

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.164 of 2009**

1. Nanku, S/o Chenga, Caste Uraon, aged about 45 years,
Occupation Agriculturist
2. Lahar Sai, S/o Nanku, Caste Uraon, aged about 22 years,
Occupation Agriculturist,

Both are R/o Vill. Kurdeg, Tah. Bageecha, Distt. Jashpur (C.G.)
(Plaintiffs)
---- Appellants

Versus

1. Bheekhu Ram, S/o Olo (ओलो), Caste Uraon, aged about 35 years,
Occupation Agriculturist, R/o Vill. Kurdega, Tah. Bageecha,
Distt. Jashpur (C.G.)
2. State of Chhattisgarh, Through the Distt. Collector, Jashpur
(C.G.)

(Defendants)
---- Respondents

For Appellants / Plaintiffs: -

Mr. A.N. Bhakta and Mr. Vivek Bhakta, Advocates.

For Respondent No.1 / Defendant No.1: -

None present, though served.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

11/12/2020

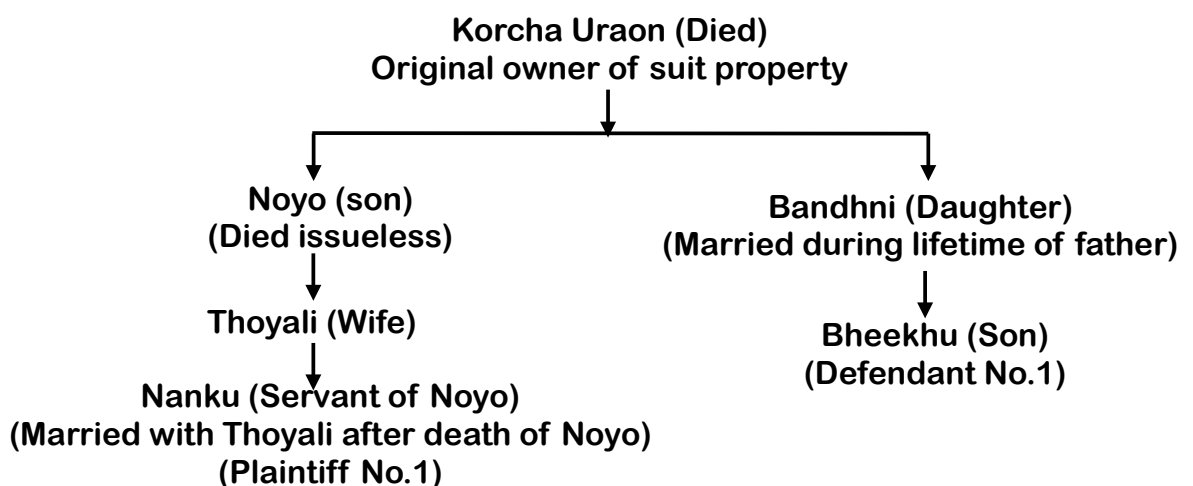
1. This second appeal preferred by the plaintiffs has been admitted
for final hearing on 25-8-2020 by formulating the following
substantial questions of law: -

"1. Whether the first appellate Court was justified in holding that Thoyali, having married with Nanku after the death of her first husband, Noyo, has not right of succession on the property of her first husband by recording a finding which is perverse to the record?

2. Whether the first appellate Court was justified in granting decree in favour of Defendant No.1, Bheeku Ram, with regard to property shown in Schedule "A" of the plaint by recording a finding which is perverse to the record?"

