

**HEADING OF DECISION IN CIVIL SUITS
IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE, BHUBANESWAR**

***Present :- Pranab Kumar Routray, LL.M,
1st Addl. Senior Civil Judge,
Bhubaneswar***

C.S. no.06/310 of 2012/2010

Radharani Panigrahi, aged about 60 years,
W/o. Sri Natabar Panigrahi,
Village Badasingha, P.S.Binjhar Pur,
Dist.Jajpur, A/P: Plot No.E.B-260,
Laxmisagar Brit Colony, Stage-II,
P.S.Laxmisagar, Bhubaneswar, Dist.Khurda.

... Plaintiff

-Versus-

1. Sumitra Mohanty, aged about 30 years,
W/o. Ranjit Mohanty, At present Plot No.689,
Behera Sahi, P.S.Nayapalli, Bhubaneswar, Dist.Khurda.

... Defendant

2. Ranjit Mohanty, aged about 35 years,
S/o. Bhagirathi Mohanty, At Old town,
P.O./P.S/Dist.Nayagarh, A/P. Plot no.689,
Behera Sahi, P.S.Nayapalli, Bhubaneswar, Dist.Khurda.

... Proforma Defendant

COUNSEL APPEARED

For Plaintiff : Shri R.R. Mohanty and associates

For Defendants : Shri P.M. Pratihari and associates

Date Of Conclusion Of Argument : **24-03-2015**

Date Of Judgment : **30-03-2015**

J U D G M E N T

This is a suit for eviction, realisation of arrear dues towards house rent and damages with interest and with cost.

2. Case of the plaintiff in brief is that she purchased the suit property from one Rabindranath Mohanty vide Sale Deed no.3575 in the year 1977 from her Stridhan. She surrounded the suit land by boundary wall with a gate on the East, constructed one asbestos room with a verandah to store building material for construction of a building in future but owing to transfer of her husband to Delhi she postponed her such proposal. She planted several trees and connected the asbestos room with electricity and water supply. One day when her husband was working in the orchard, defendant no.1 identifying herself as an employee in a nearby private sector office approached him for accommodation in the asbestos room on rent and insisted to adjust in the room even if there was no toilet and bath facility and assured to take care of the orchard. The plaintiff's husband advised her that his wife being the owner it is desirable to discuss the issue in her presence in their residence at Laxmisagar. On that day evening i.e. on 13-09-2005, defendant no.1 with her husband defendant no.2 approached the plaintiff in her residence and it was orally agreed that defendant shall pay monthly rent of Rs.1000/- escalable @ Rs.100/- in every third September and her tenancy would be counted from 01-09-2005. Accordingly, defendant offered Rs.2000/- of which Rs.1000/- towards rent for

September, 2005 and Rs.1000/- towards security. On the next day i.e. on 14-09-2005 the asbestos house was cleaned and the defendant was inducted in possession of the premises as a tenant with condition that defendant is required to pay electricity charges as per rules. On some occasions she paid house rent through cheque and on some occasions by cash. On some occasions the cheques were also dishonored on the ground of “insufficiency of funds ” and defendant always regretted for the inconvenience caused. She was found regular defaulter in paying rent. She was also not paying electricity bill for which the plaintiff under compulsion was paying the bills but in April, 2008 she informed the defendant that she was disconnecting the power supply.

3. It is further case of the plaintiff that on 30-04-2008 the plaintiff's husband was denied entry into the premises. On 16-05-2008 plaintiff received a notice from the Court of Civil Judge (Junior Division), Bhubaneswar in C.S. no.146/2008 being instituted by defendant no.2 against her for relief of perpetual injunction on the ground that he is a tenant under the original owner of the land late Rabindranath Mohanty since 05-03-2002 and one agreement for sale was also executed between them on 11-03-2004 in respect of the suit land and after death of Rabindranath Mohanty he was tendering rent to his son Sibasish Mohanty. The plaintiff of this suit filed written statement in that suit with counter claim for eviction but such claim exceeding the pecuniary jurisdiction of Court of Civil Judge (Junior Division) was not pressed and hence filed this suit. Describing the defendant as a

trespasser who is denying title of the plaintiff over the suit land, it is averred that defendant is not entitled to any notice under section 106 of T.P. Act but to avoid complicity she called upon her vide notice dtd.10-06-2008 to vacate the premises but such notice was returned undelivered. Hence, she has filed the suit praying for eviction of the defendant from the suit premises on clearing arrear dues towards rent and damages with interest.

