

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 534 of 2016**

- Rohit Kumar Bothara S/o Bhawarlal Bothara, Aged About 25 Years R/o Sambalpur, Police Station And Tahsil- Bhanupratappur, District- Uttar Bastar, Kanker, Chhattisgarh(Defendant)

---- Appellant**Versus**

1. Gautam Chand Jain S/o Champalal Jain, Aged About 51 Years R/o Bhanupratappur, Police Station And Tahsil- Bhanupratappur, District- Uttar Bastar, Kanker, Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through Collector, District- Uttar Bastar, Kanker, Chhattisgarh(Defendant No.2)

---- Respondents

For Appellant	:	Shri Jitendra Gupta, Avocate
For Respondent No.1	:	Shri Parag Kotecha, Advocate
For Respondent No.2	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11/09/2017**

1. Heard on admission.
2. This is defendant No.1's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 16.09.2016 passed by the Additional District Judge, Bhanupratappur, Dist. North Bastar Kanker in Civil Appeal No. 06-A/2014, by which, the appellate Court while modifying the judgment and decree dated 28.04.2014 passed by the Civil Judge, Class-1, Bhanupratappur in Civil Suit No. 1-A/2012 has decreed the plaintiff's claim.

3. The undisputed facts of the case that the plaintiff Gautam Chand Jain instituted a suit against defendant No.1 Rohit Kumar Bothara for obtaining the vacant possession of the suit premises, arrears of rent and also for injunction. It is pleaded by the plaintiff that by virtue of the registered deed of sale dated 09.09.2011, he purchased the suit premises bearing Kh.No.37/10 area 0.004 hectares (30 feet x 15 feet = 450 sq.ft.) and has thus prescribed his right, title and interest over the suit premises and has raised the suit shop on it and got his name mutated in revenue papers as well. It is pleaded further that the said suit premises was given to defendant No.1 on 15.10.2011 at a monthly rent of Rs.15,000/- only for a period of 2 months. It is also pleaded that despite the expiry of said two months, neither the rent nor the vacant possession of the suit shop was provided by him. Therefore, a notice dated 13.01.2012 was given to defendant No.1 by terminating his tenancy and immediately thereafter the instant suit has been filed on 02.03.2012 for obtaining the vacant possession of the suit shop.

4. The defendant No.1 has contested the aforesaid claim by submitting, inter alia, that the plaintiff is not the owner of the suit premises and that he has not obtained the same from him at a monthly rent of Rs.15,000/-. It is contested further on the ground that in reply to plaintiff's notice dated 13.01.2012, he has denied very specifically that he is enjoying the suit premises at a monthly rent of Rs.15,000/-

5. The Trial Court, after considering the evidence of the parties, has come to the conclusion that the plaintiff is the owner of the suit premises by relying upon the registered deed of sale, dated 09.09.2011 (Ex.P.7C) and also came to the conclusion that the relationship between the parties have duly been established. It, however, held further that in absence of any documentary evidence, it cannot be held that defendant No.1 is enjoying the suit premises at a monthly rent of Rs.15,000/-, and therefore, directed the parties to file joint application for fixation

of standard rent before the Rent Controlling Authority.

6. Being aggrieved with aforesaid findings, the plaintiff as well as defendant No.1, both have preferred appeals, which were registered respectively as Civil Appeal Nos.05-A/2014 and 06-A/2014, as per the provisions prescribed under Section 96 of the Code of 1908. The lower appellate Court, in turn, by its common impugned judgment and decree has decreed the plaintiff's claim by holding that defendant No.1 Rohit Kumar Bothara is occupying the suit premises at a monthly rent of Rs.15,000/- as a lessee and despite demand-cum-quit notice dated 13.01.2012 has failed to hand over the vacant possession of the suit premises to the plaintiff. In consequence, the lower appellate Court has directed the defendant No.1 to deposit monthly rent at the rate of Rs.15,000/- from 15.11.2011 upto the date of delivery of the judgment.

7. Being aggrieved, the defendant No.1 has preferred this appeal. Shri Jitendra Gupta, counsel for the appellant submits that the judgment and decree as passed by the lower appellate Court by holding that defendant No.1 is occupying the suit premises as a lessee of the plaintiff is apparently contrary to law. He submits further that in absence of any documentary evidence, the lower appellate Court ought not to have come to the conclusion that monthly rent of the suit premises was Rs.15,000/-. He, therefore, submits that the judgment and decree as passed by the lower appellate Court deserves to be set aside.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. The main contention of defendant No.1 herein is that the lower appellate Court has erred in holding that the defendant No.1 is occupying the suit premises as a lessee of the plaintiff. The contention of the appellant is noted to be rejected in view of the pleadings of the parties. From perusal of the plaint averments would show that the plaintiff, after purchasing the suit premises on

09.09.2011, had provided the same to defendant on 15.10.2011 as a lessee at monthly rent of Rs.15,000/- for a period of two months only. This lease was executed orally. When the suit premises was not handed over after the expiry of two months, a notice dated 13.01.2012 (Ex.P.5) was issued by the plaintiff by terminating the alleged oral lease and demanded the vacant possession of the suit premises. No reply to the said notice was given by defendant No.1, though stated in written statement that he has submitted his reply with regard to the alleged notice dated 13.01.2012 but in fact the same was not produced by him in order to establish the fact that he is not enjoying the suit premises as a lessee of the plaintiff or enjoying the suit premises at a monthly rent of Rs.15,000/-. In such circumstances, the lower appellate Court, by considering oral and documentary evidence of the parties, has come to the conclusion that defendant No.1 is enjoying the suit premises as a lessee of the plaintiff and his tenancy was terminated under Section 106 of the Transfer of Property Act, 1882, by issuing a notice dated 13.01.2012 (Ex.P.5). This finding of the lower appellate Court is based upon due and proper evidence of the parties and cannot be held to be perverse. It, therefore, does not require to be interfered. Consequently, the finding so recorded deserves to be and is hereby affirmed.

10. In view of the foregoing discussion, I do not find any question of law, much less, the substantial questions of law involved in this appeal. Accordingly, the appeal, being devoid of merit, is liable to be and is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge