Ivan Rathinam vs Milan Joseph on 28 January, 2025

Author: Surya Kant

Bench: Surya Kant

2025 INSC 115 RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 413 OF 2025
[ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 4917 / 2018]

Ivan Rathinam ….

versus

Milan Joseph ….Re

JUDGEMENT

SURYA KANT, J.

Leave granted.

2. The instant appeal impugns the judgment dated 21.05.2018 passed by a Single Judge of the Kerala High Court (Ernakulam) (High Court), upholding the Family Court's order dated 09.11.2015 reviving a maintenance petition on the following grounds: (i) paternity and legitimacy are independent concepts in law; (ii) the Civil Courts did not have jurisdiction to entertain the original suit; and (iii) since only the Family Court can determine maintenance and legitimacy, the Family Court could proceed to determine paternity as incidental to the maintenance proceedings.

1|Page A. FACTS A.1 First round of litigation

3. Since the instant appeal arises out of a long-drawn saga, during which multiple rounds of litigation occurred inter-se the parties before various fora, including this Court, it is necessary to narrate the factual events before delving into the legal issues raised before us. 3.1 It is a matter of record that the Respondent's mother married Mr. Raju Kurian on 16.04.1989. In 1991, a daughter was born from this wedlock. Subsequently, the Respondent was born on 11.06.2001. Immediately

after the Respondent's birth, Mr. Raju Kurian's name was entered as the 'father' of the Respondent in the Register of Birth maintained by the Municipal Corporation of Cochin. Owing to differences between them, in 2003, the Respondent's mother and Mr. Raju Kurian began residing separately. Shortly thereafter, they moved a joint application for divorce, which was granted by the Family Court in 2006. The Respondent's mother then approached the Municipal Corporation of Cochin, requesting the authorities to enter the Appellant's name in the Register of Birth, as the father of the Respondent, in place of Mr. Raju Kurian's name. She allegedly reasoned that such a request was being made on the basis that she had been involved in an extra-marital relationship with the Appellant, due to which the Respondent was begotten. In response, the Corporation authorities expressed that they would be able to grant such a request only if directed to do so by a court of law.

2|Page 3.2 Consequently, the Respondent and his mother filed OS No. 425/2007 (Original Suit) before the First Additional Munsiff Court, Ernakulam (Munsiff Court) seeking a decree declaring the Appellant to be the Respondent's father and a mandatory injunction directing the Appellant to submit an application to include his name as the Respondent's father in the relevant registers. Subsequently, the Respondent and his mother also moved an application seeking a direction to the Appellant to undergo a DNA test to prove his paternity.

3.3 The Munsiff Court directed the Appellant, on 03.11.2007, to undergo the paternity test. This direction was substantiated on the ground that, considering no matrimonial relationship subsisted between the Respondent's mother and the Appellant, the presumption under Section 112 of the Indian Evidence Act, 1872 could not be drawn. 3.4 In the same year, the Respondent filed MC No. 224/2007 (Maintenance Petition) under Section 125 of the Code of Criminal Procedure, 1973 (CrPC) before the Family Court, Alappuzha (Family Court) claiming maintenance from the Appellant, on the ground that he was his biological father. The Respondent filed the Maintenance Petition through his mother as he was a minor at that time. It is pertinent to note that Mr. Raju Kurian was not made a party to the Original Suit or the Maintenance Petition.

3.5 In this backdrop, having been aggrieved by the Munsiff Court's order dated 03.11.2007, the Appellant filed WP (C) No. 37165/2007 before the

3|Page High Court. On 18.03.2008, a Single Judge of the High Court: (i) disposed of the said Writ Petition; (ii) set aside the order dated 03.11.2007; and (iii) directed the Munsiff Court to consider the matter in light of this Court's judgment in Sharda v. Dharmpal,1 which laid down that a court could order a paternity test only if the presumption under Section 112 of the Indian Evidence Act, 1872 was displaced by proving non-access. The High Court further noted that it was well within the power of the court to direct a person to undergo a DNA test but that power could be exercised only if the applicant made out a strong prima facie case through sufficient material placed on record. In this regard, it noted that such an in-depth analysis had, however, not been conducted by the Munsiff Court.

3.6 The Appellant then filed Review Petition No. 411/2008 before the High Court, contending that the correct law was laid down in Kamti Devi v. Poshi Ram,2 wherein this Court held that the results of a genuine DNA test would be insufficient to escape the conclusiveness of Section 112 of the Indian

Evidence Act, 1872, especially when the spouses had access to each other. The Review Petition came to be decided by another Single Judge of the High Court on 03.07.2008, who allowed the same and disposed of the Writ Petition while clarifying that the court cannot permit a DNA test unless, after adducing evidence, it was convinced that the 1 Sharda v. Dharmpal, (2003) 4 SCC 493.

2 Kamti Devi v. Poshi Ram, (2001) 5 SCC 311.

4|Page relevant stakeholders—the Respondent's mother and Mr. Raju Kurian— had no access to each other when the Respondent was begotten. 3.7 This prompted the Respondent and his mother to prefer SLP (C) No. 20951/2008 before this Court, challenging the order dated 03.07.2008. This Court, on 14.09.2009, dismissed the same stating that no grounds to interfere were made out.