4. Both the defendants filed joint written statement challenging the suit on its maintainability on the ground of non-service of notice U/s. 106 of T.P. Act and in view of earlier prayer for similar relief in the counter claim in another suit bearing no.C.S.146/2008 filed before Civil Judge (Junior Division) and in view of pending of appeal of the said suit. It is claimed that there is no cause of action to bring the suit and the suit is barred by law of limitation. Locus standi of the plaintiff to file the present suit is also challenged. It is claimed that the defendant is possessing the suit house by virtue of an oral agreement with the original owner Rabindranath Mohanty dtd.11-03-2004 by which he agreed to transfer the suit land in favour of defendant no.2 and accordingly accepted Rs.80,000/-. Prior to that, they were possessing the suit property by virtue of a lease agreement dtd.05-03-2002 made between said Rabindranath Mohanty and defendant no.2. The defendants are denying the relationship of landlord and tenant between the plaintiff and them. Hence, pleaded for dismissal of the suit.

5. With the aforesaid pleadings on record, the following issues have been settled :

ISSUES

- 1) Whether the suit is maintainable ?
- 2) Whether there is cause of action to bring the suit ?
- 3) Whether defendant no.1 is monthly tenant under the plaintiff in respect of the suit premises ?
- 4) Whether the suit is hit U/s.106 of T.P Act ?
- 5) Whether the plaintiff is entitled to recover arrear house rent from defendant no.1 ?
- 6) Whether the defendants are liable for eviction ?
- 7) Whether the plaintiff is entitled for damage as claimed for ?
- 8) To what other relief (s) the plaintiff is entitled ?

6. The plaintiff has examined herself as P.W.1 and her husband as P.W.2 and brought documents vide Exts.1 to 17. On the other hand, defendant no.1 has been examined as D.W.4 and her husband defendant no.2 is examined as D.W.3, four persons of the suit locality have been examined as D.Ws.1, 2, 5 and 6. Documents vide Exts.A to P marked from the side of defendants. List of documents of both sides is appended at the foot of judgment.

With the aforesaid evidence on record the issues as framed are to be answered.

FINDINGS

Issue no.3

7. This being the principal issue is taken up first for decision. Admittedly there is no written agreement for tenancy. The plaintiff is claiming that defendant no.1 is tenant under her since 01-09-2005 with a monthly rent of Rs.1000/-. On the other hand, defendant no.1 is denying to have been inducted as a tenant under plaintiff and claimed that her husband defendant no.2 was inducted as a tenant under the original owner Rabindranath Mohanty on 05-03-2002 and they have been possessing the suit land on the basis of an oral agreement for sale dtd.11-03-2004 with said Rabindranath Mohanty. It is also claimed that Rs.80,000/- has been accepted by the said Rabindranath Mohanty to transfer the suit land in favour of defendant no.2. It is claimed by the defendants that the plaintiff is to prove whether she is the landlord and defendant no.1 is her tenant in respect of the suit premises and she can not take advantage of weakness in evidence of defendants. The evidence on record is bulky and argument of learned counsel from both sides is also lengthy. So, the evidence and argument will be reflected as per its requirement.

8. At the outset, it is pertinent to reflect that the defendants do not admit the plaintiff as their landlady. The plaintiff claims herself as the owner of the suit premises on the basis of registered sale deed executed in her favour by one Rabindranath Mohanty in the year 1977. It is also very much pertinent to say that both parties are admitting that said

Rabindranath Mohanty was the original owner of the suit land. It is not disputed by the defendants about execution of the registered sale deed by said Rabindranath Mohanty in favour of the plaintiff. There is also no material on record that the said deed has ever been challenged in any court of law. Besides this, the pleadings and evidence clearly says that defendant no.2 had earlier filed a suit bearing no. C.S. 146/2008 in the Court of Civil Judge (Junior Division), Bhubaneswar praying for permanent injunction against this plaintiff and the said suit is dismissed wherein it is held by the said Civil Court that the plaintiff of the present suit is the lawful owner of the suit premises. The certified copy of the plaint of the said suit is marked as Ext.M and certified copy of the judgment is Ext.13. Hence, it is found that there is a declaration of Civil Court that the plaintiff is the lawful owner of the suit premises which is not yet set aside of course appeal against the dismissal of the suit is pending vide RFA No.41/2012 in the Court of District Judge, Khurda. Copy of the application of the appellant is marked as Ext.P.

