

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.537 of 2014

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 05.09.2014 and 19.09.2014 respectively passed by the learned District Judge, Ganjam, Berhampur in R.F.A. No.24 of 2013 setting aside the judgment and decree dated 14.03.2013 and 26.03.2013 respectively passed by the learned Civil Judge, Senior Division, Berhampur in Civil Suit No.105 of 2012.

N. Kasi Annapurna

....

Appellant

-versus-

Smt. Bachu Kamala & Others

....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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Mr.R.K. Mohanty, Sr. Counsel
Mr.D. Mohanty, S. Mohanty,
D. Varadwaj, A. Mohanty and
S. Mohanty
(Advocates)

For Respondents

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Mr.U.C. Panda
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 03.08.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 05.09.2014 and 19.09.2014 respectively passed by the learned District Judge, Ganjam, Berhampur in R.F.A. No.24 of 2013.

By the same, the Appeal filed by these Respondents, being the aggrieved Defendants in Civil Suit No.105 of 2012 on the file of the learned Civil Judge, Senior Division, Berhampur under section 96 of the Code, has been allowed and thereby the judgment and decree passed by the Trial Court in the above-noted suit have been set aside. The suit filed by the Appellant (Plaintiff) having been decreed by the Trial Court directing the Respondents (Defendants) to vacate the suit house and pay arrear rent, have been set aside.

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 before the Trial Court.

3. The subject matter of the suit is a room, which is used as a shop. One A. Raghunath Rao is the original owner of the suit shop room. He had inducted late B. Ramachandra Rao, the husband of Defendant No.1 and the father of the other Defendant as a tenant therein on monthly rent of Rs.200/-. Lastly on 02.12.1981, said A. Raghunath Rao and B. Ramachandra Rao had entered into a lease agreement. The period of lease was for ten years and B. Ramachandra Rao, the tenant was to pay monthly rent of Rs.300/-. The said tenant, when did not adhere to the terms and conditions of the lease agreement, the original owner-cum-landlord had filed a suit, i.e. T.S. No.147 of 1991 for eviction of the tenant and claiming damage. The suit was decreed ex parte. The tenant then having moved for setting aside the ex-parte decree, was successful. Thereafter, as the said owner-cum-landlord did not prosecute the suit, the same was dismissed for default. The original owner-cum-landlord in the meantime grew old and came under the sufferings of different ailments. He, therefore, executed a registered deed of Power of Attorney

in favour of the husband of the Plaintiff for sale of 2088 sqft of land, which includes the suit shop room measuring 163 sqft (8.6 feet X 19 feet) on his behalf after due negotiation, fixation of the consideration and on receiving the same. The said Power of Attorney holder then executed the registered sale deed in respect of the entire land, which include the land over which the suit shop room stands in favour of his wife, i.e, the Plaintiff. It is stated that a part of the said property was tenanted to two persons and B. Ramachandra Rao was one of them. The other tenant, namely, Sripati Rao is stated to have vacated the tenanted shop room and gave possession of the same to the Plaintiff on 30.06.2005 by executing a deed of surrender. It is next stated that on that very day, the original owner-cum-landlord introduced the Plaintiff to the tenant, i.e., B. Ramachandra Rao as the landlord in saying that the tenancy would now continue under the Plaintiff who in his place has come as the Landlady. That B. Ramachandra Rao then is said to be continuing to pay the rent to the Plaintiff @ Rs.10,000/- per month for his occupation of the suit shop room as a tenant.

When the matter stood thus, said B. Ramachandra Rao, instead of continuing to pay the rent, all on a fine morning filed a suit, i.e., T.S. No.63 of 2009 against the husband of the Plaintiff seeking relief of permanent injunction restraining him from disturbing his peaceful possession of the suit shop room as a tenant under B. Ramachandra Rao. The present Plaintiff filed an application in the said suit to be impleaded as a party, but that was rejected on the ground that the allegations were personal to the husband of the Plaintiff. In the meantime, that B. Ramachandra Rao, the Plaintiff of that suit expired and that suit thereafter was dismissed. The legal representatives said Plaintiff having attempted, failed to prosecute the suit as the Trial Court held that no

cause of action surviving in their favour. The order, being challenged by invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India vide CMP No.15 of 2014, no fruitful result yielded thereby.

The Plaintiff, being the purchaser of the suit shop room and its owner as well as the landlady, then served a notice under section 106 of the Transfer of Property Act upon the Defendants terminating the tenancy and asking them to vacate the suit shop room by paying the arrear rent and damage. The Defendants when did not vacate the suit shop room, the suit came to be filed.