3.8 Approximately a year later, on 15.10.2009, the Munsiff Court dismissed the Original Suit with costs. The Munsiff Court held that there was no need to refer the parties to a DNA test as a valid marriage subsisted between the Respondent's mother and Mr. Raju Kurian when the Respondent was begotten. Further, it was emphasized that they had been living as spouses under the same roof, from the date of their marriage until 2003, well after the Respondent's birth. The Munsiff Court, thus, held that since the Respondent's mother failed to prove non-access between herself and Mr. Raju Kurian, the Respondent would be presumed to be their legitimate son.

3.9 Thereafter on 05.02.2010, in view of the Munsiff Court's order dated 15.10.2009, the Family Court closed the Maintenance Petition. However, the court imposed a condition permitting the revival of the Maintenance Petition if the Respondent or his mother filed an appeal or revision against the Munsiff Court's order, and the appeal or revision thereafter favoured them.

5|Page 3.10 The Respondent and his mother then preferred AS No. 150/2010 (First Appeal) before the III Additional Sub-Judge, Ernakulam (Sub-Judge), against the Munsiff Court's decision dated 15.10.2009. However, the First Appeal was dismissed with costs vide the order dated 21.02.2011. The Sub-Judge based his decision on three prongs: (i) Mr. Raju Kurian would not have signed the consent letter, as the husband of the Respondent's mother, in the hospital when the Respondent was born, if they had an estranged marital relationship; (ii) the Respondent's mother and Mr. Raju Kurian were living together as spouses long before, during, and even after the Respondent's birth; and (iii) the letters produced by the Respondent's mother, where she claimed the Appellant admitted his paternity, were not proved to be written by the Appellant and thus, could not be relied upon. In this manner, the Sub-Judge held that the evidence adduced was insufficient to uproot the presumption of legitimacy under Section 112 of the Indian Evidence Act, 1872.

3.11 The Respondent and his mother then filed RSA No. 973/2011 (Second Appeal) before the High Court, assailing the Sub-Judge's order. A Single Judge of the High Court dismissed the Second Appeal vide the judgment dated 28.10.2011. The Single Judge held that when the husband and wife were living under one roof, non-access could not be pleaded as they had the opportunity for a marital, sexual relationship. Further, the Single Judge noted that the conclusiveness of Section 112 could not be watered down merely because the mother was alleging paternity on someone other than her husband, especially when the husband was not a party

6|Page to the proceedings. It is imperative to note that this order has not been challenged in any further proceedings since and has attained finality. A.2 Second round of litigation 3.12 It seems that the dispute then attained quietus for some years, only to be resumed in 2015 when the Respondent filed an application before the Family Court, seeking to revive the Maintenance Petition. The reasons recorded in the said application were that the Respondent was facing various health issues and had undergone several surgeries, which he and his mother were unable to afford. Further, the Respondent claimed that he had also not been receiving any maintenance from Mr. Raju Kurian either for his medical or educational expenses. 3.13 On 09.11.2015, the Family Court revived the Maintenance Petition and allowed Mr. Raju Kurian to be impleaded as a party respondent. In its order, the Family Court observed that after the enactment and effectuation of the Family Courts Act, 1984, the Family Court, alone, had the jurisdiction to adjudicate a dispute regarding maintenance and the legitimacy of a person. It further highlighted that these matters are covered by explanation (e) and (f) of Section 7 of the Family Courts Act, 1984. As a result, the Family Court held the order passed by the Munsiff Court to be devoid of jurisdiction. As a corollary thereto, it was elucidated that the Family Court was not bound by its earlier order dated 05.02.2010 as the Munsiff Court lacked the jurisdiction to entertain the Original Suit. Lastly, the Family Court observed that since the question in a proceeding under Section 125 of the CrPC does not concern

7|Page legitimacy, the earlier orders of the Munsiff Court, the Sub-Judge, and the High Court would not impede the Family Court from determining the question of paternity.

3.14 Challenging this order of the Family Court, the Appellant filed Crl. (OP) No. 420/2015 before the High Court. In this regard, the Appellant contended that the Respondent was not entitled to institute a revival memo owing to the Family Court's order dated 05.02.2010, imposing a condition on itself to reopen the case. Further, the Appellant contended that since the Original Suit was filed for a declaration of paternity and the order dated 28.10.2011 had attained finality, the issue in question had already been decided by a court of competent jurisdiction and could not be re-agitated.

3.15 The High Court, vide the impugned judgment dated 21.05.2018, primarily determined that: (i) the legitimacy of birth was irrelevant when considering the right of the child to receive maintenance from their biological father; (ii) the presumption of legitimacy does not prevent an enquiry into the true paternity of a child; (iii) since 'paternity' and 'legitimacy' operate in different spheres, a declaration on the legitimacy of a child by a Civil Court would not impede an enquiry into 'paternity' by the Family Court, for the purpose of determining maintenance; and

(iv) the Civil Courts lacked jurisdiction to determine the legitimacy of the Respondent, owing to the exclusive jurisdiction of the Family Court.

8|Page 3.16 Thus, aggrieved by this decision, the Appellant preferred the instant appeal.