8(a) It is claimed that the first entry of the defendants to the suit premises is by virtue of a lease agreement between Rabindranath Mohanty and defendant no.2 vide Ext.A executed on 05-03-2002 for a period of eight years. Law requires that lease deed exceeding one year should be a registered one whereas the said document is an unregistered one. Learned counsel for the defendants argued that even if it is an unregistered lease deed, it can be used to ascertain the nature and character of possession showing the existence of

relationship of landlord and tenant between them and on this point he relied on a decision reported in AIR 1984 Orissa and submitted that a lease for a term exceeding one year is compulsorily registrable U/s. 17(1) (d) of the Registration Act read with the definition of ' Lease' contained in Section 2(7) of the said Act but if it is unregistered one the document can be used for collateral purposes U/s.49 to ascertain the nature and character of possession. On the other hand, it is contended by learned counsel for the plaintiff that the document vide Ext.A itself reveals that it is manufactured for the case purpose as the address of Rabindranath Mohanty is written as Village-Bagalpur, P.S.Balipatna, Dist.Khurda but the stamp paper whereon Ext.A is prepared shows that the same has been purchased from stamp vendor of Khurda and khata number of the schedule of property is written as 212 whereas the khata number of the present suit property is 282/1753 of course the area, mouza and plot number are not different. On this point, learned counsel for defendants further submitted that as the khata number described in Ext.A differs reflecting 212 instead of 282, defendant no.2 could not prove his right over the suit property in the Court of Civil Judge in C.S.146/2008 and the said observation is now subjudiced which is under challenge in the appeal. It is further claimed that original land owner Rabindranath Mohanty had entered into an oral agreement for sale of the suit land with defendant no.2 on 11-03-2004 and has received Rs.80,000/- towards advance and to strengthen this claim defendant no.2 has produced and proved the money receipt vide Ext.B. Perusal of this document reveals that

Rabindranath Mohanty has received Rs.80,000/- from his tenant defendant no.2 as hand loan on 11-03-2004 and undertook to repay the said hand loan within one year failing which he would transfer the suit plot in favour of defendant no.2 after taking the balance consideration amount. The said document further reveals that defendant no.2 was staying in the suit premises as a tenant of Rabindranath Mohanty. Be that as it may, the fact remains that the sale deed executed in favour of the plaintiff by Rabindranath Mohanty in the year 1977 is unchallenged and there is declaration of Civil Court that the plaintiff is the lawful owner of the suit premises. Hence, Exts. A and B are inconsequential. This further apart, there is an admission of defendant no.2 as appears from Ext.11, certified copy of his evidence in C.S. 146/2008 wherein he has admitted in para 23 that knowing Rabindranath Mohanty as the Ex-landlord, he made the agreement. This apart, it is claimed by the defendants that after death of Rabindranath Mohanty they are paying rent to his son Sibasish Mohanty and in support of their such stand they have filed money receipts vide Exts.C, D, E and F showing payment of rent on 15-05-2008, 03-02-2008, 22-11-2007, 27-08-2007 to Sibasish Mohanty but have not examined him to whom they say their landlord and are paying rent to prove the said money receipts or Ext.B. Had he been examined some light would have been thrown to ascertain about genuineness of Exts.C to F and also about execution of Ext.B.

9. There is no dispute that the defendants are now in possession of suit premises. They are claiming that they are possessing the suit premises on the basis of agreement

executed with original owner Rabindranath Mohanty. But it is already held that the agreement and the money receipt vide Exts.A and B has no value in view of alienation of the suit premises in favour of the plaintiff by Rabindranath Mohanty in the year 1977 and therefore Rabindranath Mohanty had no authority to induct the defendants as his tenants.

