

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10752 OF 2013
(Arising out of SLP(C) No.4276/2013)

KANTHAMMA

Appellant(s)

:VERSUS:

K. SHETTAPPA AND ORS.

Respondent(s)

O R D E R

Heard Mr. Raghupathy, learned counsel in support of this special leave petition and Mr. Rajesh Mahale, learned counsel for the respondent.

2. Leave granted.

3. Counsel have made their submissions. The appellant claims to be the daughter of Shettappa and she had applied for the paternity test to be conducted which was opposed by the first respondent Shettappa. That application having been allowed he filed a writ petition in the High Court of

Karnataka, bearing No.20510/2012 which has been allowed by the learned Single Judge of the High Court by his order dated 2.7.2012. The learned Single Judge has set aside the order directing DNA test.

4. Mr. Raghupathy, learned counsel for the appellant submits that the appellant has produced a document from the school record showing that the appellant is the daughter of respondent No.1 Shettappa and to further this submission, she applied for this test to be done.

5. Mr. Rajesh Mahale, learned counsel for the respondents on the other hand submits that the appellant has no such right to claim any interest in the property and he relies upon the judgment of this Court, particularly paragraphs 37 & 38, in the case of Revanasiddappa & Anr. Vs. Mallikarjun & Ors., 2011 (11) SCC 1, which states that the limitation on the allegedly illegitimate children is that they cannot ask for partition of parents' property but they can exercise their right only after the death of their parents. Mr. Raghupathy pointed out that

vide paragraph 47 of the very same judgment, the learned Bench of two Judges has referred the matter to Hon'ble the Chief Justice of India for consideration of the matter by a larger Bench. In the circumstances, in our view, the appeal requires to be allowed. We set aside the order passed by the High Court. The Trial Court will proceed with the DNA test as sought by the appellant. This appeal is allowed accordingly.

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
November 25, 2013.