1) That courts in India cannot order blood test as a matter of course;

(2) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

17. In *Sharda Vs. Dharmpal*, , a three-Judge Bench was concerned with the question whether a party to the divorce proceedings can be compelled to a medical examination. That case arose out of an application for divorce filed by the husband against the wife u/s 13(1)(iii) of the Hindu Marriage Act, 1955. In other words, the husband claimed divorce on the ground that wife has been incurably of unsound mind or has been suffering from mental disorder. The Court observed: (SCC p. 509 para 39).

"39. *Goutam Kundu Vs. State of West Bengal and another*, , is, therefore, not an authority for the proposition that under no circumstances the Court can direct that blood tests be conducted. It, having regard to the future of the child, has, of course, sounded a note of caution as regards mechanical passing of such order. In some other jurisdictions, it has been held that such directions should ordinarily be made if it is in the interest of the child."

18. While dealing with the aspect as to whether subjecting a person to a medical test is violative of Article 21 of the Constitution of India, it was stated that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. This Court summed up conclusions thus: (*Sharda Vs. Dharmpal*,)

"1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

19. In *Shri Banarsi Dass Vs. Mrs. Teeku Dutta and Another*, , this Court was concerned with a case arising out of succession certificate. The allegation was that Teeku Dutta was not the daughter of the deceased. An application was made to subject Teeku Dutta to DNA test. The High Court held that trial court being a testamentary court, the parties should be left to prove their respective cases on the basis of the evidence produced during trial, rather than creating evidence by directing DNA test. When the matter reached this Court, few decisions of this Court, particularly, *Goutam Kundu*, was noticed and it was held that even the result of a genuine DNA test may not be enough to escape from the conclusiveness of Section 112 of the Evidence Act like a case where a husband and wife were living together during the time of conception. This is what this Court said: (*Banarsi Dass Case*, SCC 454-455 Para 13.)

"13. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of

the Evidence Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above."

It was emphasized that DNA test is not to be directed as a matter of routine and only in deserving cases such a direction can be given.

20. Recently, in the case of Ramkanya Bai Vs. Bharatram, decided by the Bench of which one of us, R.M. Lodha, J. was the member, the order of the High Court directing DNA of the child at the instance of the husband was set aside and it was held that the High Court was not justified in allowing the application for grant of DNA of the child on the ground that there will be possibility of reunion of the parties if such DNA was conducted and if it was found from the outcome of the DNA that the son was born out of the wedlock of the parties.

21. In a matter where paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption u/s 112 of the Evidence Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the court to reach the truth without use of such test.

23. There is no conflict in the two decisions of this Court, namely, Goutam Kundu and Sharda. In Goutam Kundu, it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to

have roving inquiry; there must be strong prima facie case and court must carefully examine as to what would be the consequence of ordering the blood test. In the case of Sharda while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course.

24. Insofar as the present case is concerned, we have already held that the State Commission has no authority, competence or power to order DNA test. Looking to the nature of proceedings with which the High Court was concerned, it has to be held that High Court exceeded its jurisdiction in passing the impugned order. Strangely, the High Court over-looked a very material aspect that the matrimonial dispute between the parties is already pending in the court of competent jurisdiction and all aspects concerning matrimonial dispute raised by the parties in that case shall be adjudicated and determined by that Court. Should an issue arise before the matrimonial court concerning the paternity of the child, obviously that court will be competent to pass an appropriate order at the relevant time in accordance with law. In any view of the matter, it is not possible to sustain the order passed by the High Court."

Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik and Another,

The petitioner was the husband who had challenged his liabilities to pay maintenance on the ground that he was disputing the paternity of the child borne by his wife on the footing that he had no physical relation ship with her during the relevant time. The apex court however, had directed that the petitioner be subjected to a DNA test as prayed for by him, but which request had been turned down by the court below.

The report had indicated that the petitioner was not the biological father of the child. The respondent wife sought a fresh test. The same was resisted by the petitioner.

The Apex Court distinguished the earlier cases namely, Goutham Kundu, Kamti Devi, Bahabani Prasad Jena and held as follows:

"13. Before we proceed to consider the rival submissions, we deem it necessary to understand what exactly DNA test is and ultimately its accuracy. All living beings are composed of cells which are the smallest and basic unit of life. An average human body has trillion of cells of different sizes. DNA (Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. Human cells contain 46 chromosomes and those 46 chromosomes contain a total of six billion base pair in 46 duplex threads of DNA. DNA consists of four nitrogenous bases-adenine, thymine, cytosine, guanine and phosphoric acid arranged in a regular structure. When two unrelated people possessing the same DNA pattern have been compared, the chances of complete

similarity are 1 in 30 billion to 300 billion. Given that the Earth's population is about 5 billion, this test shall have accurate result. It has been recognized by this Court in the case of Smt. Kanti Devi and Another Vs. Poshu Ram, that the result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, we have to proceed on an assumption that the result of the DNA test is accurate. The DNA test reports show that the appellant is not the biological father of the girl child.

