

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.319 of 2014

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 21.01.2014 and 29.01.2014 respectively passed by the learned Additional District Judge, Rairangpur in R.F.A. No.18 of 2012 confirming the judgment and decree passed by the learned Civil Judge, Senior Division, Rairangpur in Civil Suit No. 56 of 2006.

Monoranjan Mohanty

....

Appellant

-versus-

***State Engineer, Doordarshan
Maintenance Centre, Balasore &
Others***

....

Respondents

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

For Appellant - Mr. R.K. Mohanty, Sr.Advocate

For Respondents - M/s. S. Barik, D.K. Mohanty
P.C. Behera,
Advocate for R.1

Mr. M. Ku. Badu

Advocate for R.3

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

Date of Hearing : 10.02.2022 : Date of Judgment: 14.02.2022

The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree passed by the learned Additional District Judge, Rairangpur in R.F.A. No.18 of 2012.

By the same, the Appeal filed by the present Appellant under section 96 of the Code has dismissed.

The present Appellant being the Plaintiff having lost before the Trial Court and thus being non-suited had filed the First Appeal which has been dismissed; she is now on 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, in short, is that he is the owner of the land and house in question. The Defendants had established one LPT Centre over the suit land having taken the land and house on lease from the original recorded tenant Shiba Narayan Dash. The Plaintiff having purchased the said land, the Defendants have attorned him as to be the lessor. It is stated that the parties had agreed that the Defendants would pay the monthly rent as would be assessed by the Public Works Department (PWD). The Defendants are said to have adopted dilatory tactics to settle the fair rent. However, in the month of March, 2003 fair rent certificate was obtained from the PWD (R&B), Rairangpur which was calculated @ Rs.11,665/- for the entire premises. It is further stated that the Plaintiff, his wife and daughters purchased three parcels of land covering the entire premises and accordingly, rent of Rs.3066/- is payable to Bijoy Laxmi Mohanty, Rs.3733/- is payable to Dr. P.S. Manikeswari and Rs.4866/- is payable to the Plaintiff. So as per the fair rent certificate, the Plaintiff is entitled to monthly rent of Rs.4866/- from the Defendants. The Defendants however did not pay the same. So he filed the suit for eviction of the Defendants and realization of the rent along with interest pendente lite and future.

4. The Defendant No.1 coming to contest the suit having raised technical objection as to non-joinder of necessary parties and non-compliance of the provision of section 80 of the Code have however admitted that they have been inducted as a tenant over the suit land and building by one Lingaraj Dash from 13.2.1994 on a monthly rent of Rs.3500/-/ It is also stated that the rent was not paid to the Plaintiff because of the dispute as to ownership and monthly rent of Rs.3,500/- paid to Shiba Narayan Dash from 14.2.1994 to 24.8.2000 and rent for the period from 24.8.2000 to 28.2.2002 was paid to Manoranjan Mohanty, Dr. P.S. Manikeswari and Bijoy Laxmi Mohanty. It is stated that the Defendants had agreed to enhance the house rent after obtaining necessary fair rent certificate from the Govt. Authority. The matter had been referred to the Executive Engineer, Civil Construction Wing, All India Radio Prasar Bharati Board Broadcasting Corporation of India for submission of the fair rent certificate who fixed the rent @ Rs.5000/- per month for the entire premises. The Plaintiff without submitting the bill has filed the suit.

5. On the above rival pleadings, the Trial Court framed as many as ten issues. Answering the issue as to the fair rent certificate issued by the PWD, the Trial Court has said that the Plaintiff has failed to prove the fair rent certificate submitted by the Assistant Engineer, PWD (R&B), Rairangpur. The main ground taken here is that for non-examination of the Assistant Engineer, the fair rent certificate submitted by him is not acceptable. The next ground taken is that it having not been shown in evidence that the Plaintiff and the Defendants had sent the request to the Assistant Engineer, PWD for assessment of the fair rent as an arbitrator or a referee, there was no occasion or reason for him to give that fair rent certificate.

Next coming to the other issues touching the quantum of rent as claimed by the Plaintiff, since the suit is based on fair rent certificate of the Assistant Engineer, PWD, Rairangpur which has been held to have not been proved as per the finding given on the earlier issue, those issues have been answered against the Plaintiff. Non service of notice under section 80 of the Code upon the Defendants has also been taken as the ground to dismiss the suit. The suit has also been held as bad for non-joinder of the parties i.e. two other purchasers.

The Plaintiff having suffered from the judgment and decree passed by the Trial Court in dismissing her suit having carried the First Appeal has also been unsuccessful. The First Appellate Court however has found the answers to issue Nos. 5, 6, 7 and 8 in favour of the Plaintiff. It has said that the Plaintiff is entitled to be arrear rent as claimed. Having said so, the First Appellate Court however proceeding to address the other issues i.e. issue Nos. 3 and 7 has non-suited the Plaintiff for non adherence to the provision contained in section 80 of the Code by serving prior notice to the Defendants in filing the suit.

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

“Whether the First Appellate Court is right in dismissing the suit filed by the Appellant (Plaintiff) on the ground of non-adherence to the provision of section 80 of the Code of Civil Procedure?”

