

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 24th day of January, 2014

C.S. 216/ 2010

Sri Balabhadra Mahapatra, aged about 55 years,
S/o- Prananaatha Mahapatra of vill.- Bidharpur, P.O.- Badakul,
P.S.- Balugaon, Dist- Khordha. Plaintiff.

-Versus-

1. State of Orissa represented by Collector, Khordha, At./P.O.- Khordha- 2,
P.S.- Khordha Sadar, Dist- Khordha.
2. Tahasildar, Banpur, At/P.O./P.S.- Banpur, Dist- Khordha.
.....Defendant

Counsel for Plaintiff ... Sri K. N. Roy and associates,
Advocates, Khordha

Counsel for defendants ... G.P. Khordha

.....
Date of Argument – 18.01.2014

Date of Judgment – 24.01.2014
.....

JUDGMENT

The present suit has been preferred for recovery of money of Rs.
1,76,283/- from the defendants.

02. The plaintiffs case is that he is the owner of a building situated over the land under khata No. 310 of mouza Badakul, total measuring Ac. 23 decimals. The said building comprising of living rooms, bath room, latrine etc and bounded by wall (hereinafter call to be the suit premises). The defendant No. 2 on behalf of defendant No. 1 proposed to take the suit premises on monthly rent to function the office of Revenue Inspector, Barkul circle. The plaintiff accepted the proposal and also agreed with the monthly rent as per the assessment of the government in addition to the electricity charges. Thereafter defendant No. 2 occupied the suit premises on 17.07.2000, by opening the R.I. Office there. It is the further case of the plaintiff that as per the terms and conditions he submitted the building estimate before defendant No. 2 for assessment of the monthly rent expecting immediate response from the defendants, but the defendants did not take any sincere efforts for assessment of the rent. However, after long delay the defendant No. 2 issued copy of the letter to the Assistant Engineer Rural Area Sub Division, Tangi for assessment of the rent of the suit premises and subsequently the same was sanctioned vide memo No. 1416 dated 07.05.2004, but the defendants slept over the matter and the plaintiff was deprived of receiving the monthly rent for his house. It is further contended by the plaintiff that the defendant No. 2 vide his letter No. 3958 dated 26.11.2007, expressed his intention to shift the R.I. Office to other place and accordingly the tenancy was terminated on 31.11.2007 and the defendants vacated the suit premises without paying a single pie to the plaintiff. However, after an exhaustive exercise the monthly rent of the suit premises was assessed by the

Opp. Party. As per such assessment Rs. 1,110/- per month is fixed to be paid for the year 2000 to 2002, Rs. 2,000/- per month for the year 2003 to 2005, and Rs. 2,110/- per month for the year 2006 until 30.11.2007. But all such exercise failed to meet the expectation of the plaintiff. On account of non-payment of the aforesaid arrears dues, the plaintiff issues notice to the defendant U/s – 80 of CPC on 09.03.2010, and finding no result, filed the present suit against the defendants. The total outstanding rent was estimated by the plaintiff to be Rs. 1,76,283/- including 10% interest and arrear electricity charges.

03. After institution of the case the defendants appeared and submitted their written statement. The defendants have submitted that even though they have taken the suit premises on rent, they cannot be termed as the tenants of the suit premises. It is stated by the above defendants that the plaintiff as per agreement did not provide the entire suit property to the defendant No. 2 for which the R.I., Barakul faced a lot of trouble to accommodate himself in the said rented house. The defendants again stated that there is no agreement between the plaintiff and defendants regarding payment of Electricity Bill. The defendants at no point of time caused inordinate delay deliberately by depriving the plaintiff to receive his rent amount. The defendants further case is that as per the agreement the plaintiff has to give possession of the entire building to the defendant No. 2, but the plaintiff did not give possession of the latrine, bath room and the well located in the ground floor of the suit building and as such the plaintiff was issued notice on 19.08.2000 to appear before the defendant No. 2. The plaintiff appeared and agreed to hand over

the entire building, but ultimately he failed to comply the same. The defendants while admitting the non-payment of rent to the plaintiff blamed the official formalities. It is again contended by the defendants that they took sincere effort for payment of arrear rent, but due to the laches of the plaintiff the delay was caused. The defendants again averred that there is no cause of action and the plaintiff is demanding excessive amount along with the electricity bill to which he is not entitled. It is lastly contended that the suit is liable to be dismissed.

04. The above rival pleadings give rise of the following issues for a purposeful adjudication.

I S S U E S.

