

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.643 of 2015**

Emmanuel Tigga S/o Pious Oraon, Aged About 70 Years Caste Oraon, R/o Village Jaria, Tehsil Manora, District Jashpur, Chhattisgarh

---- Appellant**Versus**

1. Jovakim And Others S/o Chima, Caste Oraon, R/o Village Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh (Dead) Through Lrs.
1. (A) Kapil Toppo Aged about 40 Years S/o Jovakim, Caste Oraon, R/o Bada Koronja, Tehsil And District Jashpur, Chhattisgarh
2. Agapeet S/o Cheema, Caste Oraon, R/o Village Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh (Dead) Through His Legal Representatives.
2 . (A) Leonard Aged about 40 Years S/o Agapeet, R/o Village Sonkwari, Dafdara, Tehsil Manora, Distt. Jashpur, Chhattisgarh
2 . (B) Cyprian Aged about 35 Years S/o Agapeet, R/o Village Sonkwari, Dafdara, Tehsil Manora, Distt. Jashpur, Chhattisgarh
3. Tobias S/o Cheema, Caste Oraon, R/o Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh (Dead) Through Legal Representatives.
3 . (A) Smt. Sabeena Aged about 55 Years W/o Tobias, Caste Oraon, R/o Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh
4. Emil S/o Soma, Caste Oraon, R/o Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh (Dead).
5. Yakood S/o Soma, Caste Oraon, R/o Jaria, Tehsil Manora, Distt. Jashpur (Dead) Through Legal Representatives.
5 . (i) Sandeep Aged about 30 Years S/o Yakoob,
6. Saroj S/o Siril
7. Stephen S/o Siril
8. Simon S/o Siril
9. Mo. Kophia W/o Siril (Dead) Caste Oraon, R/o Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh
10. Catholic Mission Society, Jaria, Through Manager, Village Jaria, R/o Jaria, Tehsil Manora, Distt. Jashpur, Chhattisgarh
11. State Of Chhattisgarh, Through Collector, Jashpur, Distt. Jashpur, Chhattisgarh

-----Respondents

For Appellant:	Smt Binu Sharma, Advocate.
For Respondent.11/State:	Smt Shobha Kashyap, Dy. G.A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

24.10.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 30.06.2015 passed by the Additional District Judge (FTC), District Jashpur in Civil Appeal No.3-A/2015 by which, the lower appellate Court, while affirming the judgment and decree dated 17.07.2013 passed by the Civil Judge, Class-II, Jashpur in Civil Suit No.2-A/2013, has dismissed the Plaintiff's suit.

2. The undisputed facts of the case are that the Plaintiff-Emmanuel Tigga instituted a suit claiming declaration of title, injunction and also praying that the orders passed by the revenue authorities be declared as null and void on the ground that the suit property described in Plaint Schedule-A was purchased by Pankhrasius Toppo and Samuel Barla by virtue of the registered deed of sale dated 2.4.1969 from Cheema and Soma for a consideration of Rs.300/-. It is pleaded further that the said purchasers have executed the deed of Will in his favour on 7.7.1984 by bequeathing the suit property in his favour. It is pleaded further that the proceeding which was initiated under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short 'the code of 1959') by the revenue authorities is apparently contrary to law as neither any notice was issued to him nor the said provision is attracted as the original transaction was made between the scheduled tribes. It is pleaded further that since the revenue authorities have passed the order on 23.11.2009 under Section 170B of the Code of 1959 by holding that the alleged transaction was a fraudulent one and therefore, the Plaintiff has been constrained to file the

suit in the instant nature.

3. The Defendants were proceeded *ex parte*. The trial Court, after considering the evidence of the Plaintiff, has come to the conclusion that since the Plaintiff has not entered into the witness box nor has established his claim, therefore, it cannot be held that the Plaintiff is the owner of the suit property as alleged by him. It held further by examining the attesting witness namely John Ekka that the alleged Will dated 7.7.1984 (Ex.P-5) cannot be upheld as the same was not proved by him as per the provisions prescribed under Section 63(c) of the Indian Succession Act, 1925 (for short 'the Act of 1925'). As a consequence, the trial Court has dismissed the Plaintiff's claim.

4. Being aggrieved, the Plaintiff has preferred the First Appeal under Section 96 of the CPC. The appellate Court, in turn, has also come to the conclusion that the alleged attesting witness has failed to prove the due execution, attestation and validity of the alleged Will in accordance with law. As a consequence, the lower appellate Court, while affirming the finding of the trial Court, has dismissed the Plaintiff's claim.

5. Being aggrieved, the Plaintiff has preferred this Appeal. Smt Binu Sharma, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. She argued that the Courts below ought to have taken into consideration the statement of the said attesting witness in its true perspective. Having failed so, the Courts below have committed an illegality in disbelieving the due execution, attestation and validity of the alleged Will dated 7.7.1984 (Ex.P-5). She further submits that the judgment and decree as passed by the Courts below deserve to be set aside.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. The Plaintiff's suit is essentially based upon the alleged Will dated 7.7.1984 (Ex.P-5) purported to have been executed by Pankhrasius Toppo and Samuel Barla in his favour. In order to establish the validity of the alleged Will, the burden was heavily on the Plaintiff to establish its due execution and attestation. However, in the instant suit, the Plaintiff has not entered into the witness box in order to prove his claim. Besides, the attesting witness John Ekka, who was examined as Plaintiff Witness No.2, has not stated anywhere that the alleged Will was executed by its executors in his presence. By considering his statement, the Courts below have rightly come to the conclusion that the due execution, attestation and validity of the alleged Will dated 7.7.1984 (Ex.P-5) could not have been established in accordance with the provisions prescribed under Section 63(c) of the Act of 1925. This finding is a pure finding of fact based upon due and proper appreciation of the attesting witness along with the other documentary evidence, therefore, the same cannot be held to be a perverse one. The findings so recorded, therefore, deserve to be and are hereby affirmed.

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

Sd/-
(Sanjay Agrawal)
JUDGE