7. Mr. R.K. Mohanty, learned Senior Counsel appearing for the Appellant submitted that the view taken by the learned First Appellate Court in non-suited the Plaintiff as no prior notice under section 80 of the Code had been served upon the Defendants is wholly erroneous. According to him, the Plaintiff having filed the suit against the Defendants with their status as admitted for eviction and realization of

arrear rent, the Plaintiff was not under legal obligation to comply with the provision of section 80 of the Code.

In support of the same, he has relied upon the decisions in case of Executive Engineer (Electrical Supply), Bhanjanagar Electrical Division & another vrs. Osha Pradhan & another; (2007) Supplementary (Vol-2) OLR 892 and Kamta Prasad Singh & another vrs. Regional Manager FCI & others; AIR 1974 Patna, Page-376.

8. Learned counsel for the Respondents contended in favour of the ultimate decision of the First Appellate Court in dismissing the suit.

9. It may be stated here that the Defendants have not filed any cross-objection or cross-Appeal in impeaching the finding of the First Appellate Court as to the entitlement of the Plaintiff to the arrear rent as claimed, nor it is argued by them in course of hearing of this Appeal.

It is submitted at the Bar that the Defendants have vacated the suit premises.

10. In the premises as above, the short point here is to answer with regard to compliance of section 80 of the Code by the Plaintiff as the condition precedent for filing of the suit which has been substantial question of law formulated. At this stage, it would be profitable to straightway take note of the decision cited by the learned Senior Counsel for the Appellant in case of Executive Engineer (Electrical Supply), Bhanjanagar Electrical Division & another (Supra). It has been held as under:-

“7. The defendants raised a plea that the suit was not maintainable as proper notice under Section 80, C.P.C. was not served on the defendants before filing of the suit. Learned Trial Judge held that the officers of the SESCO are not public officers within the meaning of Section 2(17), C.P.C.. This

observation is now challenged as incorrect. Section 2(17) of the C.P.C. indicates the persons and authorities, who come within the meaning of “public officers”. Section 80(1) of the C.P.C. says that notice on the State or public officers is to be served before filing of the suit seeking any relief against such State or Public officer. A close reading of section 2(17), C.P.C. along with the interpretation made by the Kerala High Court in the case of V. Padmanabhan Nair v. Kerala State Electricity Board; AIR 1989 Kerala 86, would show that Engineers of Electricity Board are not public officers within the meaning of Section 2(17), C.P.C. That being so, service of notice on the present appellants was not sine qua non before filing of the suit.”

In the other case of Kamta Prasad Singh & another (supra), it has been held as under:-

“4. Section 80 of the Code of Civil Procedure requires service of notice on the Government before instituting a suit against the Government or against a Public officer in respect of any act purported to be done by such public officer in his official capacity. We have, therefore, to see whether the Food Corporation of India is covered by the expression “Government”, we have also to see, whether the expression “Public officer” as used in the Section would cover officers of the Corporation.

5. Section 3 of the Act is as follows:-

“With effect from such date as the Central Government, may by notification in the official Gazettee, specify in this behalf, the Central Government shall establish for the purpose of this Act a Corporation known as the Food Corporation of India.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of that name, sue and be sued.”

It would thus appear that the Corporation is a body corporate and can sue and can be sued in its own name. The fact that the capital of the Corporation may be provided by the Central Government or that the working of the Corporation can be

supervised or directions may be issued by the Government does not, in my view, constitute it a “Government” within the meaning of Section 80 of the code. Although the expression “Government” has not been defined in the Code, it cannot in my view, include a “Corporation” constituted under an Act of the Parliament. The expression “public officer” has been defined in sub-section (1&) of Section 2 of the Code. The only sub-clause, which might have some relevancy is sub-clause (h), which is as follows:-

“(h) Every Officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty”.

Here the officers of the Corporation are not in the service or pay of the Government. They are in the service and pay of the Corporation and are paid out of the funds of the Corporation. In this view of the matter, I do not think that the officers of the Corporation are “public officers” within the meaning of Section 80 of the Code of Civil Procedure. The view of the courts below, therefore, that the plaint could be rejected under the provisions of Order VII Rule 11 of the Code does not appear to be sustainable in law.”

11. Keeping in view the position of law as have been discussed in the aforesaid decisions and applying the same to the facts and circumstances of the case at hand; this Court records the answer on the substantial question of law in favour of the Appellant (Plaintiff). It is thus held that non-compliance of the provision contained in section 80 of the Code is not total to this suit filed by the Plaintiff for realization of arrear rent from Doordarshan Maintenance Centre inducted as a tenant. The finding of the First Appellate Court which has been impugned in this Appeal that the Plaintiff is liable to be non-suited for non-compliance of the provision of section 80 of the Code is hereby set aside.

In that view of the matter, the suit filed by the Plaintiff stands decreed in terms of the finding recorded by the First Appellate Court

in answering the issue Nos. 5 to 8 as to his entitlement to the arrear rent as claimed from the Defendants.

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

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

Basu