B. CONTENTIONS OF THE PARTIES

4. Mr. Romy Chacko, Learned Senior Advocate, appearing on behalf of the Appellant, contended that the High Court erred in its decision and adduced the following submissions:

(a) Since the Respondent failed to prove non-access between the spouses when the Respondent was begotten, there is conclusive proof that the Respondent is the legitimate child of Mr. Raju Kurian.

When legitimacy is established, the Respondent can claim maintenance only from his 'legitimate' father, not a third-party, whom he claims to be his biological father. Consequently, under such circumstances, the Appellant could not be ordered to undergo a DNA test.

(b) The prayer in the Original Suit was for a declaration that the Appellant is the Respondent's father, thus, making it a suit for determining paternity. Since this issue was decided concurrently by three courts, the question pertaining to paternity could not have been reopened under the guise of 'maintenance' by the Family Court. In any case, the condition permitting reopening had not been fulfilled.

5. Per contra, Mr. Shyam Padman, Learned Senior Advocate, appearing on behalf of the Respondent, put forth the following submissions:

9|Page

(a) It is well-settled that 'paternity' and 'legitimacy' are distinct concepts. While legitimacy can be determined through a legal presumption, paternity is a matter of science. Thus, a civil suit concerning the presumption of legitimacy under Section 112 would not have any bearing on the determination of 'paternity.' Further, it is in the best interests of the child that the Appellant undergoes a DNA test, as the child has the right to know his real parentage and accrue the rights emanating therefrom.

(b) Paternity, as a concept, is intrinsically connected with maintenance;

and maintenance can be claimed from the biological father even when the child is illegitimate. Since maintenance can only be decided by the Family Court, under explanation (f) of Section 7 of the Family Courts Act, 1984, it is well within its jurisdiction to also determine paternity when posed with the question of maintenance.

(c) The Family Court was entitled to revive the Maintenance Petition because the condition for its revival was bad in law as legitimacy and paternity are different concepts, independent of each other. Thus, the revival of the Maintenance Petition concerning paternity, could not be determined based on a finding of legitimacy in a civil suit.

C. ISSUES

6. Having given our thoughtful consideration to the submissions at length, the following issues arise for the consideration of this Court:

10 | P a g e i. Whether the presumption of legitimacy, if not displaced, determines paternity in law?

ii. Whether the Civil Court had the jurisdiction to entertain the Original Suit; and accordingly, whether the Family Court was entitled to reopen the Maintenance Petition?

iii. Whether the second round of litigation, initiated by the Respondent, was barred by the principle of res judicata?

D. ANALYSIS D.1 Issue No. 1: Displacing the presumption of legitimacy and permitting a DNA test

7. The issue herein is regarding the effect of the conclusive presumption of legitimacy, how it can be displaced, and under what circumstances a court may order a DNA test. To this end, the Appellant argued that the presumption of legitimacy is conclusive until it is rebutted by leading evidence reflecting non-access between the spouses when the child was begotten. Only when non-access is made out, the court may order a DNA test. The Appellant further argued that the result of such a DNA test may bastardize an innocent child and violate the right to privacy and dignity of the persons involved. An order for a DNA test, therefore, must be resorted to sparingly. In support of these contentions, the Appellant cited decisions such as Aparna Ajinkya Firodia v. Ajinkya Arun Firodia,3 3 Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, (2024) 7 SCC 773.

11 | P a g e Ashok Kumar v. Raj Gupta,4 and Goutam Kundu v. State of W.B.,5 among others.

8. Per contra, the Respondent argued that even a positive finding by a Court regarding the legitimacy of a child would not be sufficient to prove paternity for the purpose of maintenance. Further, the Respondent argued that Courts have ordered DNA tests because it is within the best interests of the child to know their biological father. In support of their contentions, the Respondent cited decisions such as Dipanwita Roy v. Ronobroto Roy6 and Bhabani Prasad Jena v. Orissa State Commission for Women.7

9. We are of the considered view that this issue hinges on two primary prongs requiring detailed analysis: (i) the difference between legitimacy and paternity, and consequently, the circumstances under which the presumption of legitimacy is displaced to permit an enquiry into paternity; and (ii) the exercise of 'balancing of interests' and evaluating the eminent need for a DNA test.

D.1.1 Displacing the notion of legitimacy

10. The Respondent has vehemently argued that 'legitimacy' and 'paternity' are different concepts—the former being rooted in law while the latter is rooted in science. The High Court upheld this view and thereby, 4 Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20.

5 Goutam Kundu v. State of W.B., 1993 (3) SCC 418.

6 Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365. 7 Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633.

12 | P a g e permitted the revival of the maintenance proceedings as an enquiry into 'paternity,' not 'legitimacy.'

11. In this vein, we agree that scientifically and technically, a legitimate child, i.e. one born during the subsistence of a valid marriage between two persons, may not always be the biological child of the persons in the marriage. In our view, it would be possible and easy to contemplate such a situation arising, which leads us to the postulation that in a more technical sense, the terms 'legitimacy' and 'paternity' may indeed undertake different meanings.

