

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 499 of 2014

Elias Xalxo s/o Maarcel Xalxo, aged about 55 years, Caste Oraon, R/o Village Ghaghra, Tehsil Manora, District Jashpur, Chhattisgarh

-----Appellant

Versus

1. State of Chhattisgarh, Through Collector, Jashpur, Civil and Revenue District, Jashpur (CG)
2. Catholic Society Ghaghra through Manager, village Ghaghra, Tehsil Manora, District Jashpur (Chhattisgarh)

---- Respondents

Second Appeal No. 500 of 2014

Elias Xalxo s/o Maarcel Xalxo, aged about 55 years, Caste Oraon, R/o Village Ghaghra, Tehsil Manora, District Jashpur, Chhattisgarh

-----Appellant

Versus

1. State of Chhattisgarh, Through Collector, Jashpur, Civil and Revenue District, Jashpur (CG)
2. Catholic Society Ghaghra through Manager, village Ghaghra, Tehsil Manora, District Jashpur (Chhattisgarh)

---- Respondents

Second Appeal No. 501 of 2014

Elias Xalxo s/o Maarcel Xalxo, aged about 55 years, Caste Oraon, R/o Village Ghaghra, Tehsil Manora, District Jashpur, Chhattisgarh

-----Appellant

Versus

1. State of Chhattisgarh, Through Collector, Jashpur, Civil and Revenue District, Jashpur (CG)
2. Catholic Society Ghaghra through Manager, village Ghaghra, Tehsil Manora, District Jashpur (Chhattisgarh)

---- Respondents

And

Second Appeal No. 502 of 2014

Elias Xalxo s/o Maarcel Xalxo, aged about 55 years, Caste Oraon, R/o Village Ghaghra, Tehsil Manora, District Jashpur, Chhattisgarh

-----Appellant

Versus

1. State of Chhattisgarh, Through Collector, Jashpur, Civil and Revenue District, Jashpur (CG)
2. Catholic Society Ghaghra through Manager, village Ghaghra, Tehsil Manora, District Jashpur (Chhattisgarh)

---- Respondents

For Appellants	:	Ms. Binu Sharma, Advocate.
For Respondent No.1	:	Shri Sameer Behar, Panel Lawyer.
Respondent 2 not noticed.		

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI
JUDGMENT ON BOARD

01/10/2015

1. Heard on admission.
2. By this common judgment all the Second Appeal Nos. 499/2014, 500/2014, 501/2014 & 502/2014 are being disposed of after hearing the arguments.
3. Second Appeal No. 499/2014 filed under Section 100 of the Code of Civil Procedure, 1908 (for short the 'CPC') is directed against the judgment and decree dated 16.9.2014 passed by the Additional District Judge, Jashpur Nagar, District Jashpur, C.G., in Civil Appeal No. 7A/2014 whereby and whereunder the plaintiff/appellant's appeal has been dismissed affirming the judgment and decree dated 27.6.2013 passed by Civil Judge Class II, Jashpur in Civil Suit No.3A/2013.
4. Second Appeal No. 500/2014 filed under Section 100 of the CPC is directed against the judgment and decree dated 20.10.2014 passed by the Additional District Judge, Jashpur Nagar, District Jashpur, C.G., in Civil Appeal

No. 6A/2014 whereby and whereunder the plaintiff/appellant's appeal has been dismissed affirming the judgment and decree dated 27.6.2013 passed by Civil Judge Class II, Jashpur in Civil Suit No.5A/2013.

5. Second Appeal No. 501/2014 filed under Section 100 of the CPC is directed against the judgment and decree dated 11.9.2014 passed by the Additional District Judge, Jashpur Nagar, District Jashpur, C.G., in Civil Appeal No. 1A/2014 whereby and whereunder the plaintiff/appellant's appeal has been dismissed affirming the judgment and decree dated 4.3.2012 passed by the Additional Civil Judge Class II, Jashpur, in Civil Suit No.3A/2013.

6. Second Appeal No. 502/2014 filed under Section 100 of the CPC is directed against the judgment and decree dated 11.11.2014 passed by the Additional District Judge, Jashpur Nagar, District Jashpur, C.G., in Civil Appeal No. 10A/2014 whereby and whereunder the plaintiff/appellant's appeal has been dismissed affirming the judgment and decree dated 05.04.2013 passed by Additional Civil Judge Class II, Jashpur, in Civil Suit No.6A/2013.

