

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RSA No.109 of 2005**

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.11.2004 and 04.12.2004 respectively passed by the learned Adhoc Additional District Judge (Fast Track), Khurda in T.A. No.18/4 of 2004-2001 setting aside the judgment and decree dated 11.12.2000 and 05.01.2001 respectively passed by the learned Civil Judge (Junior Division), Banpur in T.S. No.13 of 1995.

***Sri Madan Mohan Ram (Since Dead) through his L.Rs*** ..... ***Appellants***

-versus-

***Bhama Dei & Another*** ..... ***Respondents***

**Appeared in this case by Video Conferencing Mode**

***For Appellants*** - M/s.S.P.Mishra, Sr. Adv  
S.Mishra, S.Dash,  
Miss.S.Mishra & B. Mohanty  
Advocates

***For Respondents*** - M/s.R.C. Rath & S.K. Panda  
Advocates.

**CORAM:**  
**MR. JUSTICE D.DASH**

**Date of Hearing :12.01.2022 : Date of Judgment: 21.01.2022**

The Appellant, by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 20.11.2004 and 04.12.2004 respectively passed by the learned Ad hoc Additional District Judge (Fast Track), Khurda in Title Appeal No.18/4 of 2004-2001.

By the said judgment and decree, while allowing Appeal filed by the present Respondent (Defendant) under section 96 of the Code, the

judgment and decree dated 11.12.2000 and 05.01.2001 respectively passed by the learned Civil Judge (Junior Division), Banpur in Title Suit No.13 of 1995, have been set aside.

The Appellant-Plaintiff has been non-suited in the suit that he had filed against the Respondent (Defendant No.1) for her eviction from the suit premises, claiming arrear rent as damage. It may be stated here that the original Appellant (Plaintiff) having died, now his legal heirs, having come on record, are pursuing this Appeal.

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 Plaintiff's case is that he is the landlord in respect of the suit premises. The Defendant No.1 (Respondent No.1) is the sister of Defendant No.2 (Respondent No.2). It is stated that they are the tenants-at-will under the Plaintiff in respect of the suit premises. The Defendants 1 and 2 had taken the suit premises from the Plaintiff on monthly rent of Rs.140/- and occupied the room in question in the month of January, 1992. They having paid the rent as agreed upon till 31.12.1994, thereafter defaulted in payment of the same. So, the Plaintiff served notice under section 106 of the Transfer of Property Act terminating their tenancy and demanding the vacant possession as also the payment of arrear house rent. That having not been paid any heed to, the suit has been filed.

4. The Defendant No.1, in her written statement, has denied the existence of relationship of landlord and tenant between the Plaintiff on the one hand and they on the other. It is, however, stated that their brother, namely, Kalia is a tenant under the Plaintiff in respect of the

very suit room and he was paying rent to the Plaintiff regularly. That Kalia had accommodated the Defendant No.1 allowing her to stay in the suit premises. So, it is stated that there arises no cause of action for filing the suit against her (Defendant No.1).

The Defendant No.3 (Kalia) having been impleaded as party, has stated in his separate written statement that neither his father nor his sister (Defendant No.1) and brother (Defendant No.2) are the tenants under the Plaintiff in respect of room nos.6 and 8. It is his specific stand that in the year 1985, he took the rooms on rent from the Plaintiff and occupied the same and subsequently he accommodated his father Parikhita in one of the rooms and sister in another room. He claims to have been paying the rent in respect of both the rooms.

5. Faced with the above rival pleadings, the Trial Court has framed six issues. Coming to answer the crucial issues with regard to the relationship of landlord and tenant as also the liability of the Defendants 1 and 2 in paying the arrear rent and damages; on examination of the evidence and upon their evaluation, conclusion has been recorded that Defendant No.1 is liable to deliver the vacant possession of the suit premises to the Plaintiff. With regard to the other issue, in the absence of any specific evidence, simply the Defendant No.1 has been directed to pay damage to the Plaintiff @ Rs.2/- per diem from the date of filing of the suit till actual vacation.

6. The Defendant No.1, being aggrieved by the said judgment and decree passed by the learned Trial Court, having preferred the Appeal, has been successful in annulling the judgment and decreed passed by the Trial Court.

