

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 644 OF 2015**

Elias Xalxo S/o Maarshal Xalxo, Aged About 58 Years Caste Oraon, R/o Village Ghaghra, Tehsil Manora, Distt. Jashpur, Chhattisgarh

**---- Appellant****Versus**

1. State Of Chhattisgarh Through Collector, Jashpur, Civil And Revenue Distt. Jashpur, Chhattisgarh
2. Catholic Society Ghaghra Through Manager, Village Ghaghra, Tehsil Manora, Distt. Jahspur, Chhattisgarh

**---- Respondents**


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| For Appellant              | : | Ms. Binu Sharma, Advocate |
| For Respondent No. 1/State | : | Mr. V. B. Singh, P. L.    |

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**Hon'ble Shri Sanjay Agrawal, J.****Judgment On Board****04/10/2017**

1. This is plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and decree dated 20/07/2015 passed by the Additional District Judge, Jashpurnagar, District Jashpur (C.G.) in Civil Appeal No. 8-A/2015, by which, the lower appellate Court while affirming the judgment and decree dated 20/03/2015 passed by the Second Civil Judge Class-I, Jashpur, District Jashpur (C.G.) in Civil Suit No. 7-A/2014, has dismissed the plaintiff's suit.

2. The undisputed facts of the case, are that, the plaintiff Elias Xalxo instituted a suit claiming declaration of title, confirmation of possession, injunction and also praying for declaration that the orders passed by the

Revenue Authorities be declared as null and void. It is pleaded by the plaintiff that the suit property bearing Khasra No. 338, admeasuring 0.607 Hectare (1.50 Acres) situated at village Ghaghra, Tahsil Manora, District Jashpur was purchased by one Domnik Tirkey by virtue of registered deed of sale dated 19/03/1957 by himself as well as the successor in office from one Athnas Tigga by paying the entire sale consideration of the suit property. It is pleaded further that a proceeding was initiated against Domnik Tirkey under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code, 1959') before the Sub Divisional Officer (Revenue) Jashpur, who passed the order on 31/07/1997, in which, the suit property was reverted back to said Domnik Tirkey. It is pleaded further that while exercising *suo moto* power, the Sub Divisional Officer has passed the order again under the said provision on 28/02/2007 by holding that the name of said Domnik Tirkey has been recorded in revenue paper without any legal ground. The said order was affirmed further by the Collector by its order dated 22/12/2009. Since the Revenue Authorities have passed the order without hearing him, therefore, the plaintiff has been constrained to file the suit in the instant nature.

3. The defendants have not submitted any return and were proceeded *ex parte*.

4. The trial Court after considering the documentary evidence, like the registered deed of sale dated 19/03/1957 (Ex. P-3), as well as oral statement produced by the plaintiff, has come to the conclusion that the plaintiff has failed to prove that which was that office for which as a successor the said Domnik Tirkey had purchased the suit property. As a consequence, the trial Court has dismissed the plaintiff's claim.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff.

6. Being aggrieved, the plaintiff has preferred this appeal. Ms. Binu Sharma, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below without appreciating the alleged registered deed of sale dated 19/03/1957 in its proper perspective has erred in dismissing the plaintiff's claim. She further submits that the orders as passed by the Revenue Authorities under Section 170-B of the Code, 1959 was made without giving sufficient and proper opportunity of hearing to the plaintiff, therefore, the orders as passed by the Revenue Authorities are required to be declared as null and void.

7. I have heard learned counsel for the appellant and perused the entire records carefully.

8. The plaintiff Elias Xalxo instituted a suit mainly on the ground that the suit property which is described in plaint Schedule 'A' was purchased by Domnik Tirkey on 19/03/1957 from one Athnas Tigga by himself as well as the "successor in office". The plaintiff under such circumstances is required to establish the fact that which was that office for which, the said Domnik Tirkey had purchased the suit property in the year 1957. However, from perusal of the alleged registered deed of sale dated 19/03/1957 (Ex. P-3) would show that the Courts below have rightly come to the conclusion that the plaintiff has failed to establish the fact that which was that office for which, the said Domnik Tirkey had purchased the suit property. It was, therefore, rightly held further by the Courts below that even if the property was purchased by said Domnik Tirkey then in that condition also, the plaintiff could not have proved that what was his relation with him. In such circumstances, the Courts below have not committed any illegality in arriving to a conclusion that the plaintiff has failed to prove his ownership with regard to the property in question. The finding as recorded by Courts below is based upon due and proper appreciation of oral and said

documentary evidence and the same cannot be held to be a perverse one, therefore, deserves to be and is hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)  
Judge

Yogesh