



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Case Comment: Banarsi Dass vs Teeku Dutta and Anr

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Received 17 August 2022; *Accepted* 04 September 2022; *Published* 10 September 2022

INTRODUCTION

The notable case of Sh. Banarsi Dass v Mrs. Teeku Dutta,¹ humanely takes on a very crucial issue for our society, the presumption of legitimacy of a child. The case lays down that, as per Section 112 of the Indian Evidence Act 1872,² conclusive proof is required to prove the illegitimacy of a child. The case states mere slender are unworthy unless they are paired with “compulsive and clinching” facts and only then does there arises a cause for a DNA examination. The sincere nature of the question of the legitimacy of a child has further led Section 112³ of the act to establish the proof of “non-access” as the essential element, and thus the presumption of the legitimacy of the child cannot be disproved without a “strong, clear, satisfying and conclusive” evidence of “non-access”⁴.

¹ *Sh Banarsi Dass v Mrs Teeku Dutta* (2005) 4 SCC 449

² Indian Evidence Act 1872, s 112

³ *Ibid*

⁴ Bharat Chugh, ‘DNA Paternity Tests : Principles to be kept in mind while ordering DNA tests in matrimonial litigation and Interplay with Section 112 of the Evidence Act’ (*Rahul's IAS – The Official Blog*, 25 November 2016) <<https://rahulsiasblog.com/2016/11/25/dna-paternity-tests-principles-to-be-kept-in-mind-while-ordering-dna-tests-in-matrimonial-litigation-and-interplay-with-section-112-of-the-evidence-act/>> accessed 14 August 2022

FACTS OF THE CASE

A petition⁵ was filed by Mrs. Teeku Dutta (hereinafter referred to as Respondent No. 1) to seek a Succession Certificate for Sh. Iqbal Nath Sharma's property, upon his demise. Respondent No.1 had stated in her claim that she was the daughter of the deceased and as per Hindu Succession Act, 1956,⁶ the only surviving Class I legal heir. Respondent No.1 in her petition had also pointed out that Sh. Iqbal Nath Sharma died intestate and had five brothers- Sh. Banarsi Dass, Sh. Amar Nath Sharma, Sh. Ram Saran Dass Sharma, Sh. P.L. Sharma and Sh. K.C. Sharma. Initially, only four out of five brothers were prosecuted through the petition, leaving Sh. Banarsi Dass is out of the picture. Among these four brothers only two were alive, Sh. Amar Nath Sharma and Sh. Ram Saran Dass Sharma, hence titled as Respondents to the petition.⁷

Sh. Banarsi Dass came into the picture during the pendency of the petition, as only then he was prosecuted. In response, Sh. Banarsi Dass disputed Respondent No.1's (Mrs. Teeku Dutta) claims for the Succession Certificate, he objected under Section 151 CPC⁸ that Respondent No.1 was not the daughter of the deceased, upon which documentary evidence was filed from both the parties. It was alleged by Sh. Banarsi Dass that Respondent No. 1 was the daughter of Sh. Ram Saran Dass Sharma, who's one of the living brothers of the deceased. Further, he stated the impossibility of a DNA test as both the deceased (Sh. Iqbal Nath Sharma) and the deceased's wife were dead, hence their DNA being impossible to be matched with the Respondent No. 1. To this allegation Respondent No.1 objected that Sh. Ram Saran Dass Sharma is alive and her DNA test will conclusively prove her paternity. It was also stated by Respondent No.1 that there was no requirement for the DNA test as there are sufficient documentary shreds of evidence on record. Moreover, she opposed the application by stating that the above allegations were malafide and were made to waste the court's time by delaying the proceedings⁹.