10. Now question arises whether from the materials available on record the plaintiff is able to establish that she is the landlord of defendant no.1. It is the oral evidence of the plaintiff and her husband that they inducted defendant no.1 as tenant in September 2005. Defendant no.1 was paying rent of Rs.1000/- per month in cash and sometimes in cheques and on some occasions the cheques were bounced on the ground of insufficiency of funds. Plaintiff has tried to prove payment of rent by defendant no.1 by cheque through Ext.7, their bank statement for the period from 16-11-2005 to 16-11-2006. It is submitted that Ext.7 reveals that on 24-11-2005, 11-02-2006, 25-03-2006, 25-04-2006, 02-06-2006, 11-07-2006, 15-11-2006 cheques of Syndicate Bank were deposited but the cheques of dtd. 02-06-2006, 11-07-2006 and 15-11-2006 were returned and it is claimed that the said cheques were issued by defendant no.1 whereas defendant no.1 denied to have issued any cheque. It is argued from the side of defendant that the statement of account vide Ext.7 does not reveal that the cheques were issued by defendant no.1 and that too towards payment of house rent. Learned counsel for the plaintiff invited attention of this Court to the admission made by defendant no.2 i.e. husband of defendant no.1 in C.S.146/2008 wherein he has admitted that

his wife has an account in Syndicate Bank and denied to the suggestion that the cheque numbers 565170 of Rs.1000/- dtd.02-06-2006, 951309 of Rs.2000/- dtd.11-07-2006 and 951314 for Rs.2000/- of dtd.15-11-2006 were bounced which were paid by his wife. This admission shows that defendant no.1 has bank account in Syndicate Bank. The aforesaid cheque numbers has been reflected in Ext.7 and admittedly those cheques were issued by Syndicate Bank and Ext.7 further reveals that the said cheques were returned and some extra amount has been deducted on each occasion from the joint account of plaintiff and her husband. So question comes why these two old persons i.e. the plaintiff and her husband would depose that defendant no.1 has been inducted as tenant and was issuing cheques towards payment of house rent and the cheques of Syndicate Bank which were received and encashed in their account and some of which were returned unpaid belonged to defendant no.1 and at the same time there is admission of defendant no.2 that he was giving rent of the house to his landlord Rabindranath Mohanty sometimes in cheque and sometimes in cash. This very admission of defendant no.2 in the earlier suit shows that house rent was also paid by cheque and obviously the house is the suit house. This apart, the conduct and admission of defendant no.2 is to be noticed. He himself has admitted in his evidence in C.S.146/2008 vide Ext.11 that he is a money lender who used to lend money to his close friends having no licence and further admitted that knowing Rabindranath Mohanty as Ex-landlord, he entered into an agreement with him. He has also admitted that husband of

plaintiff is friend of Rabindranath Mohanty is also to be taken into consideration. Hence, to conclude, when there is no written agreement in the form of lease deed and when defendants are not admitting the plaintiff as land lady it is to be seen whose evidence seems to be more probable. The defendants claim they are in possession of the suit premises as tenants of Rabindra Nath Mohanty from 2002. Had they occupied the suit premises prior to purchase by the plaintiff, the case would have been otherwise. Therefore, considering the evidence of plaintiff, admission of defendant no.2 in the earlier suit, considering the fact that plaintiff is the lawful owner of the suit premises since 1977 and that Exts.A and B are not lawful documents and that Exts.C to F are manufactured for the case purpose and that non-examination of Sibasish Mohanty to whom the defendants are claiming their landlord, it is seen that the case of plaintiff is more probable. Hence, the irresistible conclusion drawn is that the plaintiff is the landlady of defendants.

Issue no.4

11. This issue relates to notice U/s.106 of Transfer of Property Act for termination of tenancy. It is the pleadings and evidence from the side of plaintiff that notice was issued to defendant no.1 through registered post but the same has been returned unserved with remark “ Addressee not found”. Learned counsel for the defendant vehemently argued that Section 106 of the T.P. Act envisages for ascertaining the duration of lease in case of absence of written contract and the manner of termination of such tenancy but not to draw any inference that merely because notice has been sent, there is