7. Facts in brief necessary for disposal of these 4 appeals are that the appellant/plaintiff filed a civil suit before the trial Court for declaring him as owner and possession holder of the suit land; to declare the order passed by the revenue Court as null and void and for permanent injunction. The trial Court on close scrutiny of the evidence led, submissions made and material placed on record, dismissed all the 4 civil suits vide judgment and decree mentioned above and held that the plaintiff has failed to prove his case as he is owner and title holder of the suit land.

8. Against the said judgment and decree passed by the trial Court in all aforementioned civil suits, the plaintiff preferred first appeal. The first appellate

Court after re-appreciating the entire evidence available on record, dismissed all the above 4 appeals and affirmed the findings recorded by the trial Court.

9. Against the said judgment and decree passed by the first appellate Court, in all the 4 first appeals, the plaintiff has preferred second appeal inter alia on the ground that both the Courts below have erred in holding that doctrine of res judicata is not applicable as the order passed by the revenue Court was illegal and without any substance and also both the Courts below have erred in holding that the order passed by the revenue Court is proper as the seller and the purchaser both belong to 'Oraon', sub-caste under the Scheduled Tribe and the transaction was of the year 1957 before the commencement of the C.G. Land Revenue Code, 1959 (for short the 'Code') under Section 170 B of the Code, hence, the same is not applicable. Also both the Courts below have erred in holding that Section 170 B of the Code is applicable. It has further taken ground that Section 176 of the Code is not applicable as some plot area is diverted. Except the findings of the revenue Court, both the Courts below have committed error. It has stated that as the legal heir is holding the property, the appreciation regarding Benami transaction is not correct.

10. By filing these 4 appeals, it is submitted that as the substantial question of law involves, the appeals may be allowed after formulation of the substantial question of law and the judgment and decree of both the Courts below passed in all the 4 appeals be set aside and relief as claimed be granted.

11. I have heard the counsel appearing for the appellant in all the 4 appeals on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the Courts below.

12. Learned counsel appearing for the appellant in all the 4 appeals

supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeals. She would further submit that as the substantial question of law is involved in all the 4 appeals, the appeals may be admitted for hearing and be disposed of accordingly.

13. On perusal of the entire facts, it shows that there was no pleadings, issues regarding principles of res judicata. The Courts below have held that the plaintiff/ appellant failed to prove that the plaintiff was appointed as a successor in office of the institution and the basis of the same, and thereby the plaintiff failed to prove that how he was connected with the office, in which capacity he purchased the property and for what purpose he was appointed as a successor in office of the institution. The ground taken as to whether the order passed by the revenue Court can be taken into consideration? As per settled law, if order of the revenue Court is based on the law and facts, there is no reason why the same be not accepted. As the grounds argued regarding Section 170 B and Section 176 of the Code, no pleadings, also no issues were framed before the trial Court and at this stage in absence of any appropriate pleadings, evidence and its appreciation same cannot be taken into consideration before this Court. There is no specific pleadings regarding Benami transaction and other relevant facts before the trial Court and also there is no issue of Benami transaction. In absence of any pleadings and evidence, the same cannot be taken into consideration in the Second Appeal. Both the courts below have dismissed the claim of the plaintiff/appellant that he had failed to prove on what basis and in which capacity, he was appointed as a successor in office of the institution. In absence of any such basis, the Courts below have held that the order passed by the S.D.O. (Civil) Jashpur in revenue Case No. 31/A-23/96-97 dated 28.2.2007

is based on the facts available and the law prevailing, hence, both the Courts have held that the order passed by the revenue authority is proper and the plaintiff has failed to prove his case.

14. Upon perusal of entire evidence, it appears that there is no substantial law requires to be formulated for hearing of the Second Appeals.

15. This Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. The appellant failed to demonstrate any substantial question of law requires to be formulated for hearing of these 4 appeals. Existence of substantial question of law is a *sine-qua-non* for the exercise of the jurisdiction under the amended Section 100 of the CPC. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeals.

16. In view of above, since no substantial question of law arises for determination in the instant 4 appeals, these appeals are not liable for admission. Consequently, the appeals are dismissed at the motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

17. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge