IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 202 of 2007
Reserved on: 18.08.2026
Date of Decision: 24.08.2026

Munshi Ram & Ors ...Appellants

Versus

Hukmi & Anr. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellant : M/s Y.P. Sood and Praveen Chauhan, Advocates.

For the Respondent : M/s Dushyant Dadwal and Shashwat Dadwal, Advocates

Appellant No.17(b) stated to have expired

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 17.03.2007 passed by learned District Judge, Kangra at Dharamshala (learned Appellate Court) vide which the judgment and decree dated 06.01.2006 passed by learned Civil Judge, Junior Division Court No. 2, Palampur, District Kangra (learned Trial Court) were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience)*.

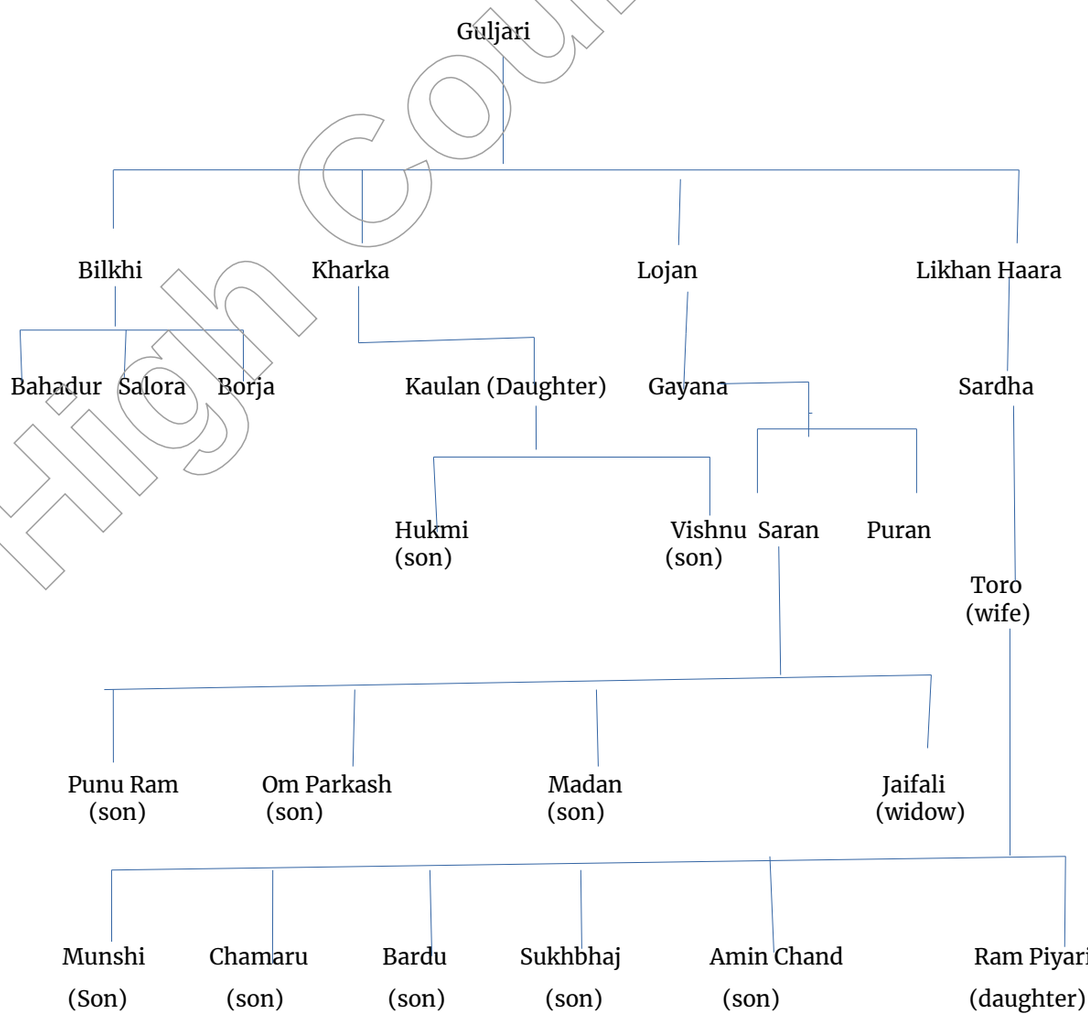
2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit for declaration that they are

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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co-sharers in the possession of the suit land mentioned in the head note and paras 1 to 3 of the plaint and the revenue entries showing the suit land in the exclusive ownership and possession of defendant nos. 1 and 2 are incorrect and illegal. A consequential relief or permanent prohibitory injunction for restraining the defendants from changing the nature of the suit land, cutting trees or alienating the suit land or, in the alternative, for possession was also sought. It was asserted that the suit land was earlier owned by Guljari. The pedigree table of the parties is under:



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3. The suit land was inherited by his four sons Bilkhi, Kharka, Lojan and Likhan Haara in equal share after the death of Guljari. The property left by Bilkhi was inherited by Bahadur, Salora and Borja and the property left by Kharka was inherited by his daughter Kaulan Devi, the predecessor-in-interest of the plaintiffs. The property left by Lojan was inherited by Gayana, and the property left by Likhan Haara was inherited by Sh. Sardha. The revenue entries in the name of defendants are incorrect. The defendants threatened to interfere with the suit land despite requests. Hence, the suit was filed for seeking the relief mentioned above.

4. The suit was opposed by filing a written statement taking preliminary objections regarding lack of cause of action, *locus standi* and maintainability, the plaintiffs being estopped by their act and conduct from filing the suit, and the suit being barred by limitation and *res judicata.* The contents of the plaint were admitted to the extent that the suit land was earlier owned by Guljari. It was asserted that the plaintiff's mother had died before her father and the share of Kharka was inherited by defendants/their predecessor-in-interest. Plaintiff's mother did not inherit any interest in the suit land. The plaintiffs have no concern with the suit land. The revenue entries were rightly

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recorded as per the law. Plaintiffs never disputed the revenue entries for a long time since the attestation of the mutation. Therefore, it was prayed that the suit be dismissed.

5. A replication denying the contents of the written statement and affirming those of the plaint was filed.

6. The learned Trial Court framed the following issues on 21.09.2002: -

(i) Whether plaintiffs are co-sharers in possession of suit land, as alleged? OPP.

(ii) Whether the revenue entries are incorrect and illegal, as alleged? OPP.

(iii) Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for? OPP.

(iv) Whether plaintiffs are entitled for the alternate relief of possession, as prayed for? OPP.

(v) Whether plaintiffs are estopped by their act and conduct to file this suit? OPD.

(vi) Whether plaintiffs have no locus standi? OPD.

(vii) Whether the suit is not within time? OPD.

(viii) Whether suit is barred by principle of res judicata? OPD

(ix) Whether plaintiffs have no cause of action? OPD

(x) Whether suit is not maintainable? OPD

(xi) Relief.

7. The parties were called upon to produce the evidence, and the plaintiffs examined plaintiff No.2 Vishnu (PW1), Krishan

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Kumar (PW2) and Dalip Singh (PW3). The defendants examined defendant No.10 Punnu Ram (DW1) and Dass (DW2).

8. Learned Trial Court held that it was undisputed that the suit land was earlier owned by Gulzari and that he had 4 sons. The plaintiff's version that Kaulan Devi had died after Kharka's death and she inherited his share was falsified by the revenue record, which showed that Kaulan Devi had died on 24.03.1952, whereas Kharka had died on 04.04.1952. The deaths had taken place before the enforcement of the Indian Succession Act, and the parties would be governed by the Traditional Hindu law. Coparcenary property devolves by survivorship, and the mutation was rightly attested in favour of the brothers/nephews of Kharka. Hence, learned Trial Court answered Issues No. 1 to 10 in the negative and dismissed the suit.

9. Being aggrieved by the judgment and decree passed by learned Trial Court, the plaintiffs filed an appeal which was decided by learned District Judge, Kangra at Dharamshala (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by learned Trial Court that Kaulan Devi had pre-deceased Kharka. It was further held that the succession would be governed by traditional Hindu law. Kharka was the sole surviving

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coparcener, and the succession to his estate would be regulated by para 43 of Mula's principle of Hindu Lal. Plaintiffs were at preference No.6, whereas brothers were at preference No.9. Brother's son was at preference No. 10, and brother's brother's son was at preference No. 11. Therefore, the plaintiffs would succeed to the estate of Kharka in preference to the defendants. Revenue entries were wrongly attested, and the learned Trial Court erred in holding that the entries were correctly recorded. The suit is within limitation because mere attestation of the entries does not affect the right of the person in possession. The right to sue would accrue when an actual threat is advanced. Therefore, the learned Appellate Court accepted the appeal, set aside the judgment and decree passed by the learned Appellate Court and decreed the suit.

