

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.578 of 2010

=====

Bashista yadav, Son of Late Ram Lakhan Yadav, resident of Village:Kasap
P.S.: Udwant Nagar, District: Bhojpur.

... .. Plaintiff/Appellant/Appellant/s

Versus

1. Bishwanath Yadav @ Bishwanath Prasad, Son of Late Patthal Singh Yadav, resident of Adityapur, near Shiv Mandir, Road No. 162, Quarter No. 56/2/03 P.O. & P.S.: Adityapur, District: Jamshedpur (Jharkhand).
2. Shanti Devi, wife of Chait Yadav, daughter of Late Pathal Singh Yadav, resident of Village: Vashidera, Nainijor, P.S.: Bhrampur, Dist: Buxar.
3. Lalita Devi, wife of Ramlal Yadav, D/o Late Pathal Singh Yadav, resident of Village: Balghat, P.O. & P.S.: Dhobha, District: Bhojpur.
4. Buddhu Singh Yadav, Son of Sitali Singh.
5. Sanjoga Kumari, Wife of Late Sidhnath Singh Yadav & Sidha Rai.
6. Gorakh Prasad Singh Yadav, Son of Late Kumar Singh Yadav.
7. Nadali Singh Yadav, Son of Late Kumar Singh yadav.
8. Rajnath Singh, Son of Late Shivpujan Yadav.
9. Kashinath Singh Yadav S/o Late Shivpujan Yadav.
10. Smt. Lal Keshra Devi, Wife of Sri Krishna Yadav.

All defendants no. 4 to 10 are residents of Village:Kashap, P.S: Udwantnagar, District:Bhojpur.

.....Defendants/Respondents/Respondents

11. Smt. Lachhimina Kuer, W/o Late Bithal Yadav
12. Yadunath Yadav S/o Bithal yadav
13. Ramnath Yadav S/o Bithal yadav

All resident of Village: Kashap, P.O: Kashap, P.S: Udwantnagar, District: Bhojpur, Arrah.

14. Sri Krishna Yadav S/o Late Tukar Yadav, Resident of Village: Kashap, P.S. Udwant Nagar, Distt.- Bhojpur at Ara

... .. Plaintiff/Appellant/Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rabi Bhushan Prasad
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