⁵ *Banarasi Dass* (n 1)

⁶ Hindu Succession Act 1956

⁷ *Banarasi Dass* (n 1)

⁸ Civil Procedure Code 1908, s 151

⁹ A Pasayat, 'Shri Banarsi Dass vs Mrs. Teeku Dutta And Anr on 27 April, 2005' (*Indian kanoon*)

<<https://indiankanoon.org/doc/505918/>> accessed 14 August 2022

ISSUE INVOLVED IN THE CASE

- *Whether DNA Test can be ordered to assuring the succession certificate under the Hindu Succession Act, 1925?*¹⁰

IMPORTANT PROVISIONS OF THE LAW RELATED TO THE CASE

Section 112, Indian Evidence Act, 1872

Section 112¹¹ stipulates that if a child is born during the continuation of a valid marriage or within 280 days of the marriage's dissolution, while the woman is unmarried, the child will be deemed the child of a man until it is proven that the parties did not have access to each other at the relevant time. Proof under section 112¹² Indian Evidence Act, 1872 is conclusive proof, which implies that if one fact is proven, the court will consider all other facts to be proven as well, and will not allow rebuttal. May presume and shall presume are the other presumptions specified in section 4¹³ of the Indian Evidence Act, 1872, and both are rebuttal whereas conclusive proof is irrebuttable. As a result, the court will not allow any evidence to be presented. The presumption of conclusive proof can only be avoided if the party bringing the claim proves the lack of access, which must be based on very strong evidence. Only then will it be admissible.

Section 372, Indian Succession Act, 1925

According to Section 372¹⁴ of the Indian Succession Act, 1925, the succession certificate is provided to legal heirs only in respect of debts and securities. The main objective of a succession certificate is to make debt collection easier and to safeguard parties paying debts to a deceased person's representative. This document does not grant any authority or title over the deceased person's estate. It merely gives the individual the authority to collect his debts and let his debtors

¹⁰ *Ibid*

¹¹ Indian Evidence Act 1872, s 112

¹² *Ibid*

¹³ Indian Evidence Act 1872, s 4

¹⁴ Indian Succession Act 1925, s 372

make payments to him without risk, and the applicant must present clear and reliable evidence in support of the succession application to succeed.

PATER IS EST QUEM NUPTIAE DEMONSTRANT

The meaning of the above maxim is that the father is he who is married to the mother. The above maxim is well accepted in India through section 112¹⁵ of the Indian Evidence Act, 1872. The general presumption is that a child born within wedlock is legitimate.¹⁶ And the husband of his mother is considered as his father unless some contrary is proved.¹⁷

DNA TEST - EMINENT NEED

When there appears to be a conflict between a person's right to privacy and the court's obligation to obtain the truth, the court must exercise its discretion only after balancing the parties' interests and considering whether a DNA test is eminently necessary for a reasonable conclusion in the issue. When a request for a DNA test in a case involving the paternity of a child is submitted, the court should not direct the test as a matter of course or in a routine manner. The court must evaluate several factors, including presumption under Section 112¹⁸ of the Evidence Act, the benefits and drawbacks of such an order, and the "eminent need" test, which determines whether the court could not obtain the truth without using such a test." This may be seen in cases like *Kanti Devi v Poshi Ram*¹⁹ and *Dipanwati Roy v Ronobroto Roy*²⁰, where the court allowed the DNA test since it was the only method to prove the truth because no other evidence was available.²¹

¹⁵ Indian Evidence Act 1872, s 112

¹⁶ Shivani Rani, 'Pater est quem nuptiae demonstrant' (*Law Times Journal*, 14 February 2020) <<https://lawtimesjournal.in/pater-est-quem-nuptiae-demonstrant/>> accessed 14 August 2022

¹⁷ *Ibid*

¹⁸ Indian Evidence Act 1872, s 112

¹⁹ *Kanti Devi v Poshi Ram* AIR 2001 SC 2226

²⁰ *Dipanwati Roy v Ronobroto Roy* (2015) 1 SCC 365

²¹ Nupur Chowdhury, 'Constituting Paternity in India' (*ResearchGate*, August 2017)

<https://www.researchgate.net/publication/319207025_Constituting_Paternity_in_India> accessed 14 August 2022

ARGUMENTS MADE BY PETITIONER AND RESPONDENT

Petitioner's Argument

The counsel for the petitioner²² agreed with the decision of the Trial Court and that the trial court has very wisely put in the correct perspective of the case and presented that instead of getting the matter decided by wholly oral and documentary evidence, the High Court has taken into the account of shreds of evidence in the form of DNA tests too²³.