10. Being aggrieved by the judgment and decree passed by learned Appellate Court, the defendants have filed the present appeal which was admitted on the following substantial questions of law on 28.12.2007: -

(i) Whether the interest of a coparcener in the coparcenary property who has died prior to coming into force of the Hindu Succession Act without leaving any male heir at the time of his death will go by survivorship to the surviving coparceners or the same will go by succession to his legal heirs?

(ii) Whether the suit for declaration filed by the respondents was maintainable in view of the fact that

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the entries were incorporated in the revenue records in favour of the predecessor-in-interest of the present appellants in their presence in pursuance of the judgment and decree of the learned Civil Judge, Kangra.

(iii) Whether the learned First Appellate Court has misread and misconstrued the evidence and legal principles pertaining to the succession to the estate of a coparcener who had died before the commencement of the Hindu Succession Act?

11. I have heard M/s Y.P Sood and Praveen Chauhan, Advocates for the appellants and M/s Dushyant Dadwal and Shashwat Dadwal, Advocates for the respondents.

12. Mr Y.P. Sood, learned counsel for the appellant, submitted that the learned Appellate Court erred in holding that the succession would be governed by para 43 of Mulla's Hindu Law. The property was jointly owned by the parties and would devolve by survivorship. Both the Courts have concurrently held that Kaulan had predeceased Kharka, and the brothers/nephews were entitled to inherit the property and not the plaintiffs. Therefore, it was prayed that the present appeal be allowed and the judgment and decree passed by learned Appellate Court be set aside.

13. Mr Dushyant Dadwal, learned counsel for the respondents, submitted that the learned Appellate Court had rightly held that the succession would be governed by para 43 of Mulla's Hindu Law. The plaintiffs have a preference over the

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defendants as per para 43. A civil suit was filed by the coparceners for setting aside the gift deed executed in favour of Kaula by Kharka, and the decree was passed against the minors without impleading their legal heir; hence, the decree in the previous suit is a nullity. Hence, he prayed that the present appeal be dismissed.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Questions of Law No.1 and 3: -

15. Both these substantial questions of law are intricately connected, and they are being taken up together for consideration.

16. It is undisputed that Guljari was the owner of the suit land and he had four sons-Bilkhi, Kharka, Lojan, and Likhan Haara. Both the learned Courts have concurrently held that the predecessor in interest of the plaintiffs had predeceased Kharka. Kharka had died on 04.04.1952, whereas Kaulan Devi had died on 24.03.1952. Therefore, the deceased Kharka did not have any son at the time of his death.

17. It has been stated in Mulla's Hindu Law, 25th edition 2024, LexisNexis India, that on the death of a coparcener, his interest in the coparcenary does not pass by succession to the heirs but by survivorship to the other coparceners. It is observed:

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On the death of a coparcener, his interest in the coparcenary property does not pass by succession to his heirs. It passes by survivorship to the other coparceners, subject to the rule that where the deceased coparcener leaves a male issue, they represent his rights to a share on partition, and are his sole legal representatives for purposes of execution of money decrees passed against him. The rule of survivorship here stated was modified by the Hindu Women's Rights to Property Act, 1937. It is subject to the provisions of sections 6 and 30 of the Hindu Succession Act of 1956, in cases where those sections are applicable (see § 35 and sections 6 and 30 of the Act of 1956, and notes thereunder for their effect upon the rights of coparceners and coparcenary property).

Where a property is acquired jointly by two brothers and such acquisition purports to be on behalf of the joint family, and when one of such brothers is not heard of for a period of more than seven years, it cannot be presumed that the missing brother's wife became entitled to his half share under the Hindu Women's Right to Property Act, 1937. In these circumstances, the rights to the missing brother's share of the property will devolve on the surviving coparcener, as per the rules of survivorship, and the widow will not be competent to convey any interest in the property in question. (footnotes omitted)

18. Learned Appellate Court referred to paragraph 34 of Mulla's Hindu law, wherein it has been observed:

In determining the mode in which the property of a Hindu male, governed by *Mitakshara* law1, devolves on his death, the following propositions are to be noted:

(1) where the deceased was, at the time of his death, a member of a joint and undivided family, technically called coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship (see Act XVIII of 1937 and § 35);