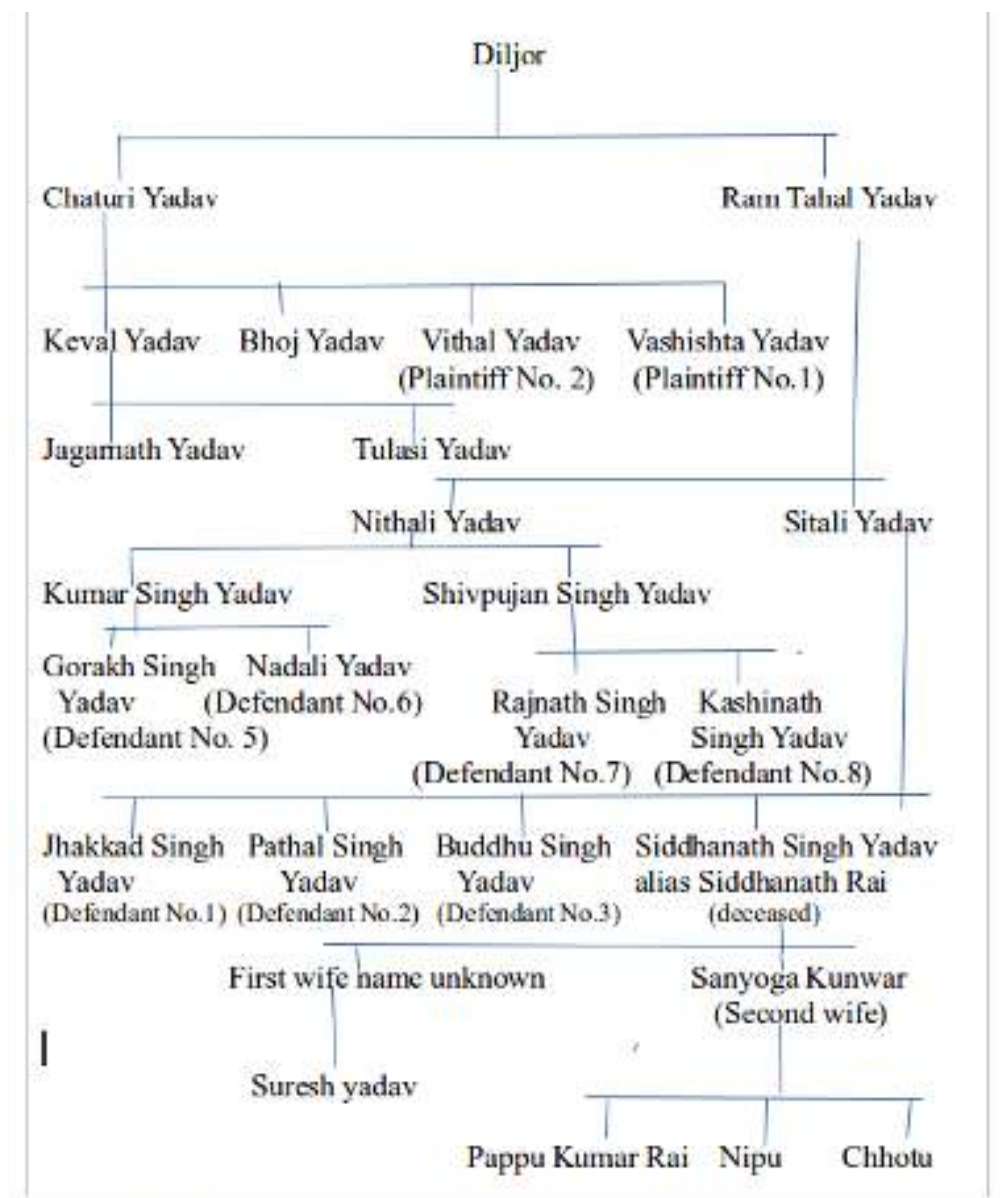
Date : 09-08-2018

This is the plaintiff's Second Appeal filed under Section
100 of the Code of Civil Procedure, where the appellant is



aggrieved by the judgment and decree dated 16.08.2010, passed in Title Appeal No. 12/2005 by learned 2nd Additional District Judge, Bhojpur at Ara, whereby he has affirmed the decree dated 18.03.2005, passed by learned 4th Subordinate Judge, Bhojpur at Ara.

The facts are short for the purpose of present adjudication. The appellant-plaintiff claims the following Genealogy in his plaint:-



The Suit was filed for declaration of sale deed dated 27.10.2000, executed by the defendant nos. 1, 2, 3, 4, 5, 6, 7 & 8 in favour of the defendants second set as nullity in the eye of law invoking Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act').

On plain reading of the Genealogy, as claimed, it was the case of the appellant/plaintiff that he, being the legal heir of common ancestor Diljor, had a preferential right to acquire the property transferred by the defendants first set through the sale deed dated 27.10.2000. Both the courts below have dismissed the appellant/plaintiff's claim on the ground that since the appellant/plaintiff was not class-I heir of the immediate ancestor of the defendants first set, his claim for preferential right to acquire the property, could not be maintained.

Learned counsel, appearing on behalf of the appellant/plaintiff, assailing the impugned judgment and decree of the courts below, has submitted that the courts below failed to appreciate the core issue that there had not been partition in the joint family by metes and bounds and ignoring this significant aspect, the courts below rejected the appellant's claim of preferential right under Section 22 of the Act. It is contended that evidently the appellant is one of the heirs, specified in class-



I of the Schedule under the Act, of Diljor, the common ancestor of the defendants and the plaintiff.

Section 22 of the Hindu Succession Act, reads thus:-

“22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir



who offers the highest consideration for the transfer shall be preferred.”

The language of Section 22 of the Act is unambiguous, plain and clear. It can be easily evinced on careful reading of Section 22 of the Act that following are the essential requisites in order to make out a claim of preferential right to acquire the property under the said Section:-

(i). The interest in any immovable property of an intestate must have devolved upon two or more heirs specified in class I of the Schedule and,

(ii). Anyone of ‘such class I heirs’ in whom the interest in the property devolved proposes to transfer his interest in the property.

(iii) If the two above noted conditions co-exist, then only, the heir/heirs other than one who proposes to transfer his or her interest shall have a preferential right to acquire the interest proposed to be transferred.

In the present case, the defendants are heirs of Ram Tahal Yadav, who had two sons, Nithali Yadav and Sitali Yadav. Defendant nos. 1, 2, 3 & 4 are sons of Sitali Yadav whereas defendant nos. 5, 6, 7 & 8 are sons of Nithali Yadav. The said Ram Tahal Yadav and Chaturi Yadav, in the Genealogy Table, were sons of Diljor. Plaintiff nos. 1 and 2 are sons of Chaturi



Yadav. The suit property, which the plaintiffs have transferred, had devolved upon them on the death of their father, Nithali Yadav and Sitali Yadav. The plaintiff/appellant was certainly not class I heirs of Nithali Yadav and Sitali Yadav.

In such circumstance, the dismissal of claim by the courts below of the plaintiff/appellant of his preferential right, under Section 22 of the Act, is justified, which requires no interference.

The Second Appeal does not involve any substantial question of law, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.2018
Transmission Date	