12. The question that, however, arises is whether the law contemplates and accepts such a differentiation. To answer this, we deem it appropriate to investigate the law governing the presumption of 'legitimacy' and 'paternity' globally, followed by its analysis in India. D.1.1.1 Position in the UK

13. The presumption of legitimacy comes from the maxim, "pater est quem nuptiae demonstrant" which means, "he is the father whom the marriage indicates to be so." Since time immemorial, English Courts upheld that where a husband and wife cohabited and no evidence of impotency was forthcoming, the child is conclusively presumed to be legitimate even though the wife is known to have been guilty of infidelity.8 To date, the presumption that a child born in wedlock is legitimate, has held the 8 Halsbury's Laws of England, Children, Volume 9, 2023; Halsbury's Laws of England, Children, Volume 10, 2023.

13 | P a g e floor.9 Earlier, the courts held that evidence from the spouses to disprove legitimacy was inadmissible.10 Over time, this strict rule was relaxed and the parties were permitted to rebut this presumption by claiming non- access and leading evidence accordingly.11

14. Advances in science and social transformation led to the passing of the Family Law Reform Act, 1969.12 It was later replaced by the Family Law Reform Act, 1987.13 Initially, the presumption of legitimacy could only be rebutted by proof beyond reasonable doubt.14 However, by virtue of section 26 of the 1969 Act, the presumption could be rebutted on a simple balance of probabilities.15 This legislation also empowered the courts to conduct paternity tests to determine the biological father of the child,16 even without the guardian's consent.17

15. Any person could apply to the High Court for a declaration as to whether that person is the parent of another person.18 The court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child. Despite this, the Family Court has continued to uphold the rule that 'access' must be 9 In re H. and Others (Minors) (Sexual Abuse: Standard of Proof), [1996] 2 WLR 8. 10 Russell v. Russell, (1924) AC 687.

11 In re Guardianship of Infants Acts, 1886 and 1925, AND In re S. B. An Infant., [1949] Ch.

108. 12 United Kingdom Family Law Reform Act, 1969.

13 United Kingdom Family Law Reform Act, 1987.

14 Preston-Jones v. Preston-Jones [1951] A.C. 391. 15 In re H. and Others, supra note 9.

16 1987 Act, supra note 13, Section 23.

17 Re Le, [1968] 1 All ER 20.

18 1987 Act, supra note 13, Section 55A.

14 | P a g e proved with cogent evidence, and that it is insufficient to merely show that opportunities for sexual intercourse existed.19

16. Thus, in England, the presumption of legitimacy exists to date. As illustrated, it can be rebutted by claiming non-access and leading evidence to prove so by a simple balance of probabilities. Additionally, the claims of infidelity or adultery, in and of itself, would be insufficient to rebut the presumption of legitimacy.

D.1.1.2 Position in the United States of America

17. In the United States, State laws presume that a child born in wedlock is the natural, legitimate child of the mother's husband. However, the rules concerning the presumption of legitimacy and the evidence necessary to rebut it vary from State to State. As a result, the US Supreme Court has had few opportunities to discuss the 'marital presumption.' For instance, the US Supreme Court dealt with a case where the respondent claimed to be the biological father of the children, though they were conceived during the subsistence of a valid marriage between the appellants. Despite the Californian Evidence Code permitting the results of DNA tests to be admitted into evidence to determine paternity, the US Supreme Court noted that the law retained a strong bias against ruling the children of married women illegitimate.20

18. In response to the need for new legislation eliminating the legal differentiation between 'legitimate' and 'illegitimate' children, the 19 MS v. RS and Others, [2021] Fam. 1.

20 Michael H. and Victoria D. v. Gerald D., 1989 SCC OnLine US SC 116.

15 | P a g e Uniform Parentage Act, 197321 was promulgated. This Act was later amended in 2002 and 2017. The aforementioned Act incorporates the presumption of paternity in circumstances such as:22 (i) where there is a marriage between the presumed father and the mother at the time of the child's birth; (ii) where the marriage was terminated no more than 300 days prior to the child's birth; and (iii) where the presumed father and the mother got married after the child's birth. Only one father, however, may trigger the marital presumption.

19. All States continue to recognize at least a rebuttable presumption that a child born within marriage is the child of the husband,23 but continue to limit the circumstances in which it may be rebutted.24 Several States grant the biological father a right to rebut the presumption and establish a relationship with the child.25 Courts in other States apply the marital presumption based on a 'best interest' analysis, i.e. they will not allow the presumption to be rebutted unless it is in the child's interests. These rulings often result in decisions upholding the marital presumption.26

20. The courts in USA and England thus, seem to maintain a strong bias towards the presumption of legitimacy. Nonetheless, both jurisdictions have enacted specific provisions governing the procedure to order DNA tests when the legitimacy of a child comes under challenge. However, this 21 Uniform Parentage Act, 1973.

22 Id., Section 4.

23 Leslie J. Harris, June Carbone, and Lee R. Teitelbaum, Family Law, 4th Edition, 2010. 24 Vargo v. Schwartz, 940A2d 459, 463 (Pa Super 2007). 25 Callender v. Skiles, 591 NW2d 182, 190 (Iowa 1999); In the Interest of JWT, 872 SW2d 189 (Tex. 1994). on 26 Hardy v. Hardy, 2011 Ark. 82; Kamp v. Dep't of Human Services, 410 Md. 645, 980 A.2d 448 (2009); and Williamson v. Williamson, 690 SE2d 257 (Ga App 2010).