(2) (i) even if the deceased was joint at the time of his death, he might have left self-acquired or separate property. Such property goes to his heirs by succession

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according to the order given in § 43, and not to his coparceners;

(ii) if the deceased was at the time of his death, the sole surviving member of a coparcenary property, the whole of his property, including the coparcenary property, will pass to his heirs by succession according to the order given in § 43;

(iii) if the deceased was separate at the time of his death from his coparceners, the whole of his property, however acquired, will pass to his heirs by succession according to the order given in § 43;

(3) if the deceased was re-united at the time of his death, his property will pass to his heirs by succession according to the rule laid down in § 60. (footnotes omitted)

19. Thus, the undivided interest in the co-parcenary devolves on the co-parceners by survivorship, but his self-acquired or separate property goes to the heirs by succession.

20. The learned Appellate Court recorded in para 25 that there is no dispute that deceased Kharka at the time of his death was the sole surviving member and last male holder of the suit land which was ancestral or co-parcenary property in his hand. The judgment is silent as to how Kharka could have been a sole surviving member when the other members of the co-parcenary were alive. No person has deposed that the coparcenary was disrupted by the partition or that Kharka's brothers/nephews had predeceased him. A perusal of the mutation (Ext.D4) shows that Kharka was survived by Sardha, Gayana, Bilkhi, and the mutation was attested in their favour. Thus, the members of the coparcenary

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were alive at the time of death of Kharka, and Kharka could not be called a sole surviving coparcener. A Hindu can only be called a sole surviving co-parcener when there is no other member of the co-parcenary or a partition has taken place between the parties. It was laid down by the Hon'ble Supreme Court in ***Manohar Lal Ganeriwal v. Bhuri Bai*, *(1973) 3 SCC 432: 1972 SCC OnLine SC* 58** that a property obtained by a sole surviving co-parcener in a family does not become his own separate property, so long as there is a woman in the family who can bring into existence a new co-parcener by adoption. It was observed at page 434:

> **6.** Jaidei can have a share in the property only if the property is held to have been the "separate property" of Bhagwan Das. As seen earlier, Bhagwan Das became the sole surviving coparcener in the family after the death of his son Rameshwar Lall; but even then, he did not become the absolute owner of the property, though his rights in the property were enlarged to a large extent. It is not necessary to spell out the nature of the rights obtained by him after the death of his son Rameshwar Lall. But, suffice it to say that the joint Hindu family continued. It is now well settled that a property obtained by the sole surviving coparcener in a family does not become his "separate property" so long as there is a woman in the family who can bring into existence a new coparcener by adoption. At the time of the death of Bhagwan Das, his widow Mahadei and his daughter-in-law were alive. That being so, the joint family cannot be held to have been disrupted. The learned Counsel for the appellants very fairly conceded that if we are unable to hold that the suit property was the separate property of Bhagwan Das at the time of his death, the appeal has to fail. According to him, on the death of Rameshwar Lall, the whole property became the separate property of Bhagwan Das. This contention has to be

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> rejected without elaborate examination in view of the decision of the Federal Court in ***Rm. Ar. Ar. Rm. Ar. Ar. Umayal Achi v. Lakshmi Acha [AIR 1945 FC 25 : (1945) 7 FCR 1],*** which decision was quoted with approval by this Court in ***Angurbala Mullick v. Debabrata Mullick [1951 SCC 420: AIR 1951 SC 293: 1951 SCR 1125]***.

21. In the present case, no person stated that there was no woman in the family at the time of Kharka's death, and the finding recorded by the learned Appellate Court that Kharka was the sole surviving coparcener and the suit land would devolve by succession and not by survivorship cannot be sustained.

22. It was submitted that each brother would have one-fourth share in the property and this one-fourth share would go to the branch headed by each brother. This submission cannot be accepted. Mulla's Hindu Law provides in para 214 that the essence of co-parcenary is the unity of ownership. The ownership of the coparcenary property is in the whole body of the co-parceners. No individual member of the family can predicate a definite share. His interest is fluctuating, being enlarged by the death and being diminished by the births. It was observed:

> The essence of a coparcenary under *Mitakshara* law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by *Mitakshara* law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property that he, that particular member, has a definite share, one-

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third or one-fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of a coparcener in a coparcenary property is "undivided coparcenary interest". The rights of each coparcener, until a partition takes place, consist in a common possession and common enjoyment of the coparcenary property. As observed by the Privy Council in ***Katama Natchiar v Rajah of Shivagunga(1863) 9 Moo Ind App 539, pp 543, 61*** :

> ...there is community of interest and unity of possession between all the members of the family, and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession.