14. Now we have to consider as to whether the DNA test would be sufficient to hold that the appellant is not the biological father of respondent no. 2, in the face of what has been provided u/s 112 of the Evidence Act, which reads as follows:

"112. Birth during marriage, conclusive proof of legitimacy.-The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten".

From a plain reading of the aforesaid, it is evident that a child born during the continuance of a valid marriage shall be a conclusive proof that the child is a legitimate child of the man to whom the lady giving birth is married. The provision makes the legitimacy of the child to be a conclusive proof, if the conditions aforesaid are satisfied. It can be denied only if it is shown that the parties to the marriage have no access to each other at any time when the child could have been begotten.

15. Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her. The wife has admitted that she had left the matrimonial home but again joined her husband. Unfortunately, none of the courts below have given any finding with regard to this plea of the husband that he had or had not any access to his wife at the time when the child could have been begotten.

16. As stated earlier, the DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl-child. However, at the same time, the condition precedent for invocation of Section 112 of the Evidence Act has been established and no finding with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten has been recorded. Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that respondent No. 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstance, which would give way to the other is a complex question posed

before us.

17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room, for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

18. We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption.

19. The husband's plea that he had no access to the wife when the child was begotten stands proved by the DNA test report and in the face of it, we cannot compel the appellant to bear the fatherhood of a child, when the scientific reports prove to the contrary. We are conscious that an innocent child may not be bastardized as the marriage between her mother and father was subsisting at the time of her birth, but in view of the DNA test reports and what we have observed above, we cannot forestall the consequence. It is denying the truth. "Truth must triumph" is the hallmark of justice.

20. As regards the authority of this Court in the case of Kamti Devi (Supra), this Court on appreciation of evidence came to the conclusion that the husband had no opportunity whatsoever to have liaison with the wife. There was no DNA test held in the case. In the said background i.e. non-access of the husband with the wife, this Court held that the result of DNA test "is not enough to escape from the conclusiveness of Section 112 of the Act." The judgment has to be understood in the factual scenario of the said case. The said judgment has not held that DNA test is to be ignored. In fact, this Court has taken note of the fact that DNA test is scientifically accurate. We hasten to add that in none of the cases referred to above, this Court was confronted with a situation in which DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child u/s 112 of the Evidence Act. In view of what we have observed above, these judgments in no way advance the case of

the respondents.

21. In the result, we allow this appeal, set aside the impugned judgment so far as it directs payment of maintenance to respondent no. 2. However, we direct that the payments already made shall not be recovered from the respondents."

Dharam Deo Yadav Vs. State of U.P.,

While addressing the acceptability of the DNA Report in a criminal case, the Apex Court was observed thus:

"36. The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in the identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory. Close relatives have more genes in common than individuals and various procedures have been proposed for dealing with a possibility that true source of forensic DNA is of close relative. So far as this case is concerned...."

6. In the light of the above decisions of the apex court, it may be said that the following legal position emerges:

- a) That parties to a civil suit cannot be subjected to DNA Analysis as a matter of course;
- b) Whenever applications are made with a prayer for such a test or analysis, by way of a roving enquiry the same should not be entertained; It is for the parties to place evidence in support of their respective claims and it is only in deserving cases that such a measure can be resorted to;
- c) In cases where the father denies paternity, he must establish a strong prima facie case of "non access" in order to dispel the presumption arising u/s 112 of the Evidence Act, 1872. The burden of proof in that regard should be higher than the standard of preponderance of probabilities--it need not however, be proof beyond reasonable doubt;

d) The Court must examine the possible consequence of such a test, especially in cases involving disputed paternity, having the effect of branding a child as a bastard and the mother as an unchaste woman;

e) A party to a civil case cannot be compelled to subject himself or herself to a test or analysis;

f) An order by a court directing a party to submit to a test would not however, be in violation of the right to personal liberty under Article 21 of the Constitution of India;

g) If on consideration of all aspects, if a court has passed an order against a party to submit himself to medical examination and such party refuses to so submit himself-the court may draw an adverse inference against him.

In the instant case on hand, it is clear that the plaintiffs had not produced any satisfactory material to establish the relationship between the petitioner and themselves, as found by the trial court. Therefore, the appellate court having routinely allowed the application of the plaintiffs on sympathetic grounds, as it were, is not welcome, in the light of the consistent view adopted by the Supreme, Court.

Accordingly, the writ petition is allowed and the impugned order is quashed