presumption of landlord and tenant relationship. It is further argued that notice U/s.106 the T.P. Act must be served on the tenant but in the present case notice has not been served. On the other hand, learned counsel for plaintiff relying on a decision reported in AIR 1989 SC 630 contended that Hon'ble Apex Court has held that once the landlord post registered letter containing the tenant's correct address, he has no control over it and then it is presumed to have been delivered to the addressee and the responsibility of the postman cannot therefore equated to those of a process server entrusted with the responsibilities of serving the summon of a Court under Order 5 of C.P.C. Another case reported in AIR 1990 SC 2156 may be pressed into service wherein Hon'ble Apex Court has held that the service is complete when the notice is sent by post. In another case reported in AIR 2006 NOC 356 (Delhi) it is held that where the notice for termination of tenancy is sent by the landlord to the tenant at his residential address in accordance with law, presumption arises that notice has been duly served on the tenant. In the case at hand, it is the evidence of P.Ws.1 and 2 that notice was sent to defendant no.1 in her address but the same has been returned unserved on the remark "Addressee not found". The said notice alongwith the postal AD card is available on record vide Ext.9. Office copy of the notice is marked as Ext.8. The notice reveals that it was sent on 10-06-2008 determining the tenancy from 30-06-2008. So, 15 days of notice was given to the tenant. Hence, it is clear that notice was sent to defendant no.1 in accordance with law and in view of the decisions cited supra, it is held that the provision of

Section 106 of T.P. Act has been complied. This issued is answered accordingly.

Issue nos.5 and 7

12. These two issues relate to recovery of arrear rent and entitlement of the plaintiff for damage. It is claimed by the plaintiff that there is arrear rent of Rs.16,200/- for the period from September 2005 to May 2008. Admittedly there is no documentary evidence to show that rent was paid for how many months during the said period. It is the admission of the defendant no.1 that defendant no.2 was paying Rs.1,000/- per month towards rent to the original landlord Rabindranath Mohanty and of course for the suit house. When the defendant is not admitting the plaintiff as her landlord and also question on her title, no further discussion is required except to believe the claim of the plaintiff about non-payment of arrear house rent by the defendant. Hence, the plaintiff is entitled for the arrear house rent of Rs.16,200/- as claimed by her and certainly with interest @ 6% per annum.

13. The plaintiff has claimed damage @ Rs.100/- per dien. It is already held under issue no.3 that the plaintiff is landlord of defendant no.1. She has sent notice U/s.106 of T.P. Act on dtd.10-06-2008 to defendant no.1 intimating defendant no.1 that the tenancy to be terminated by 30-06-2008. It is already held that notice is sufficient. Therefore, the tenancy has been terminated since 30-06-2008. House rent was fixed @ Rs.1000/- per month. The suit premises is located at a prime palace of the city. Hence, damage @ Rs.100/- per dien will be

just and proper. Hence, plaintiff is entitled for the damage at the above rate from 1st July, 2008 till its full realisation. These issues are answered accordingly.

Issue no.6

14. This issue is to decide whether the defendants are liable for eviction. It is already held under issue no.3 that defendants are monthly tenants of the plaintiff. Tenancy has been terminated since 30-06-2006. On this point, learned counsel for the defendants relied on a decision reported in 2009(4) Civil Court cases 475 SC that even if it is proved that the plaintiff is landlady of defendant no.1 then also the defendant is not liable for eviction rather the landlady to seek possession on the basis of title by treating the tenant as trespasser and therefore she is to amend the plaint to take plea of trespasser. But in the present case the plaintiff claiming herself as landlady is praying for eviction. On this point, it is further submitted that had it been a case of eviction then the defendant would have raised some points on the plea of adverse possession or on some other points but could not plead the same as because the case is filed on the basis of landlord-tenant relationship. Ratio of the aforesaid decision is reflected below for proper appreciation of the present case.

Court Fees Act, 1870, S.7(v), Civil Procedure Code, 1908, O.7.R.7 – Landlord purchasing property in possession of tenant – Eviction petition – Failure to prove relationship of landlord and tenant – In absence of proof of relationship of landlord and tenant landlord is not entitled to a decree for possession – However, landlord is entitled to seek possession on basis of title by treating the tenant as trespasser – Landlord to amend plaint to take plea of trespasser – An issue to that effect has to be framed – Landlord has to pay ad valorem Court fee – Tenant is at liberty to take plea of adverse possession.

Court Fees Act, 1870, S.7(v) – Trespasser – Suit for possession – Court fee is to be paid in terms of S.7(v) of the Act which is to be according to the value of the subject matter of suit.

Transfer of Property Act, 1882, S.105 – Failure to prove relationship of landlord and tenant – In the event landlord proves his title he can get a decree of possession on the basis of title – Defendant can raise a contention that he had acquired an indefeasible title by adverse possession.

Transfer of Property Act, 1882, S.106 – Tenancy governed by Rent Act – After termination of tenancy tenant does not become a trespasser – He becomes statutory tenant.