16 | P a g e presumption is moulded as the foundation for these provisions and cannot be displaced by mere allegations or suspicion. The court can order a DNA test only after cogent and reliable evidence is led to prove illegitimacy and if the test is in the 'best interests' of the child. D.1.1.3 Position in Malaysia

21. We also find it fruitful to look into the position regarding the presumption of legitimacy in Malaysia as they have extensively borrowed the language of Section 112 of the Indian Evidence Act, 1872. To compare the progress between the two jurisdictions, it would prove beneficial to look into Malaysia's Evidence Act, 1950.

22. In Malaysia, the court presumes the child to be legitimate if: (i) a valid marriage existed between the presumed parents; and (ii) the child was born during the subsistence of a valid marriage or within 280 days of its dissolution. This presumption can be rebutted by proving non-access when the child could have been conceived.

23. The courts generally refuse to order DNA testing when the child is born during a valid marriage between the parties, and especially when the applicant fails to prove a lack of sexual access between them.27 However, if the parties undergo a DNA test voluntarily, the results of such a test can be admitted into evidence to determine paternity.28 27 Ng Chian Perng v. Ng Ho Peng, [1998] 2 CLJ Supp 227. 28 Alesiah Jumil & Chua Kin Han v. Julas Joenol, [2013] 1 LNS 1213.

17 | P a g e

24. Here, we notice a consonance between the laws in all three jurisdictions. While the courts have the authority to direct the parties to undergo a DNA test if a case for non-access is made out, the courts may also utilize the results of a voluntarily-conducted DNA test to displace the presumption. However, the standard of proof required in Malaysia seems to be higher than a mere balance of probabilities. D.1.1.4 Position in India

25. The above analysis makes it clear that courts around the globe have recognized the theoretical difference in 'paternity' and 'legitimacy' to the extent that in the Venn diagram of paternity and legitimacy, legitimacy is not an independent circle, but is entombed within paternity. After adverting to the position of 'paternity' and 'legitimacy' in various foreign jurisdictions, it is imperative to evaluate the position in India in light of the unique factual matrix of the instant appeal.

26. The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. To this end, Indian courts have sanctioned the use of DNA testing, but sparingly.

27. Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:

> "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." 18 | P a g e

28. The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity.29 The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations.30 To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations.31 Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. 32 For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence. 29 Aparna Ajinkya Firodia, supra note 3.

30 Mir Muzafaruddin Khan v. Syed Arifuddin Khan, (1971) 3 SCC 810, para 6; Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana, (1953) 2 SCC 627, para 4. 31 Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Kamti Devi, supra note 2. 32 Aparna Ajinkya Firodia, supra note 3; Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454.

19 | P a g e

30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In Goutam Kundu v. State of W.B. (supra), this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112:

> "(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 under Section 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."

31. These parameters have been subsequently followed by this Court in Sharda v. Dharmpal (supra) and Bhabani Prasad Jena v. Orissa State Commission for Women (supra). In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision.

32. In the case at hand, it is an admitted fact that when the Respondent was begotten in 2001, his mother and Mr. Raju Kurian were married. In fact, they had been married since 1989 and neither had ever questioned the validity of the marriage. They were, admittedly, living under the same roof from 1989 till 2003, when they decided to separate. It is, but 20 | P a g e obvious, that the Respondent's mother and Mr. Raju Kurian had access to each other throughout their marriage. This conclusion has been arrived at through concurrent findings of all the courts involved, at multiple stages of litigation. Even if it is assumed that the Respondent's mother had relations with the Appellant during her marriage and especially when the Respondent was begotten, such a fact per se, would not be sufficient to displace the presumption of legitimacy. The only thing that such an allegation sheds light on is the fact that there seems to have been simultaneous access with the Respondent's mother, by the Appellant and Mr. Raju Kurian. What, however, needs to be clarified is that an 'additional' access or 'multiple' access does not automatically negate the access between the spouses and prove non-access thereof. Consequently, there is a statutory mandate that the Respondent must be presumed to be the son of Mr. Raju Kurian.

33. In our considered opinion, the challenge raised before the High Court that 'paternity' and 'legitimacy' are distinct or independent concepts is a misdirected notion and is liable to be rejected. The High Court's view that 'paternity' can be determined independent of the concurrent findings regarding the legitimacy of the child thus, cannot be sustained. D.1.2 Balancing of interests and the 'eminent need' for a DNA test

34. The Respondent argued that it was in his best interests that the Appellant undergo a DNA test, as he has the right to know his true parentage and accrue rights emanating therefrom, such as maintenance. The High Court upheld this view and noted that though it is not in the 21 | P a g e interest of society to brand a child as 'illegitimate,' the interest of the child to know his biological father and claim maintenance from him is overwhelming in comparison.

35. In the peculiar circumstances of this case, this Court must undertake an exercise to 'balance the interests' of the parties involved and decide whether there is an 'eminent need' for a DNA test.33 This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.

36. On one hand, courts must protect the parties' rights to privacy and dignity by evaluating whether the social stigma from one of them being declared 'illegitimate' would cause them disproportionate harm. On the other hand, courts must assess the child's legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test. D.1.2.1 Right to privacy and right to dignity

37. Having recognized the diverging pathways in the present analysis, it is pertinent to first address the aspect of the right to privacy. At the outset, a cursory reference to the decision in K.S. Puttaswamy (Privacy-9J.) v. Union of India,34 reveals that privacy is concomitant to the right of the individual to exercise control over his or her personality. Privacy includes, at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the 33 Sharda, supra note 1.

