

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.1217 of 2000**

1. Rangobai W/o Shidhu aged about 50 years.
2. Shanti D/o Shidhu aged about 30 years
3. Brahma S/o Shidhu aged about 27 years
4. Anuk Das S/o Shidhu aged about 18 years

All are Occupation agricultural and R/o Puhputara – P.S. Lakhanpur Distt. Surguja (M.P.) (Now C.G.)

---- Appellants

Versus

1. i) Smt. Laxmi Wife of late Vayunandan
- 1.ii) Falendra S/o Late Vayunandan
- 1.iii) Suresh S/o Late Vayunandan
- 1.iv) Umesh S/o Late Vayunandan
- 1.v) Savitri D/o Late Vayunandan
- 1.vi) Gayatri D/o late Vayunandan
- 1.vii) Parmeshwari D/o late Vayunandan
2. Rawati (deleted)
- 3 (i) Subhash Ram, Aged 20 years, S/o Late Shri Gore Lal
- (ii) Sumitra, Aged 18 years, D/o Late Gore Lal
4. Rama Shankar S/o Tribhuvan aged about 37 years
5. Rudenbai (deleted)

All are R/o Village-Puhputara P.S. Lakhanpur, Tah. Ambikapur Distt. Surguja (M.P.) (Now C.G.)

6. State of M.P. Through District Collector, Surguja (Ambikapur)

---- Respondents

For Appellants/Defendants	:	Mr.Sushil Dubey, Advocate
For LR's of Respondent No.1	:	Mr.Rishi Mahobia, Advocate
For State	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

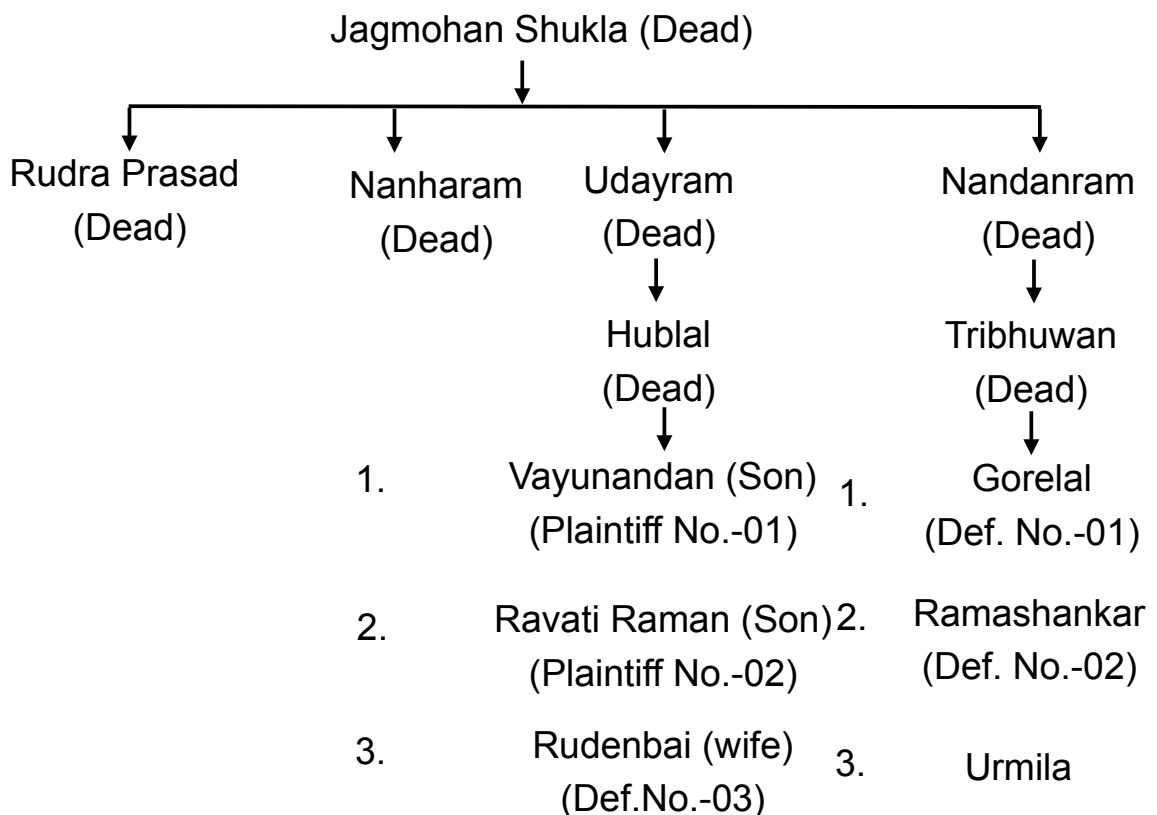
05/02/2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendants No.4 to 7 is as under:-

“Whether the Courts below were justified by relying upon the revenue papers in holding that the suit properties were acquired by Nanha Ram, the predecessor in interest of the Plaintiffs ?