The latter part of this proposition must be read in the context of sections 6 and 30 of the Hindu Succession Act, 1956, in cases where those sections are applicable.

The Supreme Court has summarised the position and observed that coparcenary property is held in collective ownership by all the coparceners in a *quasi*-corporate capacity. No co-owner can claim rights to a particular part. He has a right over every part and parcel of any joint property of the coparcenary. In fact, if a co-owner files a suit for recovery of property, it would enure for the benefit of all co-owners. The position of ownership of co-owned property only undergoes a change when there is actual division and a co-owner's particular share would become identifiable. (footnotes omitted)

23. It was laid down by the Hon'ble Supreme Court in ***SBI v. Ghamandi Ram, (1969) 2 SCC 33: 1969 SCC OnLine SC 100*** that no Hindu, being a member of the coparcenary, can predict his share because the share keeps on fluctuating. The property is owned by the coparcenary as a corporate body. It was observed at page 36:

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5. According to the Mitakshara School of Hindu Law, all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (*see* Mitakshara, Chapter I, 1-27). The incidents of co-parcenership under the Mitakshara law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; secondly, that such descendants can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property, conjointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common; fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except insofar as, on adoption, the adopted son becomes a co-parcener with his adoptive father as regards the ancestral properties of the latter. In ***Sundaranam Maistri v. Harasimbhulu Maistri [1901 SCC OnLine Mad 91: ILR (1902) 25 Mad 149]***

Mr Justice Bhashyam Ayyangar stated the legal position thus:

> "The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family, as a corporate body (***Gansavant Balsavant v. Narayan Dhond Savant) [1883 SCC OnLine Bom 1: ILR (1883) 7 Bom 467***] and ***Mayne's Hindu Law and Usage (6th Edn para 270)*** and the possession of property by such corporate body. The first requisite therefore is the family unit; and the possession by it of property is the second requisite. For the present purpose, female members of the family may be left out of consideration, and the conception of a Hindu family is

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> a common male ancestor with his lineal descendants in the male line, and so long as that family is in its normal condition viz. the undivided state — it forms a corporate body. Such corporate body, with its heritage, is purely a creature of law and cannot be created by act of parties, save insofar as, by adoption, a stranger may be affiliated as a member of that corporate family."

6. Adverting to the nature of the property owned by such a family, the learned Judge proceeded to state:

> "As regards the property of such family, the 'unobstructed heritage' devolving on such family, with its accretions, is owned by the family, as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body, may possess separate 'unobstructed heritage' which, with its accretions, may be exclusively owned by such branch as a corporate body."

24. Therefore, the submission that all the brothers had inherited one-fourth share on the death of Guljari, which would be inherited by the heirs of each branch is not acceptable.

25. Thus, the learned Appellate Court misconstrued the provisions of Hindu Law by holding that the matter would be covered by succession and not survivorship. Hence, these substantial questions of law are answered accordingly.

Substantial Question of Law No. 2:

26. It is undisputed that Kharka had executed a gift deed in favour of his daughter-in-law and a mutation (Ex. D1) was sanctioned in her favour. Subsequently, the coparceners brought a suit in the Court of the learned Sub Judge First Class Kangra, which

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was compromised on 24.12.1953. It was submitted that the plaintiffs were minors and could not have entered into a compromise; hence, the previous judgment and decree were bad. This submission is not correct. A copy of the translation of the previous judgment and decree (Ex. D5 and Ex. D6) shows that the legal guardian of the minor had acknowledged the correctness of the compromise. Hence, the court had granted permission to enter into a compromise on behalf of the minors. The learned Appellate Court failed to notice the contents of the order and erred in holding that the minors were unrepresented. Moreover, the minors never challenged the decree after obtaining the majority, and these are binding upon the plaintiffs. Hence, they cannot challenge the mutation attested based on the judgment and decree, and this substantial question of law is answered accordingly.

Final Order:

27. In view of the above, the present appeal is allowed. Judgment and decree passed by learned Appellate Court are ordered to be set aside, whereas judgment and decree passed by learned Trial Court are ordered to be restored.

28. Pending application(s), if any, also stand(s) disposed of.

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29. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

24th August, 2026
(Nikita)

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