

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.402 of 2017

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 16.08.2017 and 29.08.2017 respectively passed by the learned 1st Additional District Judge, Khurda in R.F.A. No.23 of 2016 confirming the judgment and decree dated 04.03.2016 and 18.03.2016 respectively passed by the learned Civil Judge, Junior Division, Banpur in Civil Suit No.20 of 2013.

***Sri Gorachand Pattanaik @
Jogesh Pattanaik*** ***Appellant***

-versus-

Sri Surendranath Patra ***Respondent***

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

For Appellant - M/s.Alok Kumar Mohanty and
M.R.Satapathy
(Advocates)

For Respondent - M/s.Samir Ku. Mishra, J.Pradhan,
S. Rout & P.S.Mohanty and
A.K. Dash
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 20.07.2022 : 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 dated 16.08.2017 and 29.08.2017 respectively passed by the learned 1st Additional District Judge, Khurda in R.F.A. No.23 of 2016.

By the same, the Appeal filed by the present Appellant being the aggrieved Defendant, under section 96 of the Code, has been dismissed and thereby the judgment and decree dated 04.03.2016 and 18.03.2016 respectively passed by the learned Civil Judge, Junior Division, Banpur in Civil Suit No.20 of 2013 have been confirmed.

The Respondent, as the Plaintiff, has filed the Suit for eviction of the Appellant (Defendant) from the suit shop and premises for realization of rent etc and that being decreed, the Appellant (Defendant) has been directed to give vacant delivery of possession of the suit shop and premises and pay the arrear rent with interest @ 6% per annum till 30.04.2013 and damage @ Rs.100/- per day with effect from 01.05.2013 till vacation.

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 Trial Court.

3. The Plaintiff's case is that he is the owner of the suit land over which the shop room stands and the Defendant had been inducted therein as a monthly tenant and was running a furniture store being its proprietor. It is stated that the tenancy being renewed with effect from 01.01.2012, the monthly rent was fixed at Rs.1100/-, payable on the last day of each English calendar month and the period was to end on 30.11.2012. An agreement had come into being on 01.01.2012. It is stated that the Defendant paid a sum of Rs.3000/- as the security money and after expiry of the period of tenancy, the Defendant continued to occupy the suit shop room and premises by paying the rent to the Plaintiff as per the terms of the agreement. It is stated that the rent was paid by the Defendant to the Plaintiff till the month of April, 2013. The Defendant then, as promised, did not vacate the suit shop and premises

and rather stopped paying the rent from May, 2013 onwards. So, the Plaintiff terminated the tenancy by issuing notice in consonance with the provision under section 106 of the Transfer of Property Act (for short, 'the T.P. Act') to the Defendant demanding him to vacate the suit shop and premises. The notice was sent by registered post with AD on 22.07.2013 and thereby the Plaintiff demanded vacant possession of the suit shop and premises on expiry of the period allowed therein and pay the rent. It is stated that the Defendant, having acknowledged the receipt, sent a reply on 22.08.2013 in accepting his position/status as tenant till April, 2013. It is stated therein that he is possessing the suit land from 01.05.2013 pursuant to an agreement for sale executed between the Plaintiff and the Defendant whereunder the Defendant had paid a sum of Rs.1,50,000/- as advance consideration out of the agreed consideration of Rs.2,50,000/- for the purpose of sale of the suit shop and premises. It is stated that for that reason, the Defendant is not liable to vacate the suit shop and premises and pay the rent any more.

4. The Defendant, in his written statement, has admitted the ownership of the Plaintiff and his mother over the suit shop and premises as well as the factum of tenancy. It has been specifically pleaded that there was an oral agreement between the Plaintiff and Defendant for continuance of the tenancy in respect of the suit shop and premises from 01.12.2012 till end of April, 2013 on payment of rent. It is stated that on 01.05.2013, the Plaintiff offered the Defendant to purchase the suit shop and premises. The Defendant having agreed the consideration for the said sale was fixed at Rs.2,50,000/-. It is next stated that the Defendant paid a sum of Rs.1,50,000/- towards advance consideration to the Plaintiff in presence of witnesses. The Plaintiff then agreed to execute a registered sale deed in respect of the suit land on or

before 31.12.2013 and it was further agreed that the Defendant would not pay any rent in respect of his occupation of the suit shop and premises and will be only paying the electricity charges.