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The following genealogical tree would demonstrate the relationship among the parties:-



3. It is the case of the plaintiffs that originally the suit property was held by Nanha Ram as he was granted raiyat rights in Surguja State

Settlement vide Ex.P/3 and after his death, Hublal, father of the plaintiffs, has inherited the property. Defendants No.4 to 7 have no right and right over the suit property, as such, they are entitled for decree of declaration of title, possession and permanent injunction.

4. Defendants No.4 to 7 filed their written statement denying the title of the plaintiffs and also filed counter-claim. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 20.7.1998 held that the plaintiffs are title-holder of the suit land, but dismissed the suit as well as counter-claimed filed by defendants No.4 to 7. Against which, both the parties preferred first appeal under Section 96 of the CPC. The First Appellate Court decreed the suit of the plaintiffs and dismissed the appeal filed by defendants No.4 to 7. Questioning legality and validity of the impugned judgment and decree of the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants No.4 to 7, in which substantial question of law has been framed by this Court, which has been set out in the opening paragraph of this judgment.
5. Mr.Sushil Dubey, learned counsel for the appellants/defendants No.4 to 7, would submit that the First Appellate Court is absolutely unjustified in granting the decree in favour of the plaintiffs holding that it is joint family property of Jagmohan Shukla and defendants No. 4 to 7 being sons and daughters of Tribhuwan are entitled to succeed the property, as such, the judgment and decree passed by

the First Appellate Court on the basis of revenue records deserves to be set aside.

6. On the other hand, Mr. Rishi Mahobia, learned counsel for legal representatives of respondents No.1/plaintiffs, would support the impugned judgment & decree and submit that the suit property was held by Nanha Ram and after his death, their father Hublal inherited the suit property left by Nanha Ram. He would further submit that the plaintiffs' grandfather was holding the suit property and therefore, vide Ex.P/3 in Surguja State Settlement in ryoti rights, land was settled in favour of the plaintiffs' grandfather. Therefore, it cannot be said to be the property of Uday Ram. Even otherwise, defendants No.4 to 7 are not sons and daughters of legally wedded wife of Tribhuwan and therefore, they are not entitled for suit property and appeal has rightly been allowed by the First Appellate Court.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. It is not in dispute that vide Ex.P/1, some land was settled in favour of Rudra Prasad Shukla, Son of Jagmohan Shukla, vide Ex.P/2, some land was settled in favour of Nandanram Shukla and vide Ex.P/3, the suit land was settled in Surguja State Settlement in favour of the plaintiffs' grandfather Nanharam Shukla, which has not been controverted on record except self-serving statement of

defendants No.4 to 7 that it was joint family property of Jagmohan Shukla.

9. The trial Court has clearly held that the plaintiffs are title-holders of the suit land. However, the First Appellate Court has held that Hublal died prior to coming into force of the Hindu Succession Act, 1956 and after his death, Rudenbai, wife of Hublal married Tribhuwan and further held that after death of Hublal, the plaintiffs succeeded the property left by Hublal and also held that defendants No.4 to 7 have failed to establish marriage of Tribhuwan with Rango Bai. It is apparent on record that the suit property was granted in Surguja State Settlement in ryoti rights in the name of the plaintiffs' grandfather Nanha Ram and after death of Nanha Ram, Hublal succeeded and after his death the plaintiffs have succeeded the suit property. Defendants No.4 to 7 have failed to establish that it is the property of Jagmohan Shukla which Nanha Ram and Uday Ram jointly succeeded and Tribhuwan had right over the suit property. In absence of that, the First Appellate Court has rightly concluded that it is the property of Nanha Ram which was succeeded by the plaintiffs' father and after death of plaintiffs' father-Hublal, the plaintiffs inherited the property. The finding recorded by the First Appellate Court is a finding of fact based on evidence available on record, in which I do not find any perversity or illegality. The substantial question of law is answered in favour of the plaintiffs and against the defendants.

10. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-