34 K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1.

22 | P a g e safeguarding of individual autonomy and the ability of an individual to control vital aspects of his life. Elaborating further, this Court held that:

> "325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality,

> which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them."
>
> 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.

39. Similarly, when dealing with the right to dignity, this Court, in X2 v.

State (NCT of Delhi),35 held that the right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and self- determining choices. Further, this Court held that the right to dignity is 35 X2 v. State (NCT of Delhi), (2023) 9 SCC 433.

23 | P a g e intertwined with the right to privacy. This means that a person can exercise his right to privacy in order to protect his right to dignity and vice-versa. Together, these rights protect an individual's ability to make the most intimate decisions regarding his life, including sexual activity, 36 whether inside or outside the confines of marriage.

40. Forcefully undergoing a DNA test would subject an individual's private life to scrutiny from the outside world. That scrutiny, particularly when concerning matters of infidelity, can be harsh and can eviscerate a person's reputation and standing in society. It can irreversibly affect a person's social and professional life, along with his mental health. On account of this, he has the right to undertake certain actions to protect his dignity and privacy, including refusing to undergo a DNA test.

41. Usually in cases concerning legitimacy, it is the child's dignity and privacy that have to be protected, as they primarily come under the line of fire. Though in this instance, the child is a major and is voluntarily submitting himself to this test, he is not the only stakeholder bearing personal interest in the results, whatever they may be. The effects of social stigma surrounding an illegitimate child make their way into the parents' lives as there may be undue scrutiny owing to the alleged infidelity. It is in this backdrop that the Appellant's right to privacy and dignity have to be considered.

36 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

24 | P a g e

42. Moreover, the Respondent is already declared to be the legitimate son of Mr. Raju Kurian. The fishing enquiry, which he wants through the judicial process is seemingly, not meant to bring

'certainty' to an uncertain event. Rather, it is predominantly targeted to harm the Appellant's reputation. The Respondent knows well who is his 'father' as per the law.

43. That apart, the courts must also remain abreast with the effects such a probe would have on other relevant stakeholders, especially women. Casting aspersions on a married woman's fidelity would ruin her reputation, status, and dignity; such that she would be castigated in society. Though in this case, the Respondent's mother is actively associated in propagating this vexatious litigation, one can only imagine the repercussions in other cases where a child, in utter disregard to the sentiments and self-respect of their mother, initiates proceedings seeking a declaration of paternity? The conferment of such a right can lead to its potential misuse against vulnerable women. They would be put to trial in a court of law and the court of public opinion, causing them significant mental distress, among other issues. It is in this sphere that their right to dignity and privacy deserve special consideration.

44. It must be noted that the law permits only a preliminary enquiry into a person's private life by allowing the parties to bring evidence on record to prove non-access to dislodge the presumption of legitimacy. When the law provides for a mode to attain a particular object, that mode must be satisfied. When the evidence submitted does not rebut this presumption, 25 | P a g e the court cannot subvert the law to attain a particular object, by permitting a roving enquiry into a person's private life, such as through a DNA test.

45. Despite concurrent findings of three courts as to the legitimacy of the Respondent, he and his mother maintain and proclaim to the world that the Appellant is his biological father. It must be underscored that the Appellant has maintained a consistent stance across all fora that he never had sexual relations with the Respondent's mother. In fact, the dispute was assumed to have been put to rest in 2011, providing some relief to the Appellant, only to be reopened in 2015, once again making him face the brunt of the allegations. This constant pendulum-like state of affairs and unsubstantiated allegations must have, undoubtedly, had an adverse effect on the Appellant's quality of life. In this backdrop, an order necessitating a DNA test based on mere allegations of adultery, would ultimately violate the Appellant's right to dignity and privacy. D.1.2.2 Eminent need for a DNA test

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. 37

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 37 Bhabani Prasad Jena, supra note 7; Aparna Ajinkya Firodia, supra note 3.

26 | P a g e 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.

48. The Respondent in this regard, has placed strong reliance on two decisions of this Court to buttress his claim for a DNA test: Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik38 and Dipanwita Roy v. Ronobroto Roy (supra). We are of the view that it is necessary to distinguish these cases from the facts of the case at hand to illustrate as to why they cannot come to the aid of the Respondent.

49. In Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (supra), all the parties concerned consented to undergo a DNA test. It was solely on this basis that the High Court permitted such testing. The question before this Court was only whether the results of such a test could be admitted into evidence to rebut the presumption of legitimacy. This Court held that since none of the parties contested the DNA test, the Court had to proceed with the assumption that the order for it was validly passed. Thus, the issue before this Court was solely concerning the admissibility of the results of the test, not whether a DNA test could be ordered in the first instance.

38 Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576.

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50. In Dipanwita Roy v. Ronobroto Roy (supra), this Court directed the child therein to undergo a DNA test. However, this direction was not given in furtherance of a declaration as to the legitimacy of the child. On the contrary, the proceedings therein were regarding a prayer for divorce based on adultery. The DNA test was to be conducted to prove that the wife was adulterous for the sake of obtaining a divorce. The appellant therein did not desire to prove the illegitimacy of the child; it was merely incidental. This Court explicitly stated that though the question of legitimacy was incidentally involved, the issue of infidelity alone would be determined by the DNA test, without expressly disturbing the presumption under Section 112 of the Indian Evidence Act, 1872.