4. The Defendants, by filing the written statement, have not denied the ownership of A. Raghunath Rao as also the fact that he was the landlord of the suit shop room and that he had inducted their predecessor-in-interest B. Ramachandra Rao as a tenant. It is stated that said B. Ramachandra Rao was in possession of the suit shop room since 02.08.1976 and was paying the rent @ Rs.100/- per month. They allege that A. Raghunath Rao had never executed any Power of Attorney in favour of the husband of the Plaintiff or for sale of the land over which the suit shop room stands as also other land adjoining and the sale in favour of the Plaintiff is said to be thus having no legal sanction. It is stated that the Defendants are the tenants under A. Raghunath Rao and the Plaintiff has no right in respect of the said shop room. Thus, it is stated that the suit, as laid for the reliefs claimed, is liable to be dismissed.

5. On the above rival pleadings, the Trial Court in total has framed seven issues. Rightly taking up issue nos.2, 3 and 4 together for decision as those are interlinked as regards the case and counter case of the

parties as to the interse relationship vis-à-vis the suit shop room, upon examination of the evidence and their analysis from different angles, the Trial Court has answered all those in favour of the Plaintiff. The Trial Court's conclusion runs as under:

“In the present case, it is found that the defendants acknowledged the title of the plaintiff as his landlady and there is tenant relationship of landlord and tenant between the plaintiff and the defendant by virtue of sale deed dated 19.11.2004. Accordingly, issues no.2, 3 and 4 are answered in favour of the Plaintiff.”

Accordingly, the other issue has been answered in holding the liability of the Defendants to pay three years arrear rent @ 300/- per month.

6. The Defendants, being aggrieved, having questioned the judgment and decree passed by the Trial Court, by filing Appeal, have been successful in getting those annulled in ultimately achieving the result of the dismissal of the suit filed by the Plaintiff.

7. The Appeal has been admitted to answer the following substantial question of law:

“Whether the Appellate Court is right in holding the Plaintiff to have not stepped into the shoes of her vendor as the landlady in respect of the suit house by virtue of the said sale deed and as such to be having no relationship with the Defendants as her tenant.”

8. Mr.R.K.Mohanty, learned Senior Counsel for the Appellate submitted that the Trial Court, when upon detail examination of the evidence and making an indepth study, had arrived at a conclusion in favour of the relationship of the landlord and tenant; and the tenancy to have been duly terminated as provided in law; the First Appellate Court has proceeded in a completely wrong direction in sitting over to decide

the challenge to the sale deed projected by the Plaintiff as the source of title and ownership over the suit shop room. He submitted that with the relationship which finding on the available evidence on record is bound to be recorded, the provision of section 116 of the Evidence would come into play leaving no scope for the Defendants to challenge the title of the Plaintiff over the suit shop room and then irrespective of whether the Plaintiff has acquired title over the suit shop room by virtue of the sale deed executed by her husband on the strength of Power of Attorney executed by original owner A. Raghunath Rao; simply proceeding to record the finding as to if the tenancy has been duly terminated as required under section 106 of the Transfer of Property Act, a decree for eviction has to follow. He submitted that within the scope and ambit of the suit, when the Trial Court, on proper evaluation of evidence, had rightly decree the suit; the First Appellate Court has erred both on fact and law in setting aside the decree.

9. Mr.U.C.Panda, learned counsel for the Respondents, on the other hand, supported the findings returned by the First Appellate Court. He submitted that the Defendants had never admitted the Plaintiff to be the owner and landlady of the suit house. He submitted that when the First Appellate Court has rightly found out the Power of Attorney to be a document surrounded with the suspicion and as such not acceptable, the Plaintiff having purchased the property from her husband, whose authority is based upon that deed of Power of Attorney; it is a case where the Plaintiff has no locus standie to file the suit. He then proceeded to point out the deficiencies in the said deed of Power of Attorney (Ext.1) as also the sale deed (Ext.2). It was submitted that the execution of the Power of Attorney in favour of the husband of the Plaintiff (P.W.2) being under thick cloud of suspicion, the First

Appellate Court has rightly disbelieved the case of the Plaintiff as to the acceptance of tenancy to be so continuing with the Plaintiff which has the direct nexus with the said Power of Attorney and the sale deed as it is said by the Plaintiff that on the strength of those documents, the occasion arose for the owner-cum-landlord to introduce her to the tenant as the landlady.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

11. The Defendants do not dispute that their predecessor-in-interest, i.e., B. Ramachandra Rao was a tenant under the owner of the suit shop room, namely, A. Raghunath Rao. The Plaintiff claims to have purchased the said property by registered sale deed (Ext.2). This sale deed has been executed by her husband examined as P.W.2 on exercising the authority on behalf of A. Raghunath Rao on the strength of a registered deed of Power of Attorney, which has been admitted in evidence and marked Ext.1. The Plaintiff no doubt claims to have derived the right, title and interest over the suit shop room by virtue of the said sale deed, but so far as the present suit is concerned, it is one for eviction pleading the tenancy to have been so attorned by the Defendants in her favour and its termination.

