

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.3 of 2012**

1. Dhola, D/o Mahesh, Aged About 60 Years,
Caste, Yadav
2. Mantora, D/o Mahesh, Aged About 55 Years,
Caste Yadav
3. Naihar, S/o Bhuri, Aged About 50 Years

All R/o Village Urga, Tahsil and District
Korba, Chhattisgarh

---- Appellants**Versus**

1. Dilharan, S/o Kanhiya Aged About 59 Years,
Caste Dhimar, R/o Village Urga, Tahsil and
District Korba, Chhattisgarh
2. Fagni Bai, aged About 55 Years, R/o Village
Darrabhata, Tahsil and District Korba,
Chhattisgarh

---- Respondents

For Appellants	Mr. H. V. Sharma, Advocate
For Respondent No.1	Ms. Richa Dwivedi, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal**Order On Board****29/06/2021**

1. Heard on admission and formulation of
substantial question of law in this second
appeal preferred by the appellants/defendants.

2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellants/defendants vide judgment and decree dated 11.02.2011 passed by the learned 2nd Additional District Judge, FTC, Korba (C.G.) in Civil Appeal No.9A/2010 affirming the judgment and decree of the Trial Court dated 12.10.2007 passed by the learned 2nd Civil Judge Class-I, Korba (C.G.) in Civil Suit No.202-A/2006, whereby the learned Trial Court decreed the suit preferred by the respondent No.1/plaintiff and dismissed the counter claim of the appellants/defendants.
3. Mr. Sharma, learned counsel for the appellants/defendants, would submit that both the Courts below have concurrently erred in holding that the suit property was exclusively held by Parvati, widow of Maheshram and she has rightly alienated the suit property in favour of Dilharan, the plaintiff and further erred in not holding that the amendment made in the plaint on 14.03.2001 was barred by limitation. As such, the appeal involves substantial question of law for determination

and deserves to be admitted for hearing.

4. I have heard learned counsel for the appellants/defendants, considered his submissions made herein-above and also went through the records with utmost circumspection.
5. The suit property was alienated by Parvati in favour of plaintiff vide sale deed dated 25.02.1991 (Ex-P/1). The said Parvati admittedly purchased the suit property in her own name vide sale deed dated 18.07.1959 (Ex-P/2) and got her name mutated in the revenue record and she being the owner has rightly alienated the suit property in favour of the plaintiff by registered sale deed dated 25.02.1991 (Ex-P/1). As such, the finding of the two Courts below holding the plaintiff to be the owner of the suit property vide sale deed dated 25.02.1991 (Ex-P/1) is finding based on the material available on record. The defendants have no right once Parvati has sold her own property in favour of plaintiff. Likewise, the amendment application filed on 14.03.2001, by which the Trial Court has

permitted the plaintiff to amend the plaint holding the property to be the property of Parvati, cannot be taken as exception, as it is undisputed fact on record that the property was purchased by Parvati, widow of Maheshram in her own name by registered sale deed dated 18.07.1959 (Ex-P/2). As such, the Trial Court has rightly decreed the suit of the plaintiff and rightly dismissed the counter claim of the defendants, which has also been affirmed by the First Appellate Court in the appeal preferred by the defendants.

6. 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