51. In the case at hand, we cannot say that there is insufficient evidence to come to a conclusion regarding the presumption of legitimacy. The Respondent and his mother placed on record certain letters, claimed to be written by the Appellant, where he allegedly admitted his paternity. They were deemed unreliable as they could not be proved to be written by the Appellant. Even the Register of Birth in Cochin clearly recorded Mr. Raju Kurian's name as the father of the Respondent. Documentary evidence aside, it is uncontested that the Respondent's mother and Mr. Raju Kurian were residing together, in a valid, subsisting marriage when the Respondent was conceived. Thus, in our considered opinion, there seems to be ample evidence to presume legitimacy and there is absolutely no confusion as to whether the presumption would apply. Further, as analyzed in detail above, the balance of interest does not support 28 | P a g e mandating a DNA test, as it is likely to have a disproportionately adverse impact on the Appellant and the Respondent's mother. As a result, there is no 'eminent need' for a DNA test.

52. In light of the above, it is evident that the High Court erred in holding that the Respondent's legitimate interest to know his father outweighs the infringement of the Appellant's right to privacy and dignity. D.2 Issue No. 2: The jurisdiction of the Civil Court

53. In regard to this particular question of law, we are only concerned with two sub-issues: (i) whether the Munsiff Court could have decided on legitimacy despite the Family Court's supposed exclusive jurisdiction; and (ii) whether the Family Court is bound by a self-imposed condition. D.2.1 The exclusive jurisdiction of the Family Court

54. We deem it appropriate to begin our analysis by extracting Sections 7 and 8 of the Family Courts Act, 1984, which state as follows:

> "7. Jurisdiction — (1) Subject to the other provisions of this Act, a Family Court shall—
>
> (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
>
> (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.— The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a)-(d)****

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g)**** 29 | P a g e

8. Exclusion of jurisdiction and pending proceedings — Where a Family Court has been established for any area—

(a) no District Court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c)****"

55. In this regard, the Appellant asserted that the Munsiff Court had jurisdiction to entertain the Original Suit because it was filed for a declaration of paternity and for a mandatory injunction. In

support of this, the Appellant cited Renubala Moharana v. Mina Mohanty.39 Per contra, the Respondent claimed that the Family Court, alone, could adjudicate on paternity through the Maintenance Petition, as it is distinct from legitimacy. Further, the Respondent contended that the Family Court had exclusive jurisdiction to make a declaration regarding legitimacy. In support of this, the Respondent cited Bharat Kumar v. Selma Mini40 and Alexander C. C v. Jacob Anthony Palakkandathi @ Amith and Anr.41

56. It is well-settled law that the Family Court has exclusive jurisdiction over a suit or proceeding for a declaration as to the legitimacy of a person. However, the Family Court cannot entertain any proceedings for a declaration of legitimacy without a claim on the marital relationship. 39 Renubala Moharana v. Mina Mohanty, 2004 (4) SCC 215. 40 Bharat Kumar v. Selma Mini, 2007 (1) KLT 945.

41 Alexander C. C v. Jacob Anthony Palakkandathi @ Amith and Anr., 2012 (2) KLT 36.

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57. In Renubala Moharana v. Mina Mohanty (supra), this Court was confronted with a set of facts similar to the present dispute. In the captioned matter, the child therein was contended not to have been the mother's husband's offspring, despite being conceived during the subsistence of the marriage. The appellants therein filed a petition before the Family Court "to declare that their son was the father of the minor child, and not the mother's husband." This Court held that the Family Court could not entertain any proceedings for a declaration as to the legitimacy of any person without any claim on the marital relationship.

58. The jurisdiction conferred upon the Family Court is for the settlement of issues arising out of matrimonial causes. A matrimonial cause essentially relates to the rights of marriage between a husband and wife. In the instant case, there is no claim regarding the marital relationship between the Respondent's mother and Mr. Raju Kurian, and instead, it pertains to an alleged extra-marital relationship between the Appellant and the Respondent's mother. This matter, therefore, cannot be construed to fall within the exclusive jurisdiction of the Family Court and was thus, rightly entertained by the Munsiff Court and subsequently, the Sub-Judge.

D.2.2 The authority of the Family Court to revive the Maintenance Petition by imposing a condition on itself

59. By virtue of Section 151 of the Civil Procedure Code, 1908 (CPC) read with Section 7 of the Family Courts Act, 1984, the Family Court has 31 | P a g e inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court's process.

60. The Appellant claimed that the Family Court had the authority to impose a condition on itself. On the contrary, the Respondent argued that since the condition imposed by the Family Court was bad in law, the Maintenance Petition could be revived. The High Court upheld the Respondent's claim and accordingly, held that the condition had to be read as "the Respondent could proceed with the maintenance petition after the disposal of the civil suit."

61. Since the overlapping nature of paternity and legitimacy have been exhaustively explained in the first issue, we do not deem it necessary to delve into it again. In the present scenario, the Family Court seems to have acted within its powers under Section 151 of the CPC, by self- imposing a condition regarding the revival of the Maintenance Petition. Through its order dated 05.02.2010, the Family Court merely kept the Maintenance Petition in abeyance; only to be opened depending on the outcome of the civil proceedings.

