

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****SA No.172 of 2012**

1. Smt. Nira Bai, D/o Mannulal Sahu, aged about 52 years, R/o Village Pendrikala Patwari Halka No.17, Tahsil Khairagarh, Distt. Rajnandgaon (C.G.)
2. Smt. Darnia Bai, W/o Mannulal Sahu, aged about 59 years, R/o Village Pendrikala Patwari Halka No.17, Tahsil Khairagarh, Distrit Rajnandgaon (C.G.)

**---- Appellants****Versus**

1. Smt. Dashoda Bai, D/o Mannulal Sahu, W/o Tikam, aged not known, R/o Nawagaon Bharetha, Tahsil Dongargaon, District Rajnandgaon (C.G.)
2. State of Chhattisgarh, through Collector, Rajnandgaon, District Rajnandgaon (C.G.)

**---- Respondents**


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| For Appellants       | Mr. Arvind Shrivastava, Adv |
| For Respondent-State | Mr. Animesh Tiwari, Dy. AG  |

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**Hon'ble Justice Shri Sanjay K. Agrawal****Order On Board****14/07/2021**

1. The proceedings of this matter have been taken up through Video Conferencing.
2. Heard on admission and formulation of substantial question of law in this second

appeal preferred by the appellants/defendants.

3. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellants/defendants vide judgment and decree dated 31.03.2012 passed by the learned Additional District Judge, Khairagarh (C.G.) in Civil Appeal No.22A/2009 affirming the judgment and decree of the Trial Court dated 28.02.2009 passed by the learned Civil Judge Class-I, Khairagarh (C.G.) in Civil Suit No.32-A/2004, whereby the learned Trial Court decreed the suit preferred by the respondent No.1/plaintiff.
4. Mr. Shrivastava, learned counsel for the appellants/defendants, would submit that both the Courts below have concurrently erred in holding that the suit property is the joint family property of plaintiff and defendant Nos.1 & 2 by recording a finding perverse to the record. As such, the appeal involves substantial question of law for determination and deserves to be admitted for hearing.
5. I have heard learned counsel for the

appellants/defendants, considered his submissions made herein-above and also went through the records with utmost circumspection.

6. The suit property was originally held by Mannu Lal. The plaintiff and the defendant No.1 are the daughters of Mannu Lal, whereas the defendant No.2 is the wife of Mannu Lal. One of the daughters of Mannu Lal filed a suit for declaration of joint ownership and declaring the order dated 06.10.2003 passed by the Tahsildar as null and void stating interalia that the suit property was jointly recorded in the revenue record in the name of plaintiff and the defendant Nos.1 & 2 and they were in the joint possession, but the defendant Nos.1 & 2 got deleted the name of the plaintiff from the revenue record behind the back of the plaintiff by order of the Tahsildar, Khairagarh dated 06.10.2003, against which the plaintiff also preferred an appeal before the SDO, Khairagarh, but the same was dismissed as barred by limitation, which resulted into filing of suit by the plaintiff claiming

decree, which was opposed by the defendants by filing their written statement inter-alia stating that the plaintiff has no right and title over the suit property.

7. The Trial Court after appreciating the oral and documentary evidence available on record came to the conclusion that the plaintiff is the joint owner of the suit property along with defendant Nos.1 & 2 and the order dated 06.10.2003 passed by the Tahsildar, Khairagarh is null and void, as the same has been passed behind the back of the plaintiff and accordingly decreed the suit, which has also been affirmed by the First Appellate Court in the appeal preferred by the appellants/defendants.

8. In the considered opinion of this Court, the concurrent finding recorded by the two Courts below holding the suit property to be the joint family property of plaintiff and defendant Nos.1 & 2 is the finding of fact based on the evidence available on record, as no partition has taken place between them and further the order of the Tahsildar has also

rightly been declared as null void, as the name of the plaintiff has been deleted from the revenue record without notice to the plaintiff. As such, the finding recorded by the two Courts below is the finding of fact based on the evidence available on record, which is neither perverse nor contrary to record.

9. I do not find any substantial question of law for determination in this second appeal. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-  
Sanjay K. Agrawal  
Judge

Nirala