12. The settled position of law is that it is not necessary that a landlord always be the title holder/owner of the property in question and even a person having no title over the property can still be the landlord in respect of the tenanted premises and the tenancy created with regard to that property with someone else. It is also the settled position of law that in that event, the tenant cannot question the authority of his landlord in inducting him/her as a tenant with respect to that property. He/she is

estopped in law to question the status of the landlord and his/her status as the tenant vis-à-vis the suit property.

13. Keeping the above settled position of law in mind, it would be apposite to proceed to judge the sustainability of the findings of the Trial court on the issue of relationship of landlord and tenant between the parties.

14. It may be stated here that the First Appellate Court, instead of taking up this exercise, has proceeded to scrutinize the document Exts.1 and 2 and rule upon their acceptability. The Plaintiff, in the instant case, has been examined as P.W.1. Prior to the suit, the Plaintiff had served a notice under section 106 of the Transfer of Property Act upon the Defendants terminating the tenancy. The Defendants have given a reply to the same. The notice has been duly proved as Ext.4 and the reply is Ext.5. Said reply, being gone through, it is seen that the Defendants have not denied the factum of disclosure made by A. Raghunath Rao in introducing the plaintiff to have stepped into his shoes as landlady in his place to the then tenant and thus instructing him to pay the rent to the Plaintiff. It has been deposed to by P.W.1 that she along with her husband and A. Raghunath Rao approached B. Ramachandra Rao when she was introduced to that B. Ramachandra Rao as his landlady. The husband of P.W.1 having been examined as P.W.2 has stated in that light and thus, the evidence of P.W.1 receives the corroboration. This part of evidence has not been shaken during cross-examination.

15. The Trial Court then having gone to discuss the evidence as also the circumstances surrounding the prior litigation, i.e, C.S. No.63 of 2009 has arrived at a conclusion that the Defendant No.1 was well aware of the purchase of the suit land by the Plaintiff since 13.10.2009

and just in order to avoid it, is falsely saying to have come to know about it only in the present suit in the year 2012. The evidence of P.Ws.1 and 2 with regard to the fact that A. Raghunath Rao had introduced the Plaintiff to the tenant B. Ramachandra Rao stating him to accept the Plaintiff as her landlady cannot be doubted as noted by the Trial Court upon detail discussion. The Trial Court has then gone to discuss certain important features of the case. The Plaintiff has proved the certified copy of the lease deed admitted in evidence and marked as Ext.7, which is not denied by the Defendant. The period of lease was ten years. That was to end on 02.12.1991. In the year 1991, said A. Raghunath Rao had filed the suit for eviction of B. Ramachandra Rao. That being decreed ex parte, B. Ramachandra Rao prayed for setting aside the same and that was set aside, but the suit was finally dismissed on 08.03.1993 for non-prosecution. The pleadings of the Defendants are now very important. When they state that even after 1995, they were continuously paying rent to A. Raghunath Rao and as he was no more traceable, the money returned unpaid; the D.W.1 having deposed in the Court in the year 2012 has stated that for last six to seven years, they have not been paying the rent and prior to that, they were paying the rent. The Defendants have not proved any document that after their predecessor-in-interest could not pay the rent to that A. Raghunath Rao, he or thereafter they had written any letter to him. This means that till the year 2004-2005, they were paying the rent. The Plaintiff has purchased the suit land in the year 2004. Admitted position stands that in respect of the rest part of the property, the other tenant has surrendered the possession of that tenanted premises in favour of the Plaintiff by executing a deed of surrender (Ext.3). The very filing of the suit against the husband of the Plaintiff goes to show that said B.

Ramachandra Rao was aware of the fact that the husband of the Plaintiff being armed with some claim, which he of course had not disclosed, was likely to disturb his possession. With such evidence on record, in my view, the Trial Court was right in answering the issues as to existence of relationship between the Plaintiff and the predecessor-in-interest of these Defendants, who was the original tenant under A. Raghunath Rao and the First Appellate Court merely raising some suspicion over the document, i.e., Power of Attorney (Ext.1) and sale deed (Ext.2) and without finding any such glaring infirmity shaking the foundation ought not to have set aside the said finding that the Trial Court had returned upon proper evaluation of evidence on record. In fact, these Defendants in view of their nature of occupation of the suit premises were precluded to advance any challenge to those Ext.1 and Ext.2.

16. The answer to the substantial question of law is accordingly returned in favour of the case/claim of the Plaintiff, which in turn, leads to set aside the judgment and decree passed by the First Appellate Court and restore those passed by the Trial Court.

17. In the result, the Appeal stands allowed. There shall, however, be no order as to cost.

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

Basu