

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.254 of 2005

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.01.2005 and 27.01.2005 respectively passed by the learned Adhoc Additional District Judge (Fast Track Court), Khurda in T.A. No.1/72 of 2004/2000 confirming the judgment and decree dated 07.09.2000 and 26.09.2000 respectively passed by the learned Civil Judge (Junior Division), Banpur in T.S. No.10 of 1995.

Parikhita Chhata (Since Dead) Appellants
through his LRs and Another

-versus-

Madan Mohan Ram (Since Dead) Respondents
through his LR and Another

Appeared in this case by Video Conferencing Mode

For Appellants - M/s.R.C. Rath & S.K. Panda,
Advocates

For Respondents - M/s.S.P. Mishra, Sr.Counsel
S.Mishra, S. Dash, S.Nanda
B.Mohapatra, S.S. Satapathy
B.S. Panigrahi, S.K. Mohanty &
A.K. Dash, Advocates.

CORAM:
MR. JUSTICE D.DASH

Date of Hearing :12.01.2022 : Date of Judgment: 21.01.2022

The Appellants, by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), have assailed the judgment and decree passed by the learned Ad hoc Additional District Judge (Fast Track Court), Khurda in Title Appeal No.1/72 of 2004-2000.

By the said judgment and decree, the lower Appellate court, while dismissing the Appeal filed by these original Appellants under section 96 of the Code, has confirmed the judgment and decree passed by the learned Civil Judge (Junior Division), Banpur in Title Suit No.10 of 1995.

The original Appellant No.1 having died during pendency of this Appeal, his legal representatives are now on record as Appellants. The suit having been decreed, the Defendant, namely, Parikhita Chhata and his daughter Kamala Dei had carried the First Appeal. Parikhita having died during pendency of this Appeal, apart from his daughter already on record, his son Kalia @ Kalu Chhata has joined as one of the Appellants. The Respondent-Appellant having died during pendency of the Appeal, his son as his legal representatives, are now contesting the Appeal as the Respondent Nos.1(a) to 1(d).

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. The original Plaintiff-Madan Mohan Ram's case in the plaint is that he is the landlord of the suit premises as described in Schedule-A of the plaint. It is stated that Defendant No.1 (Parikhita) is a tenants-at-will in respect of the suit premises under the Plaintiff. He took the said premises from the Plaintiff on 01.01.1989 for the purpose of his residence and stayed therein with his daughter-Kamala (Defendant No.2). They were paying rent of Rs.14/- per month. In view of the default of the Defendant No.1 in making the payment or rent despite the demand from the side of the Plaintiff; the Plaintiff served a notice under Section 106 of the Transfer of Property Act terminating the tenancy and

demanding vacant possession of the suit premises, further claiming arrear of rent etc.

4. The Defendants, in their written statement, at first admitted the Plaintiff (Madan Mohan) to be their landlord and also the owner of the suit premises. It is, however, stated that Defendant No.1 is not the tenant-at-will in respect of the suit premises under the Plaintiff. In the very next paragraph of the written statement, it is stated that his son kalu is remaining there with his father and sister and other children. They also stated that there was never any payment of rent from their side. Their specific plea in paragraph-14 of the written statement is that Defendant No.1, being a rickshaw puller, had come to Banpur to earn his livelihood by pulling rickshaw in the year 1980 and he took two rooms from Chakrapan Mohapatra of Kumaranga Sasan, who was letting out the houses on his own on a monthly rent of Rs.30/- and thus they stayed there with family. Subsequently, in the year 1985, Defendant No.1, the elder son of Kalia got married and he wanted to reside separately. So, in the year 1985, Kalia, the elder son of Defendant No.1 took possession of two rooms situated in the suit premises. Again, in the year 1986, Defendant No.1, being deserted by her husband after some time of her marriage, came back to her father (Defendant No.1) and stayed there. It is further stated that in the year 1987, Chakrapani intended to sell the entire property and he asked the Defendant No.1 to vacate the house. The Defendant No.1 then being helpless had to adjust with Kalia in the rooms where he was residing with his family.