62. This condition was fairly applied, after recognizing that the Family Court would, incidentally adjudicate on the legitimacy of the Respondent while determining maintenance. If the Family Court proceeded with the Maintenance Petition, it would result in parallel proceedings, both of which, would have involved an examination of the legitimacy of the Respondent. These parallel proceedings would not have served the 32 | P a g e interests of justice but instead, would have further complicated the matter. Instead, it was apropos to place a temporary pause on the maintenance proceedings and to allow the Original Suit to come to its logical conclusion. Further, had there been a finding favouring the Respondent in the Original Suit, the disposal of the Maintenance Petition would have perhaps become easier, as the Respondent would not have to establish why the claim was laid against a third-party.

63. Nevertheless, in our considered view, this condition was not abhorrent to law as it was necessary in the interest of justice to avoid multiple proceedings, and it did not cause any prejudice to the rights of the parties. As a result, the order dated 05.02.2010 is perfectly valid. In any case, considering the fact that the condition imposed was not satisfied, the Maintenance Petition could not have been revived or reopened. As a necessary corollary thereto, we must clarify that the Family Court erred in reviving the Maintenance Petition vide its order dated 09.11.2015. D.3 Issue No. 3: The principle of res judicata

64. In pursuance thereto, we find it imperative to examine the issue pertaining to the revival of the Maintenance Petition through the lens of the principle of res judicata. Though such a contention has not been raised by the parties, it is nonetheless essential as the reopening of the Maintenance Petition could very well fall foul of this fundamental doctrine of law.

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65. The principle of res judicata is a salutary and pragmatic edict to reinforce the doctrine of finality. When a matter, whether on a question of fact or question of law, has been decided between two parties in a suit and the decision is final, neither party will be allowed to canvass the matter again in a future suit or proceeding.42 Without this bar, parties would be immobilized for all eternity, due to the uncertainty regarding their rights and entitlements. Res judicata infuses predictability in legal adjudication. The courts are thus, under a bounden duty to enforce this statutory embargo where the facts of the case overwhelmingly satisfy the ingredients of Section 11 of the CPC.

66. This principle applies squarely to the sequence of events in the instant case. The High Court's order dated 28.10.2011, as already elucidated, was never challenged and attained finality. This concomitantly means that the issue of legitimacy was conclusively decided, in favour of the

Appellant, inter partes on that very day. As the lis stood adjudicated, no court of law, except in appeal, could have proceeded to decide the same issue arising between the same parties, regardless of whether it was incidental to other proceedings.

67. Given our understanding of the commonalities shared by the aspects of legitimacy and its effects on maintenance issues, there is no gainsaying that these particular subject matters are interdependent. In such a scenario, the Family Court at a later point in time could not have revived the Maintenance Petition, simply under the guise that the issue of 42 Mulla, The Civil Procedure Code, 20th Edition, Volume I, 2021.

34 | P a g e maintenance would be entirely divorced from an analysis of the issue of legitimacy, such that they could be examined in distinct silos.

68. In furtherance, permitting a second round of litigation, when the issue was already settled inter partes, is a grave misuse of judicial time and resources. Courts must pay heed to settled principles of law and avoid unearthing established precedents. On the fulcrum of this postulate, there seems to have been no reason for those involved to be embroiled in yet another round of litigation, which lasted more than a decade after the issue was conclusively decided by the High Court in 2011. Allowing such an application sets a dangerous example and will open the floodgates, allowing one and all to re-agitate matters that have already attained finality. The Family Court's order dated 09.11.2015, reviving the Maintenance Petition, is ex-facie in direct contravention with the principles of res judicata.

E. CONCLUSION AND DIRECTIONS

69. This convoluted case, spanning over two decades, has no doubt taken its toll on the parties involved and other relevant stakeholders. Given these extenuating circumstances, at this stage, it must be closed for all intents and purposes.

70. Accordingly, we deem it appropriate to allow this appeal and set aside the Impugned Judgment of the High Court dated 21.05.2018 and of the Family Court dated 09.11.2015, with the following directions and conclusions:

> 35 | P a g e i. Legitimacy determines paternity under Section 112 of the Indian Evidence Act, 1872, until the presumption is successfully rebutted by proving 'non-access';

ii. The Munsiff Court and the Sub-Judge Court possessed jurisdiction to entertain the Original Suit, which dealt with the question of the legitimacy of the Respondent;

iii. The Family Court, Alappuzha erred in reopening the Maintenance Petition when the self-imposed condition was not satisfied; iv. The impugned proceedings, initiated by the Respondent, are barred by the principle of res judicata;

v. The proceedings in MC No. No. 224/2007 before the Family Court, Alappuzha stand quashed;

vi. Any claim by the Respondent based upon the perceived relationship of paternity qua the Appellant, stands negated; and vii. The Respondent is presumed to be the legitimate son of Mr. Raju Kurian.

71. The instant appeal is allowed in the above terms.

72. Ordered accordingly. Pending applications if any, to be disposed of.

.....J. (SURYA KANT) .....J. (UJJAL BHUYAN) NEW DELHI;

JANUARY 28, 2025 36 | P a g e