

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.327 OF 2008

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned District Judge, Keonjhar in RFA No.56 of 2007 by dismissing the judgment and decree passed by the learned Civil Judge (Senior Division), Keonjhar in Civil Suit No.05 of 2003.

Rabindra Ku. Ojha

:::

Appellant

-versus-

***Madhusudan Mishra (Since Dead)
through his LRs.***

:::

Respondent.

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

For Appellant

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M/s.S.K. Nayak-2, S.K. Nayak,
B.K. Rout, M.R. Behera,
Miss A. Nayak. Advocates.

For Respondent

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M/s. Soumya Mishra,
B. Mohanty, B. Mohanty,
S.K. Samantray, D. Priyanka,
Advocate.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING:: 14.07.2022, DATE OF JUDGMENT:: 25.07.2022

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 passed by the learned District Judge, Keonjhar in RFA No.56 of 2007.

Being aggrieved by the judgment and decree passed by the learned Civil Judge (Senior Division), Keonjhar in disposing the suit i.e.

Civil Suit No.05 of 2003; with the counter-claim; this Appellant (Defendant) had filed the Appeal under Section-96 of the Code.

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 having died, his legal representatives are on record. The Plaintiff has stated that he is the owner of the suit property, with the house standing thereon. It is stated that the Plaintiff had purchased the suit land from one Jagannath Mishra and had mutated the same in his name. The Defendant had been inducted as tenant over there in the year, 1984. He was paying the rent of Rs.200/- per month. It is stated that from March, 1991 to July, 1992, the Plaintiff did not pay the rent for his occupation as the tenant. So, on 01.07.1992, the Plaintiff issued notice terminating the tenancy. The Defendant then paid the rent and requested the Plaintiff to permit him to continue to possess the suit house as a monthly tenant. The Defendant opened the Cycle repairing shop with effect from August, 1992 and the monthly rent was enhanced to Rs.300/-.

The Defendant continued to pay rent till January, 2000 and then again defaulted. It is also alleged that the Defendant without the consent and permission of the Plaintiff demolished a portion of the house. So, on 02.12.2005, notice was served by the Plaintiff upon the Defendant

terminating the tenancy claiming arrear house rent and damage etc. The Defendant then came forward to say that he had paid a sum of Rs.50,000/- in two instalments on 05.02.1985 and 06.03.1985 to the Plaintiff for the said suit house and premises. He also advanced a claim of acquisition of title over the said property by adverse possession.

4. The Defendant in the written statement questioned the validity of the notice terminating tenancy as not in conformity with the provision of Section-106 of the Transfer of Property Act. It is stated that although the Defendant was remitting the rent every month by money order, the Plaintiff was not receiving the same. In view of the above, it is asserted that the possession of the Defendant over the property in question is adverse and he has perfected title by adverse possession. He too advanced a counter-claim.

5. The Trial Court on the above rival pleadings having framed nine issues, decreed the suit in part by simply directing the Defendant to pay arrear house rent from the year, 2003 to 2005 @ Rs.300/- per month in total amounting to Rs.10,800/-. The counter claim was dismissed.

6. The Defendant having carried the Appeal, the First Appellate Court has passed the following orders:-

“9. Therefore, the order of Court below in so far as it relates to the dismissal of counter claim of Defendant and payment by Defendant to pay Plaintiff arrear house rent from 2003 to 2005 @ Rs.300/- per month amounting to

Rs.10,800/- is confirmed. It is further directed that Defendant shall deliver vacant possession of suit house to Plaintiff within 2 months of this order of this Court failing which the Plaintiff shall be entitled to evict the Defendant therefrom by due process of law.”

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

(a) Whether the learned lower Appellate Court has committed illegality in decreeing the suit for eviction even though the Trial Court refused to grant relief of eviction and decreed the suit in part with regard to payment of rent, against the Defendant and the Defendant filed the Appeal before the lower Appellate Court but no cross-Appeal was filed?

8. I have heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. I have carefully read the judgments passed by the Courts below.

9. It appears from the judgment of the Trial Court that the issue has been very clearly answered in saying that the Plaintiff is the landlord of Defendant in respect of suit shop and premises; the Defendant was a tenant under him and had been so inducted. It has been held that the Defendant has not paid the rent for certain period as stated. Having said all these, despite service of notice by the Plaintiff terminating the tenancy as required under Section-106 of the Transfer of Property Act upon the Defendant-tenant, the Trial Court even though declined to

accept the claim of Defendant that he has acquired title by adverse possession yet without assigning any reason had not passed the order of eviction. In that view of the matter, the Defendant having carried the Appeal in questioning the decree directing him to pay the arrear rent also questioning the dismissal of the counter claim made therein; the First Appellate Court is found to have rightly granted all such reliefs to the Plaintiff as within the four corners of the provision of Order-41, Rule-33 of the Code. The substantial question of law is accordingly answered which leads to confirm the judgment and decree passed by the First Appellate Court.

10. In the result, the Appeal stands dismissed. No order as to cost.

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

Narayan