13(a) With utmost regard to the decision cited supra, it is found that in the said case the suit premises is a shop and the appellant has entered into possession of the suit premises in the year 1970 pursuant to or in furtherance of an agreement for sale entered into on 18th May, 1970 between him and the original owner. Respondent purchased the suit premises in 1980. In 1990 the respondent filed a suit for eviction and for mesne profit claiming to be the owners and landlords. In the present case there is no dispute that Rabindranath Mohanty was the original owner. There is also no dispute that the plaintiff has purchased the suit premises from said Rabindranath Mohanty in 1977. The dispute is that the plaintiff is claiming that defendant no.1 has been inducted by her as a tenant in 2005 whereas defendant no.1 is claiming that she is possessing the suit premises on the basis of lease agreement with Rabindranath Mohanty made in the year 2002 and thereafter on the basis of an oral agreement for sale between the said Rabindranath Mohanty and her husband defendant no.2 in 2004. It is already held that Rabindranath Mohanty had no interest over the suit premises by the year 2002 and the lease agreement

or oral agreement to sale is of no consequence. This is a case which is different from the facts of the case cited by learned counsel for the defendants. That apart, it is already proved that the plaintiff is the landlord of defendant no.1 and the tenancy has been terminated since 30-06-2008 and the plaintiff is claiming eviction of the defendants on the basis of landlord-tenant relationship. It is pertinent to reflect here that when defendants are admitting that their possession over the suit premises is permissive they are certainly debarred to take the plea of adverse possession. In view of the findings that plaintiff is landlady of defendant no.1 and she is the owner of the suit premises and that term of tenancy has been terminated since 30-06-2008, the plaintiff is entitled for possession of the suit premises and the defendants are liable for eviction. Accordingly, this issue is answered in affirmative and in favour of the plaintiff.

Issue nos.1 and 2

15. It is claimed by the defendants that the suit is not maintainable mainly on the ground that the plaintiff is not their landlord and that similar relief has also been prayed by the present plaintiff in Civil Suit no.146/2008 though in the form of counter claim and the same has been dismissed and that appeal against the dismissal of the suit for permanent injunction filed by defendant no.2 is pending before the Court of District Judge, Khurda.

16. It is already held that the plaintiff is landlord of defendant no.1 and therefore no further discussion is necessary on this point.

16(a) So far as maintainability of the suit in view of dismissal of the counter claim in C.S.146/2008 is concerned, it is claimed by the plaintiff that she has not pressed the counter claim in the said suit before settlement of issues on the ground that the counter claim was exceeding pecuniary jurisdiction of Civil Judge (Junior Division) and hence, filed this suit. She has produced the order sheets of C.S.146/2008 as Ext.16 which reveals that the case was posted to 08-10-2009 for hearing on the office note on counter claim and on that day she filed memo not to press the counter claim which was accepted by the Court and accordingly the counter claim was rejected as not pressed. So it is clear that counter claim was not admitted by the Court and the plaintiff being defendant in the said case has taken the appropriate steps before it was admitted. There is no dispute that the counter claim exceeded the pecuniary jurisdiction of the Court of Civil Judge (Junior Division). Had it been a rejection U/O 9 of C.P.C, then the case would have been different. Further, Order 23 Rule 1 of C.P.C will not be a bar to bring this suit for the dismissal of the said counter claim.

16(b) So far as the third point raised as regards to maintainability of the suit, it is evident that appeal is pending against the judgment passed in C.S.146/2008 but that case was filed by this defendant no.2 for permanent injunction and this case is filed by the plaintiff with relief of recovery of house rent, damage and eviction. This case is based on landlord-tenant relationship. Issues in both the cases are different. Hence, pending of an appeal against the judgment passed in a suit for permanent injunction is certainly not a bar to file a suit by the

landlord claiming arrear house rent and for eviction of the tenant from the suit premises. Hence, the points raised by learned counsel for the defendants is not sustainable. In view of this and in view of findings under issue nos.3 & 4 the suit so filed is maintainable and there is cause of action to bring the suit. These issues are answered accordingly.