Respondent's Argument

On the other hand, the counsel or the respondent presented that the order of the High Court was right and is based on the correct legal position with regard to the allowance of DNA tests.²⁴ The counsel for the respondent supported their argument with the judgment given in the case law *Goutam Kundu v State of West Bengal*²⁵. The Honorable High Court in *Goutam Kundu v State of West Bengal*²⁶ provided the following guidelines for conducting DNA tests: -

1. Courts in India Cannot order blood tests as a matter of course;
2. Whenever applications are made for such prayers to have a roving inquiry, the prayer for a blood test cannot be granted;
3. A strong prima facie case must be established by the husband to dispel the presumption arising under section 112 of the Evidence Act;
4. The court must carefully consider the implications of ordering the blood test, on the child and the mother.
5. No one can be forced to submit a blood sample for testing.

JUDGMENT

The Trial Court first permitted DNA testing for the following reasons: -

²² *Banarasi Dass* (n 1)

²³ *A Pasayat* (n 9)

²⁴ *Ibid*

²⁵ *Goutam Kundu v State of West Bengal* AIR (1993) 3 SC 418

²⁶ *Ibid*

- The documents presented were insufficient.
- The DNA Test applicant was willing to fund the expense, thus there would not impede in doing so.
- Only a DNA Test would be conclusive.²⁷

Later, the Delhi High Court overruled it, ruling that DNA testing cannot be directed in this case since it is not appropriate.²⁸ The court went on to say that, as a testamentary court, a trial court should have left the parties to prove their cases by producing evidence rather than permitting them to fabricate evidence by conducting a DNA test.²⁹

CRITICAL ANALYSIS

Sec 112³⁰ of the Indian Evidence Act, 1872 in my opinion, should not be included under CONCLUSIVE PROOF, but rather MAY PRESUME, which means that the court should consider assuming certain things after thoroughly analyzing the facts and evidence. This section was enacted during a time when society did not treat women and children with the respect that they deserved. So, while this law was created to safeguard the respect and dignity of women and children, now that we are in the twenty-first century, this section should be classified as MAY PRESUME rather than CONCLUSIVE PROOF under section 4³¹ of the Indian Evidence Act, 1872. This assures that no one has been treated unfairly and that there is no inequality because one side has an advantage over the other under conclusive proof. Also, if a DNA test positively shows that a man is not the father of the child, he will be presumed to be the father of the child if access between the parties is proven under section 112³² of the Evidence Act, 1872, which I believe is a discriminatory law that also deprives the man of his right to equality under Article 14³³ of the Indian Constitution.³⁴ Not only is that but there are a variety of situations in which

²⁷ *Ibid*

²⁸ A Pasayat (n 9)

²⁹ *Ibid*

³⁰ Indian Evidence Act 1872, s 112

³¹ Indian Evidence Act 1872, s 4

³² Indian Evidence Act 1872, s 112

³³ Constitution of India, art 14

³⁴ *Ibid*

the parties have contact with one another even though the man is not the father of the child. What about situations like this? The man must shoulder the responsibilities of a father, which is unfair to him.

CONCLUSION

In *Goutam Kundu vs the State of West Bengal*³⁵, The court concluded that DNA testing should not be ordered as a matter of course and should only be conducted in the rarest of situations where no other evidence can be offered. I agree with this decision because I believe it preserves people's privacy, autonomy, and confidentiality, but it does not provide justice to the parties. DNA tests, in my opinion, should only be permitted if the person on whom the test will be run consents. And, if we examine the situation, there is no harm in doing DNA testing with the consent of the individual because it will only increase the parties' evidence, which will, in turn, strengthen the parties' arguments. As a result, courts and judges will have an easier time making non-discriminatory decisions and delivering justice.

³⁵ *Goutam Kundu* (n 25)