1. Is the suit maintainable?
2. Has the plaintiff any cause of action to file the present suit against the defendants?
3. Is the plaintiff was deprived from receiving monthly rent from the suit premises for utter negligence of the defendants?
4. Is the plaintiff entitled for rent for Rs. 1,76,283/- from the defendant as claimed for?
5. Whether the defendant N0-2 was a monthly tenant under the plaintiff in respect of entire suit properties as per agreement.
6. To what relief the plaintiff is entitled to as prayed in the suit?

05. In order to prove its case the plaintiff examined two witnesses in all, out of which P.W. 1 is Prafulla Dalai is an independent witness and P.W. 2 Balabhadra Mohapatra is the plaintiff himself.

Six documents have also been relied upon by the plaintiff and admitted in the evidence. The notice U/s 80 CPC to the defendants is marked as Ext. 1, the memo No. 2721 dated 30.07.2003 of the office of the Tahasildar, Banpur as Ext. 2, the Memo No. 3958 dated 26.11.2007 is marked as Ext. 3, the memo No. 1316 dated 07.05.2014 as Ext. 4, the memo No. 3307 dated 01.12.2009 as Ext. 5 and the declaration by the plaintiff in a stamp paper dated 28.06.2000 as Ext. 6.

06. On the other hand defendants examined none, nor any document has been relied upon on behalf of the defendants.

FINDINGS.

Issue Nos. 3, 4 & 5.

07. The above three issues are the core issues and inter related to each other and as such these are taken up first for consideration.

Admittedly, the suit premise was taken by the defendant No. 2 on rent for functioning of the R.I. Office of the circle area. Being an admitted fact, the same needs no further discussion. But so far as the question of tenancy is concerned, the plaintiff has to say that the plaintiff being a tenant to his house, he may be considered as a monthly tenant to the suit premises for the sake of adjudication of the matter. The defendants in the written statement only contended that defendant No-2 is not a tenant to the suit premises without offering any reason to the same. At

this stage it may be noted that the defendants No. 2 is sued by his official capacity and defendant No. 1 is the state himself represented by the collector, Khordha. The very admitted case of the plaintiff is that he left the suit premises to the defendant and after taking into the possession the defendants started running the R.I. Office. But, the surprising fact is that there is absolutely no agreement between the parties regarding any terms and condition of such taking over the possession of the suit premises. But, it is true that the defendant Nos. 2 took possession of the suit premises from the year 2000. Not a scrap of paper has been submitted here in the case by the defendants to substantiate that the plaintiff has not handed over the entire suit premises. Since the defendant have not adduced any evidence to substantiate the said fact, lets come to the witness from the side of the plaintiff who have been elaborately cross-examined by the counsel for the defendants. P.W. 1, who is an independent witness only stated that the suit premises was under the possession of defendant No. 2 on rental basis. In the cross-examination he admitted that he has not personally verified any agreement nor he has any idea about the quantum of rent for the said pleading. Plaintiffs evidence in chief is an exact copy of his plaint. Therefore, the same needs no further discussion. In the cross-examination he stated that on 17.07.2000 he handed over the suit premises to the R.I., Barkul on rent. At this stage the counsel for the defendant suggested that since he has not handed over the entire suit premises to the R.I., Barakul till 19.07.2007, the same was intimated to the Tehsildar vide letter No. 2614 dated 19.08.2000. But, the surprising fact is that the said letter is not made available to the

court nor proved by the defendants. Even if the said fact is admitted, the plaintiffs case is that the R.I. Office started functioning over the suit premises on 17.07.2000 and the R.I. Sent his letter to the Tehsildar on 19.08.2000 and no subsequent letter to that effect has been issued. Therefore, it is not right to say that the entire suit property was not handed over to the defendants from 17.07.2000 till 19.07.2007. Therefore, saying that the entire suit premises was not handed over to the defendant appears to be false and averred only for the sake of depending their case. The plaintiff is the landlord to the suit premises and the defendants were the tenants to the suit premises from 17.07.2000 to 31.11.2007.

08. There is nothing in the defendant's case to prove that due to the latches of the plaintiff the arrear amount could not paid to him. It should be remembered that the defendant No. 2 took possession of the suit premises in the the year 2000 and in the mean time 13 years have already been elapsed, but a single pie has not been paid to the plaintiff. In case the defendants are really interested and sincerely to their efforts and commitments, there would not have any accession for the plaintiff to file this case and even after the filing of this case the matter could have been subsided. But, the defendants neither approached the court nor the plaintiff for settlement of dispute. This is one of the worst example how the public servants are discharging their duty to the general public so effectively and purposefully. This is not expected from the defendants, who have been vested with high responsibility.

09. Coming to the question of outstanding amount, the plaintiff has calculated the arrear rent amount to be Rs. 1,50,070/-. He has estimated the interest @ Rs. 10 per cent per annum to be Rs. 16,000/- and electricity charges to be Rs. 10,213/-. The monthly rent was calculated as per the assessment of the state vide its letter No. 3306 dated 01.12.2009. The copy of the said letter was served to the plaintiff vide memo No. 3307 dated 01.12.2009 which is marked as Ext. 5. The said letter is enclosed with a separate sheet mentioning the manner of fixation of rent. This said copy is made available to the court in xerox, but, since the said copy is a part and parcel of Ext. 5 and not disputed by the plaintiff, the same is admitted in the evidence and accepted by the court. The said letter reveals that the assessment is made for occupation of the both first floor and second floor of the suit premises. The rent per month for the year 2000-01 to 20002-03 is assessed @ Rs. 1,110/-, 2003-04 to 2005-06 Rs. 2000/- and 2006-07 to onwards Rs. 2,100/-. Consequent upon the said fixation the arrear amount of rent as claimed by the plaintiff amounting Rs. 1,50,070/- appears to be right.

10. But, so far as the question of assessing the quantum of rent is concern, on account of the above discussion the plaintiff is entitled for the principal outstanding rent amount of Rs. 1,50,070/-. Admitted there was no agreement between the parties regarding interest or payment of electricity bill. The plaintiff claimed interest @ Rs. 10 per cent, but in absence of any agreement it is not possible for the court to allow interest @ Rs. 10 per cent per annum over the

principal outstanding amount, but rather the plaintiff would be entitled for a interest @ Rs. 6 per cent per annum over the arrear amount Rs. 1,50,070/-.

So far as the question of electricity bill is concern in absence of any agreement between the parties and since the plaintiff has not submitted a single scrap of paper to provide support to his claim amount of Rs. 10,213/-, it is not possible for the court to accept the same and as such the plaintiff is not entitle for the outstanding electricity charges of Rs. 10,213/-.

Issue Nos. 1, 2 & 6.

11. So far as the question of maintainability is concern, the same has not been pressed by the defendants and as such the same is considered to be not pressed. But so far a the question of relief is concern in view of the above discussion the plaintiff is entitled for Rs. 1,50,070/- towards his outstanding house rent and interest @ Rs. 6 per cent per annum which would be calculated from the date of filing of the suit till payment is made but the plaintiff is not entitled to receive any electricity charges from the defendants. Hence it is ordered.

O R D E R.

The suit of the plaintiff be and the same is decreed in part on contest, but in the circumstances with cost.

The plaintiff is entitled for Rs. 1,50,070/- towards his outstanding house rent and interest @ Rs. 6 per cent per annum from the defendants, which would be calculated from the date of filing of the suit till payment is made but the plaintiff is not entitle to receive any electricity charges from the defendants

The defendants are hereby directed to pay the outstanding house rent of Rs. 1,50,070/- to the plaintiff along with Rs. 6 per cent interest per annum from the date of filing of the suit till the payment is made, within three months hence. Failing of which, the plaintiff is at liberty to execute the order by the process of this court.

Advocate's fee is at the contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 24th day of January, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1 Prafulla Dalai.
P.W. 2 Balabhadra Mahapatra.

List of witnesses examined on behalf of Defendants. :-

Nil

List of documents admitted on behalf of the Plaintiff :-

Ext.1 Copy of Notice U/s- 80 CPC.
EXT. 1/a Signature of advocate on Ext. 1.
Ext. 1/b & 1/c Two postal receipts.
Ext. 2 Memo No. 2701 dated 30.07.2003 by Tahasildar, Banpur.
Ext. 3 Memo No. 3958 dated 26.11.2007 by Tahasildar, Banpur.

- Ext. 4 Memo No. 1416 dated 07.05.2004 by Tahasildar, Banpur.
Ext. 5 Memo No. 3307 dated 01.12.2009 by Tahasildar, Banpur.
Ext. 6 Declaration dated 28.06.2000 in stamp paper by P.W. 2.
Ext. 6/a Signature of P.W. 2 on Ext. 6.

List of documents admitted on behalf of Defendants :-

Nil

Sr. Civil Judge, Khurda.