

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.74 of 2007

1. Badriprashad Shukla S/o Late Rajman @ Rajeeman Age about 54 years, R/o Vilage Dhuma, Tah. and Dist. Bilaspur (CG)
2. Sunil Kumar Shukla S/o Late Sudaman Prashad, Age about 35 years, R/o Village Dhuma, Tah. and Dist. Bilaspur (CG)
3. Suman Kumari W/o R.S Mirsha, Age about 37 years, R/o near dargee mandir Goadpara Tah. and Dist. Bilaspur (CG)
4. Sudhaa Kumari W/o-Bhola Tiwari Age about 33 years, R/o infront of Kabrithan Gangpara, Durg, Tah. and Distrit Durg (CG)
5. Sumitrabai W/o Late Sudaman Prashad, Age about 60 years, R/o Village Dhuma Tah. and Distt. Bilaspur (CG)

(defendants)

---- Appellants

Versus

1. Asha Devi Dubey W/o Lakhanlal Dubey, Aged about 48 years, R/o-Near Shyam Takij Tahsil and Dist-Bilaspur (CG)
2. State of Chhattisgarh Through The Collector, Bilaspur (CG)

(Plaintiff)

---- Respondents

For Appellants/Defendants	: Mr.Prafull Bharat, Advocate
For Res.No.1/Plaintiff	: Mr.Gautam Khetrapal, Advocate
For Respondent No.2/State	: Mr.Ravi Bhagat, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. AgrawalJudgment on Board13/11/2019

1. This second appeal preferred by the appellants herein/defendants was admitted for hearing by formulating the following substantial questions of law:-

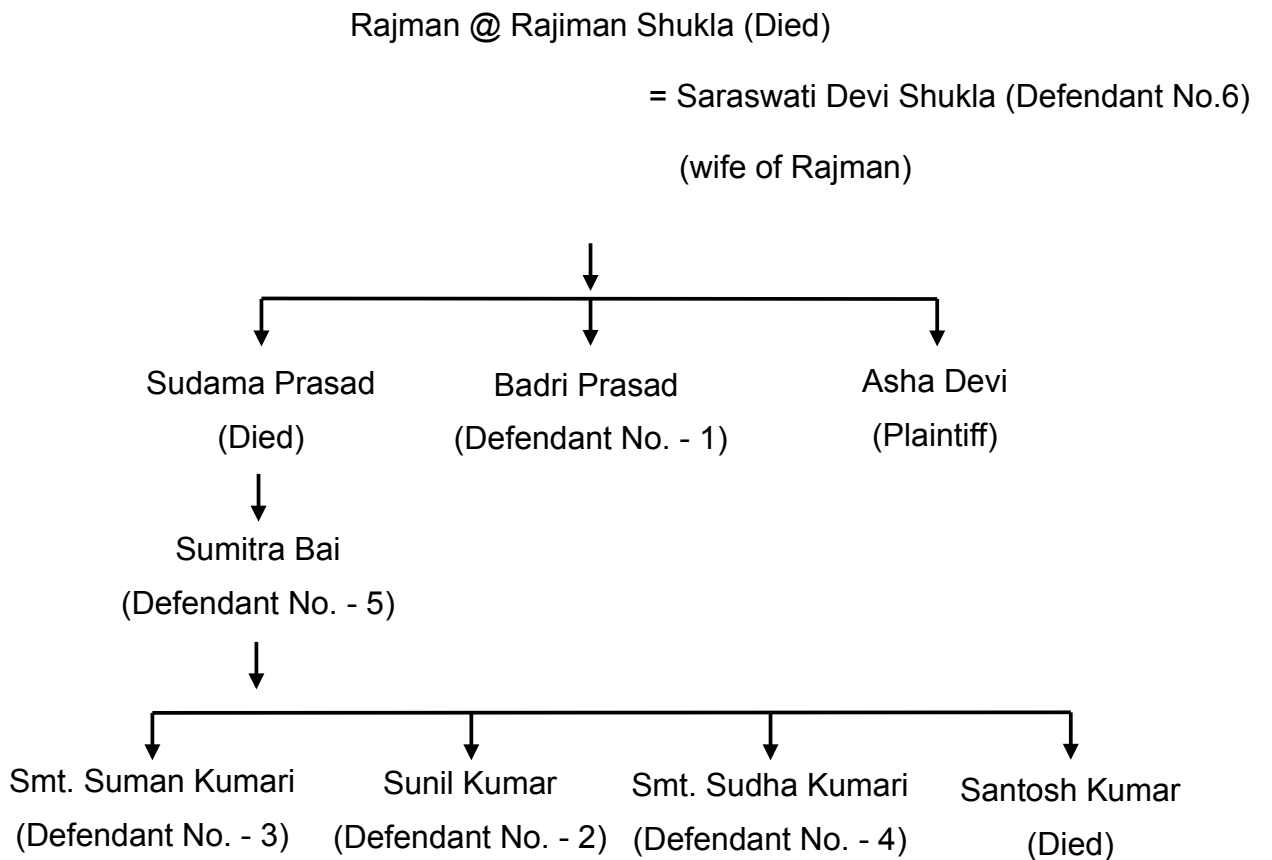
"1. Whether the Lower Appellate Court after

holding the suit property to be an ancestral property was justified in applying Sec. 10 of the Hindu Succession Act and granting 1/3rd share to the plaintiff?

2. Whether the suit for partition filed on behalf of the daughter for a co-parcenary property of which partition was effected prior to 1966-67 was maintainable ?”

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

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



(Defendant No.6-Saraswati Shukla died during pendency of the suit and her name was deleted).

3. The suit property was originally held by Rajman @ Rajiman Shukla. He died in the year 1981. Plaintiff-Smt.Asha Devi is daughter of Rajman @ Rajiman Shukla, whereas defendant No.1 is son and defendant No.5 is

widow of his second son Sudama Prasad. Defendants No.2 to 4 are son and daughters of Sudama Prasad. The plaintiff filed a suit stating that the suit property is self-acquired property of her father and therefore, she is entitled for $1/3^{\text{rd}}$ share in the suit property and accordingly, decree for partition and possession be granted.

4. The defendants by filing written statement denied the averments made in the plaint stating inter-alia that the suit property is co-parcenary property of Rajman @ Rajiman Shukla and his two sons Sudama Prasad & Badri Prasad, as such, the plaintiff is not entitled for any share in the suit property.
5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 9.12.2005, dismissed the suit holding that the plaintiff has failed to prove that she is entitled for partition and possession. On appeal being preferred by the plaintiff, the first appellate Court partly allowed the appeal and held that the suit property was ancestral property in the hands of Rajman @ Rajiman Shukla and it was co-parcenary property with Sudama Prasad and Badri Prasad and further held that the plaintiff would be entitled for $1/3^{\text{rd}}$ share in the suit property. Being aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second

appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

6. Mr.Prafull Bharat, learned counsel for the appellants/defendants, would submit that in the instant case, Section 6 of the Hindu Succession Act, 1956 (hereinafter called as 'the Act of 1956') would apply and the first appellate Court is absolutely unjustified in applying the provision contained in Section 10 of the Act of 1956, as such, notional partition shall be affected in which Rajman @ Rajiman will get $1/3^{\text{rd}}$ share along with his two sons namely Sudama Prasad and Badri Prasad and and after death of Rajman @ Rajiman, his $1/3^{\text{rd}}$ share will be further divided between Saraswati Devi, Sudama Prasad, Badri Prasad & plaintiff-Asha Devi and the plaintiff would be entitled for $1/4^{\text{th}}$ of $1/3^{\text{rd}}$ share in the property of Rajman @ Rajiman, as such, the impugned judgment and decree deserves to be modified accordingly.

7. On the other hand, Mr.Gautam Khetrapal, learned counsel for respondent No.1/plaintiff support the impugned judgment and decree.

8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. The first appellate Court has already held that the suit property is ancestral property of Rajman @ Rajiman and devolved upon two sons Sudama Prasad & Badri Prasad.

10. At this stage, it would be appropriate to notice Section 6 of the Act of 1956 (unamended) which states as under:-

"6. Devolution of interest in coparcenary property.-When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.-For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.-Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

11. After death of Rajman @ Rajiman in the year 1981, following the provisions of Section 6 of the Act of 1956, a notional partition just before the death of

Rajman @ Rajiman will have to be presumed. There would, therefore, be 3 sharers in the suit property and the share of each one of them would be as follows:

Rajman @ Rajiman	1/3 (original holder) (father)
Sudama Prasad	1/3 (son)
Badri Prasad	1/3 (son)

Now, share of Rajman @ Rajiman i.e. $1/3^{\text{rd}}$ will be further divided between her widow Saraswati Devi-defendant No.6, plaintiff-Asha Devi and two sons Sudama Prasad & Badri Prasad and each of them will be entitled for $1/4^{\text{th}}$ of $1/3^{\text{rd}}$ share in the property of Rajman @ Rajiman and as such, Sudama Prasad & Badri Prasad will be entitled for $1/3^{\text{rd}} + 1/4^{\text{th}}$ of $1/3^{\text{rd}}$ share in the suit property and thereafter, share of defendant No.6-Saraswati Devi, who died during pendency of the suit i.e. $1/4^{\text{th}}$ will be further divided between Sudama Prasad, Badri Prasad and plaintiff-Asha Devi and each of them will get $1/3^{\text{rd}}$ share in the property of defendant No.6-Saraswati Devi. Accordingly, plaintiff-Asha Devi will be entitled for $1/3^{\text{rd}} \times 1/4^{\text{th}} = 1/12^{\text{th}}$ share in the property shown in Schedule 'A', 'B', 'C' and 'D' annexed with the plaint and further entitled for $1/3^{\text{rd}}$ share in the property of defendant No.6-Saraswati Devi (11.107% of the suit land) and defendant No.1-Badri Prasad & legal heirs of Sudama Prasad i.e. defendants No.2 to 5 will be entitled for $1/3^{\text{rd}} + 1/3^{\text{rd}}$ share in the property of defendant No.6-Saraswati Devi, which

comes to 44.433% of the total suit land.

12. Thus, the plaintiff will be entitled for $1/4^{\text{th}}$ + $1/3^{\text{rd}}$ of $1/4^{\text{th}}$ = $8.33 + 2.77 = 11.107\%$, Sudama Prasad Shukla/his LR's will be entitled for $1/3^{\text{rd}}$ + $1/12^{\text{th}}$ + $1/3^{\text{rd}}$ of $1/4^{\text{th}}$ = $41.663 + 2.77 = 44.333\%$ and defendant No.1-Badri Prasad Shukla will be entitled for $1/3^{\text{rd}}$ + $1/12^{\text{th}}$ + $1/3^{\text{rd}}$ of $1/4^{\text{th}}$ = $41.663 + 2.77 = 44.333\%$. The substantial questions of law are answered accordingly.
13. Accordingly, the judgment and decree of the first appellate Court is partly modified.
14. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
15. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-