5. On the above rival pleadings, the Trial Court having framed seven issues, has answered all the crucial issues in favour of the Plaintiff.

It has been held that the Defendant, being a tenant under the Plaintiff, his tenancy has been duly terminated by service of notice demanding vacant possession of the suit shop and premises on expiry of the period prescribed therein. Upon examination of the evidence and their analysis, the case projected by the Defendant that there was an oral agreement for sale between himself and the Plaintiff has been disbelieved and so also the payment of the advance consideration of Rs.1,50,000/- as pleaded. The suit being thus decreed, the Defendant being aggrieved by the same, had filed the Appeal, which too has failed.

6. Learned counsel for the Appellant submitted that on the face of the evidence of P.W.1, the Courts below ought to have held that there was an agreement for sale of the suit shop and premises between the parties and that the Defendant has been occupying the suit shop and premises pursuant to the said agreement for sale on payment of advance consideration. In this connection, he has placed the certified copy of the deposition of P.W.1. He, therefore, submitted that the parties having given go-by to the tenancy and the Defendant having come to occupy the suit shop and premises as the proposed vendee, the Courts below have fallen in grave error in decreeing the suit of the Plaintiff granting him the relief of eviction, arrear rent and damage. He, therefore, contended for admission of this Appeal to answer the above as the substantial question of law.

7. Learned counsel for the Respond, in assisting the Court in the matter of admission of this Appeal, submits that the Courts below, on discussion of the evidence on record, have concurrently held that the case of the Defendant that there was an oral agreement of sale of the suit shop and premises with the Plaintiff has not been proved by the Defendant. Placing the copy of the certified copy of the deposition of P.W.1, he submitted that the Plaintiff has never admitted to have received a sum of Rs.1,50,000/- towards advance consideration out of the agreed consideration of Rs.2,50,000/-. He submitted that the Plaintiff has denied the suggestion thrown to him by the Defendant during cross-examination and he has also denied to have ever entered into any agreement with the Defendant for sale of the suit shop and premises. He further submitted that when there surfaces no such perversity in the findings of the Courts below and when the Courts below have rightly disbelieved the case set-up by the Defendant to have been in possession of the suit property by virtue of an agreement for sale, there surfaces no substantial question of law for being answered in this Appeal

8. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below; as also the certified copy of the deposition of P.W.1 submitted by the learned counsel for the Appellant and Respondent.

9. Admittedly, the Defendant had been inducted at the beginning as a tenant in respect of the suit shop and premises and he made entry over the property as the tenant in respect of said property. He states to have entered into an agreement for sale with the Plaintiff-owner on 01.05.2013. The said agreement is said to be oral and not reduced into writing. It being stated that a sum of Rs.1,50,000/- had been paid from out of the total agreed consideration of Rs.2.50,000/-, there is no

documentary evidence to that effect. It is not stated by the Defendant that the possession of the suit shop and premises, being given back to the Plaintiff-owner prior to the said agreement by the Defendant, by shunning his status as the tenant in respect of that property and abandoning that character; he was again delivered with the possession of the said suit shop and premises after the said agreement for sale came into being. The Defendant being a tenant under the Plaintiff in respect of the suit shop and premises; the nature of his possession of the tenanted premises cannot automatically be changed during continuance of possession as that of a proposed vendee pursuant to the agreement for sale unless the possession is surrendered by him in favour of the landlord and he again delivers the possession of the same to the tenant for his occupation on different assumed status other than as a tenant. In these light, neither there is any pleading in the written statement nor the Defendant has tendered any evidence covering all those aspects. In that view of the matter, the judgments and decrees passed by the First Appellate Court granting the relief of eviction, arrear rent and damage as against the Defendant firmly hold the field and are unassailable.

10. For all the aforesaid discussion and reasons; this Court is not in a position to accept the submission of the learned counsel for the Appellant that there surfaces any substantial question of law for being answered in this Appeal meriting its admission.

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

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