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

“When as per the case of the Defendants, the Plaintiff being the owner of the suit house as the Landlord had inducted the Defendant No.3 as tenant and he had accommodated other Defendants in that tenanted premises and was paying rent to the Landlord (Plaintiff) and when the Defendants 1 and 2 do not advance any independent claim over the suit premises nor stake to have entered into possession on their own; whether the lower Appellate Court has gone wrong in dismissing the suit for eviction on the ground that the Plaintiffs has failed to establish the relationship of landlord and tenant?”

8. Mr.S.P.Mishra, learned Senior Counsel for the Appellant submitted that the Defendant No.1, is none other than the sister of Defendants 2 and 3 and in her written statement, she has admitted that Defendant No.3 is the tenant under the Plaintiff in respect of the suit rooms and he was paying the rent to the Plaintiff regularly. He submitted that it is admitted by the Defendant No.3, in his written statement that in the year 1985, he took the two rooms on rent from the Plaintiff and occupied the same wherein he has subsequently accommodated the Defendant No.1 and his father and is accordingly paying the rent to the Plaintiff. He next submitted that based upon all these facts when the Plaintiff's claim as of landlord in respect of the suit premises is not denied, the lower Appellate Court has erred both on fact and law in non-suiting the Plaintiff by setting aside the judgment and decree of eviction and recovery of damage as passed by the Trial Court.

9. Mr.R.C.Rath, learned counsel for the Respondents submitted all in favour of the findings recorded by the lower Appellate Court. According to him, the suit for eviction being founded upon the relationship of landlord and tenant, as pleaded by the Plaintiff to be

with Defendant Nos.1 and 2; the same having not been established, the Plaintiff has been rightly non-suited. I have also gone through the written notes of submission filed by Mr. Rath which has been taken on record.

**10.** Coming to dwell upon the rival contentions, it may be first noted that Defendant No.2 had neither contested the suit nor has appeared in the Appeal. The Defendants 1 and 3 are the daughter and son of one Parikhita Chhata. The Defendant No.2 is the other son of Parikhita. Defendant No.1 had challenged the judgment and decree passed by the Trial Court in directing their eviction and payment of damage finding the Defendant No.1 to be in possession of the suit premises. No where in the written statement, the ownership of the Plaintiff over the suit premises has been disputed. It is rather stated by Defendant No.1 that the Plaintiff as the landlord had inducted her brother (Defendant No.3) in respect of the suit premises which the Defendant No.3 has also admitted in further stating that he had accommodated the Defendant No.1 in one of the rooms that he had taken on rent as a tenant under the Plaintiff. This fact that Defendant No.1 had been accommodated by her brother (Defendant No.3) to reside in the suit premises stands candidly admitted in her written statement. In that view of the matter, the tenancy having been duly terminated and when the Defendant No.3 coming to enter appearance in the suit has not taken any such other plea to thwart the suit for eviction in stating that the notice under section 106 of the Transfer of the Property Act terminating the tenancy served upon the Defendant no.1 is not legally tenable; this Court is of the considered view that the lower Appellate Court has fallen in grave error in setting aside the judgment and decree passed by the trial Court. The settled position of law is that lessee includes his legal representatives or

assignee of said lessee (tenant). A person who comes into occupation in place of tenant through him and does not claim to have independently come to occupy the tenanted premises is presumed to be an assignee of the tenant. The Defendant No.1 here thus, in the above circumstances as those emanate from the pleadings for all the purposes has to be treated to be the assignee of Defendant No.3, the tenant under the Plaintiff (landlord) in respect of the suit premises and, therefore, the trial Court's decree for eviction and for recovery of arrear damage against the Defendant No.1 has to stand.

**11.** In the wake of aforesaid discussions and reasons, the substantial question of law is answered accordingly in favour of the Appellant. Consequent upon the same, it is held that the judgment and decree passed by the lower Appellate Court are liable to be set aside and those passed by the Trial Court are to be restored.

**12.** Resultantly, the Appeal is allowed. There shall however be no order as to cost.

The judgment and decree passed by the lower Appellate Court being set aside; the judgment and decree passed by the Trial Court are hereby restored.

However, taking into account the long pendency of this litigation and other surrounding circumstances in the prevailing situation, the Defendant No.1, if has not vacated the suit premises in the meantime, is 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 Defendant No.1 fails 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.

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 25<sup>th</sup> March, 2020 as modified by Court's Notice No.4798 dated 15<sup>th</sup> April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7<sup>th</sup> January, 2022.

*Basu*