5. On the above rival pleadings, the Trial Court has framed seven issues. Coming to answer the crucial issue as to the relationship of the

Plaintiff with the Defendants as landlord and tenants and the Plaintiff's entitlement to a decree for eviction of the Defendants from the suit premises, upon examination of the evidence and their analysis, has answered those in favour of the Plaintiff and the Defendants have been directed to vacate the suit premises within two months. However, without required evidence in proving the factum of non-payment of rent for any prior period, the issue with regard to the claim of arrear rent having been answered against the Plaintiff, the Defendants have been directed to pay damage @ Rs.4/- per day from the date of filing of the suit till delivery of vacant possession of the suit premises to the Plaintiff.

6. The Defendants, being aggrieved by the said judgment and decree, having carried the Appeal, have been unsuccessful.

7. This Appeal has been admitted on the following substantial question of law:-

“Whether the decree for eviction of the Appellants from the suit premises is permissible without the specific finding that they are the defaulters in payment of rent?”

8. Mr.R.C. Rath, learned counsel for the Appellants submitted that the Courts below have erred in passing the decree for eviction of the Defendants by recording the finding that they are the tenants under the Plaintiff. He next submitted that when the Courts below have not been able to record any specific finding based on evidence that the Defendants were paying monthly rent to the Plaintiff and were in arrear of payment of rent to him, no finding as to the existence of relationship of landlord and tenant between the Plaintiff and Defendants could have been recorded holding the Plaintiff as entitled to the decree for eviction of the Defendants from the suit premises. I have also gone through the

written notes of submission filed by Mr. Rath which has been taken on record.

Mr.S.P. learned Senior Counsel for the Respondents submitted that the findings recorded by the Courts below with regard to the existence of relationship between the parties and Plaintiff's entitlement to the decree of eviction of the suit premises from the Defendants in any event is unassailable. He further submitted that even if for the sake of argument, it is said for a moment that the Plaintiff was not the landlord and Defendants were not his tenants in respect of the suit premises, yet in view of the candid admission of the Defendants that the Plaintiff is the owner of the suit premises and when the Defendants have not claimed any competing right, title and interest over the same nor have asserted to have perfected the title by way of adverse possession, the Courts below did commit no mistake in passing the decree for eviction.

9. Coming to dwell upon the above rival contentions, it would be profitable first to refer to the plaint averments. The Plaintiff claims in paragraph-1 of the plaint to be the landlord in respect of the suit premises asserting that Defendant No.1 is a tenant-at-will under him. Stating that since Defendant Nos.1 and 2 were residing there as such, the tenancy has been duly terminated by giving notice.

The Defendants, in paragraph-5 of the written statement, have admitted the averments made in paragraph-1 of the plaint. The followings have been averred therein:-

“that the averments in paragraph-1 of the plaint is admitted to be true. The Defendants know that the Plaintiff is the owner of the suit premises described with Schedule-A below of the plaint.”

However, in the later paragraphs, they have again gone to deny the factum of tenancy. On detail examination of the evidence on record, the Courts below have come to a conclusion that Defendant No.1 resided in the suit premises with his family and that he was the karta of the family. So it has been concluded that he is a tenant under the Plaintiff since 01.01.1989. Such is the concurrent finding of the Courts below based on the above pleadings, this Court further having gone through the discussion of evidence as made by the courts below is of the view that the finding as to the relationship as recorded by the courts below does not suffer from the vice of perversity. In view of that finding for eviction of a tenant, the Plaintiff having stated to have served notice under section 106 of the T.P. Act, the same at the first have not denied by the Defendants. But at a later stage, it has been said that they have refuted the same. Then again they have stated that such notice have never been tendered to them. In such state of affair in the pleading, it being not the mandate of law that for eviction of a tenant-at-will besides terminating the tenancy, the Plaintiff, in order to seek the relief of eviction has also to prove that the tenant was a defaulter in payment of rent, the Courts below cannot be said to have fallen in error in passing the decree of eviction of the Defendants from the suit premises.

The substantial question of law thus receives the answer against the Defendants and consequently, this Court finds that the judgments and decrees passed by the Courts below are not liable to be interfered with.

10. Resultantly, the Appeal is dismissed. There shall be no order as to cost.

However, taking into account the long pendency of this litigation and other surrounding circumstances in the prevailing situation, the Appellants re directed to give delivery of vacant possession of the suit premises on or before the expiry of July, 2022 carrying the liability of payment of damage as has been awarded by the Trial Court. It is further stated that in the event, the Appellants fail to give the delivery of vacant possession of the suit premises within the period, as stipulated above, the Plaintiffs would be at liberty to levy the execution proceeding for fruitful execution of the decree.

11. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

**(D. Dash),
Judge.**