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

2. Following family tree would demonstrate relationship among parties: -



3. The suit property was held by Korcha Uraon, he had son Noyo and daughter Bandhni. Noyo died issue-less leaving his wife Thoyali, whereas Bandhni had one son Bheekhu who is defendant No.1. After death of Noyo, Thoyali during her lifetime was said to have married Nanku who is plaintiff No.1 before the trial Court. The plaintiffs filed suit that they are title holders of the property shown in Schedule A of the plaint for declaration of title, possession, permanent injunction and mesne profit. In the said suit, defendant No.1 also made counter-claim for the properties shown in Schedules A & B also. The trial Court decreed the suit of the plaintiffs in toto with regard to the property and declared the plaintiffs as title holders of the scheduled properties shown in Schedules A & B. On appeal being preferred by defendant No.1, the first appellate Court

partly allowed the appeal and held that the property shown in Schedule A will be held by Bhikhu – defendant No.1, as he will succeed the property of Thoyali, first wife of Noyo and Nanku would not succeed the property of Noyo against which the plaintiffs have preferred this second appeal in which substantial questions of law have been framed which have been set-out in the opening paragraph of this judgment.

4. Mr. A.N. Bhakta, learned counsel appearing for the appellants herein / plaintiffs, would submit that the first appellate Court is absolutely unjustified in holding that Nanku would not succeed the property of Thoyali after her death, it ought to have been held that Nanku married Thoyali after death of Noyo, as he had already married Thoyali in *chudi* form, as such, the judgment & decree of the first appellate Court are liable to be set aside by allowing this second appeal.
5. None present for respondent No.1 / defendant No.1, though served.
6. I have heard learned counsel for the appellants herein / plaintiffs and considered his submissions and also went through the records of both the Courts below thoroughly and with utmost circumspection as well.
7. It is pertinent to mention here that this second appeal is only with regard to the property shown in Schedule A of the plaint, as the dispute with regard to the property shown in Schedule B is not in question, as it has already been settled.
8. Admittedly, the suit property was held by Korcha, he had son Noyo and daughter Bandhni. Noyo's wife was Thoyali and Noyo

died issue-less. Defendant No.1 is son of Bandhni. It is the case of the plaintiffs that after death of Noyo, plaintiff No.1 Nanku married Thoyali and therefore he would succeed to her property being husband of Thoyali, whereas it is the case of defendant No.1 that Nanku was only servant of Noyo and taking advantage of death of Noyo, Nanku developed illicit relationship with Thoyali and claimed property of Thoyali which he cannot succeed as parties are Uraon by caste in which wife does not inherit the property of her husband. The trial Court decreed the suit in favour of Nanku which has been reversed on the ground that Nanku would not inherit the property of Thoyali.

9. A careful perusal of the record would show that Nanku is claimed to have married Thoyali to whom the property stood recorded in the revenue records, but perusal of the plaint would show that there is no whisper / allegation in the plaint on behalf of Nanku that he ever married Thoyali in accordance with the customary form or in accordance with the customary law prevalent among them. In order to succeed the property of Thoyali, Nanku must have pleaded and established that he is the legally wedded husband of Thoyali and therefore after death of Thoyali, he would succeed the property of Thoyali. Though the provisions of the Hindu Succession Act, 1956 are not applicable to the members of Uraon caste, but by virtue of Section 15(1)(a) of the said Act, even if he claims the property of his wife Thoyali, he must establish that he is the legally wedded husband of Thoyali duly married her and if valid marriage between Thoyali and Nanku is not established, he is not entitled for decree. In this case, valid marriage between Thoyali and Nanku has not

been established and even there is evidence laid on behalf of Bhikhu – defendant No.1 that Nanku was servant of Noyo – first husband of Thoyali and he developed illicit relationship with Thoyali to grab her property. As such, since lawful marriage between Thoyali and Nanku is not established as there is neither pleading nor piece of evidence, therefore, the first appellate Court is absolutely justified in holding that Nanku would not succeed the property of Thoyali and it will go back to her former husband Noyo's sister (Bandhni being daughter of Korcha, now LRs of Bandhni) i.e. defendant No.1. As such, the first appellate Court is absolutely justified in holding that Bhikhu would succeed to the property shown in Schedule A of the plaint. I do not find any illegality or perversity in the said finding.

10. Consequently, I do not find any merit in the second appeal, it deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s). The substantial questions of law are answered accordingly.

11. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge