

**IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

Sri Abhilash Senapati, B.Com, LL.B  
Civil Judge (Jr. Divn.), Khurda.

Dated the 2<sup>nd</sup> day of July, 2014  
Dated the    day of    , 1935 Sakabda

**C.S. 09/2006**

Sri Sri Grameswar Dev, Bije Golabai Sasan  
represented by Managing Marfatdar  
Sri Satyabadi Rath, S/o: Late Narayan Rath  
Vill: Golabai Sasana, P.O: Golabai,  
P.S: Jankia, Dist: Khurda

..... Plaintiff.

-Versus-

Raghunath Mohapatra,  
S/o: Late Maguni Mahapatra  
Vill: Golabai Sasana, P.O: Golabai,  
P.S: Jankia, Dist: Khurda

..... Defendant.

Sri Padmanav Rath,  
S/o: Late Jagannatha Rath  
Vill: Golabai Sasana, P.O: Golabai,  
P.S: Jankia, Dist: Khurda

..... Proforma Defendant

Counsel for Plaintiffs ... Sri Siba Sundara Pattanaik,  
Advocate

Counsel for Defendants ... Exparte

.....  
Date of Argument – 19.09.2014

Date of Judgment – 02.07.2014  
.....

### JUDGMENT

The plaintiff has filed the suit for a prayer for injuncting defendant No.1 from the suit property, recovery of arrear rent , damages amount to Rs.984 and future damages of Rs.2 per day till the defendant No.1 actually delivers the possession to the plaintiff.

2. The plaintiffs case as is apparent from the pleadings is as follows:

That the plaintiff is the managing *Marfatdar* of the *Diety* Sri Sri Grameswar Bije, Golabai Sasan. There is another Marfatdar who is proforma defendant No.2 who is temporarily absent from the village. The plaintiff being the managing marfatdar his filed the suit in the interest of Sri Sri Grameswar Dev Golabai Sasan. The plaintiff deity is a perpetual minor and is represented by the managing Marfatdar who looks after the affairs of the deity and his daily “Nitis”. The said deity has been endowed with some properties at separate places for smooth maintenance of his “Nitis”. The suit property measures 48 square feet i.e 8'x6' having an asbestos room in plot No.837 under Khata No.53/03.

The defendant is a monthly tenant and pays monthly rent of Rs.50 since 01.03.2003 as the defendant defaulted to pay his monthly rent, hence the plaintiff was forced to ask him to vacate the house after payment of arrear rent. Due to non compliance, notice U/s.106 of T.P Act was issued to the plaintiff and the suit bearing T.S No.40/1990 was filed in the court of Munsiff, Khurda. In the decree the defendant was forced to vacate the house in question. After several persuasion by the defendant to the plaintiff, the former was again inducted as a tenant since 01.03.2003 . The defendant paid rent regularly till May 2004. since 01.06.2004 the defendant has stop paying rent, which means that he is continuously defaulting to paying rent. Ultimately the plaintiff determined the tenancy of the defendant asking him to vacate the said room by September 2005. The defendant was treated as a defaulter since 30.09.2005 and that damages of about Rs.2 thereof charges daily since 01.10.2005. the defendant did not comply to the advocate notice and also did not vacate the said room. The arrear outstanding rent and rents till September 2005 was Rs.984. The cause of action for the suit arose of June 2005 when the defendant did not pay the arrear rent which had become due. Hence the plaintiff has prayed for ejectment of defendant No.1 from the suit property along with recovery of arrear rent and damages amount to Rs.984 and directing the defendant to pay damages at the rate of Rs.2 per day to the defendant No.1 until final delivery of possession.

3. On the other hand the defendant has neither appeared nor has filed the show cause in the suit. Hence the suit is proceeded as exparte.

4. In order to prove its case the plaintiff has examined one witness who is Marfatdar and has exhibited 8 documents. Ext.1 is the Affidavit

evidence of P.W.1. Ext.1/1 to 1/3 : Signatures of P.W.1 on Ext.1.

Ext.2 is the certified copy of Hal ROR of Khata No.85/03 of Mouza- Golabai Sasan. Ext.3 is Office copy of the notice U/s.106 T.P Act. Ext.4 is Postal receipt. Ext.5 is the Postal A.D. Ext.6 is the Rent Receipt. Ext.7 is the Certified copy of judgment of T.S 40/90 passed by Munsiff, Khurda . Ext.8 is the Certified copy of decree in T.S 40/90 by munsiff , Khurda

5. P.W.1 has in his evidence stated that he is the plaintiff in the original suit and is represented as the managing Marfatdar of Sri Sri Gramaswar Dev, Bije, Golabai Sasan. The suit property measures an area of 48 square feet having an Asbestos room in plot No.837. The defendant No.1 is the monthly tenant over the suit property managed by the plaintiff and was inducted as a tenants on monthly rent paid Rs.50 since 01.03.2001 and as the defendant defaulted the plaintiff determined his tenancy asking him to vacate the house after paying arrear rent. But due to non-compliance notice U/s.106 of transfer of property act was issued to the defendant. The plaintiff has filed T.S 40/90 in the court of Munsiff, Khurda and decree was passed in favour of the plaintiff. After several requests made after passing of decree the plaintiff allowed the defendant to leave as tenants since 01.03.2003. the defendant used to pay monthly rent for the said room over the suit property till May 2004. Since 01.06.2004 the defendant has not been paying the rent till date. Since no other alternative the plaintiff determined the tenancy of the defendant asking him to vacate the said room by the end of September 2005. The plaintiff also issued a notice to the defendant U/s.106 of T.P Act to pay the rent and also damages of about Rs.2 per day. In view of

such notices the defendants did not comply the same, and also did not vacate the said house. Hence the plaintiff was compelled to file the above said suit.

6. The plaintiff has filed 8 documents. Ext.1 is the affidavit evidence of P.W.1. Ext.2 is the certified copy of Hal R.O.R of Khata No.85/03 which shows the suit land. Ext.2 clearly shows that the plaintiff i.e Sri Sri Grameswar Deve Bijje, Golabai Sasan has two Marfatdars namely Padmanava Rath and Satyabadi Rath, Ext.3 is the notice sent by the plaintiff to the defendant . Exts. 4&5 are the postal receipt and postal A.D of the said notice. Ext.6 is the rent receipts. Ext.7 is the certified copy of judgment in T.S 40/90 in which Learned Munsiff, Khurda had directed

*“ The plaintiff's suit be decreed exparte against the defendant No.1 with cost. The defendant No.1 to pay a sum of Rs.234/- towards arrear rent and damages till 31.05.1990. The defendant No.1 is further directed to pay the future damages to the plaintiff at Rs.1.00 per day till he restored possession of the suit house to the plaintiff. The defendant No.1 is directed to give vacant possession of the suit property within two months hence failing wiich it would be open for the plaintiff to levy executing for recovery of the same.”*

Ext.8 is the certified copy of decree in T.S 40/90. From careful scrutiny of the evidence filed by the plaintiff and the document of the plaintiff it is quite clear that the plaintiff have got right, title interest over the entire land in question. There being no evidence given by the defendant it is clear that the defendant was made as a tenant in the said

room it measures 8'x6' for which he had to pay rent and he regularly failed to pay the rent. There being no other counter evidence or document to negate the prayer of the plaintiff, I am inclined to pass a decree in favour of the plaintiff. Hence ordered.

### **ORDER**

The suit be and the same is decreed on exparte against the defendant but without costs . The defendant is directed to remove from the said suit property within a period of 3 months failing which the plaintiff is at liberty to take help of the process of court to ensure eviction. The defendant is directed to pay a sum of Rs.984 towards arrear rent and damages to the plaintiff. The defendant No.1 is further directed to pay Rs.2 as future damages per day to the plaintiff till delivery of possession or eviction through court.

(ABHILASH SENAPATI)

CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 2<sup>nd</sup> day of July, 2014.

(ABHILASH SENAPATI)

CIVIL JUDGE(JR.DIV), KHURDA.

**List of witnesses examined on behalf of Plaintiff :-**

P.W.1            Satyabadi Rath

**List of witnesses examined on behalf of Defendants. :-**

None

**List of documents proved on behalf of the Plaintiff :-**

- Ext.1: Affidavit evidence of P.W.1  
Ext.1/1 to 1/3 : Signatures of P.W.1 on Ext.1  
Ext.2: certified copy of Hal ROR of Khata No.85/03 of Mouza- Golabai  
Sasan  
Ext.3: Office copy of the notice U/s.106 T.P Act  
Ext.4: Postal receipt  
Ext.5: Postal A.D  
Ext.6 Rent Receipt  
Ext.7 Certified copy of judgment of T.S 40/90 passed by Munsiff,  
Khurda  
Ext.8 Certified copy of decree in T.S 40/90 by munsiff , Khurda

**List of documents proved on behalf of the Defendant :**

Nil

(ABHILASH SENAPATI)  
CIVIL JUDGE(JR.DIV), KHURDA.