Issue no.8

17. Except the reliefs claimed by the plaintiff, she is not entitled for any other relief.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against the defendants with cost. It is hereby declared that defendant no.1 is monthly tenant at will under the plaintiff in respect of the suit premises. Defendant nos.1 and 2 are liable for eviction from the suit premises. The plaintiff is entitled to recover arrear house rent amounting to Rs.16,200/- for the period from September, 2005 to May, 2008 with interest @ 6% per annum thereon and damage @ Rs.100/- per dien since 01-07-2008 till the defendants vacate the suit premises. Defendant no.1 is further directed to deliver vacant possession of the suit premises on payment of aforesaid arrear house rent for the said period with interest and aforesaid damage within two months hence failing which the plaintiff is at liberty to get the decree executed through the process of Court.

***1st. Addl. Senior Civil Judge,
Bhubaneswar.***

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the 30th day of March , 2015 under my seal and signature.

***1st. Addl. Senior Civil Judge,
Bhubaneswar.***

List of Witnesses examined for the Plaintiff:

P.W.1: Smt. Radharani Panigrahi

P.W.2: Sri Natabara Panigrahi

List of Witnesses examined for the Defendants :

D.W.1: Sri Sarbeswar Behera

D.W.2: Tofan Kumar Behera

D.W.3: Ranjit Mohanty

D.W.4: Sumitra Mohanty

D.W.5: Arjun Kumar Behera

D.W.6: Arun Kumar Mohapatra

List of Documents marked as Exhibits for the Plaintiff:

Ext.1: Registered Sale Deed no.3575 dtd.24-06-1977;

Ext.1/a: Signature of plaintiff on Ext.1 ;

Ext.1/b: Signature of Rabindra Nath Mohanty ;

Ext.2: Certified copy of not final R.O.R of Khata no.1753
of Mouza Nayapalli ;

Exts.3 and 3/a: Rent receipts ;

Ext.4: Sanction letter/order of CESCO ;

Ext.5: Sanction letter/order of Executive Engineer, P.H.D ;

Ext.6: Paper slip containing writing of defendant ;

Ext.7: Bank statement ;

Ext.8: Legal notice dtd.10-06-2008 ;

Ext.8/a: Postal receipt ;

Ext.9: Returned envelope containing legal notice alongwith
A.D card ;

Ext.10: Certified copy of deposition of Natabar Panigrahi
in C.S.146/2008 of Court of Civil Judge
(Junior Division), Bhubaneswar ;

- Ext.11: Certified copy of deposition of Ranjit Mohanty in C.S.146/2008 of the Court of Civil Judge (Junior Division), Bhubaneswar ;
- Ext.12: Certified copy of lease agreement ;
- Ext.13: Certified copy of judgment passed in C.S.146/2008 of the Court of Civil Judge (Junior Division), Bhubaneswar ;
- Ext.14: Certified copy of not Final R.O.R of Khata no.1753 of Mouza Nayapalli ;
- Ext.15: Certified copy of R.O.R of Khata no.282 of Mouza Nayapalli ;
- Ext.16: Certified copy of order sheet in C.S.146/2008 of the Court of Civil Judge (Junior Division), Bhubaneswar ;
- Ext.17: Certified copy of petition in Exn.43/2011 of the Court of Civil Judge (Junior Division), Bhubaneswar dtd.18-05-2013 ;

List of Documents marked as Exhibits for the Defendants:

- Ext.A: Lease Agreement executed by Rabindranath Mohanty & Ranjit Mohanty ;
- Ext.A/1: Signature of Rabindranath Mohanty on Ext.A ;
- Ext.A/2: Signature of Rabindranath Mohanty on Ext.A ;
- Ext.A/3: Signature of Anil Mohapatra on Ext.A ;
- Ext.A/4: Signature of Rashmi Ranjan Baliarsingh on Ext.A ;
- Ext.A/5: Signature of D.W.6 on Ext.A ;
- Ext.B: Money receipt ;
- Ext.B/1: Signature of Rabindranath Mohanty of Ext.B ;
- Ext.B/2: Signature of Arjun Ku. Behera on Ext.B ;
- Ext.B/3: Signature of Arijit Pattnaik on Ext.B ;
- Exts.C to F: Money receipts towards house rent ;
- Exts.C/1 to F/1: Signature of Sibasish Mohanty on Exts.C to F;
- Ext.G: Certified copy of Power of Attorney vide General Power of Attorney no.7939 dtd.26-07-2006 ;
- Ext.H: Certified copy of Registered Sale Deed vide no.8417 dtd.08-08-2006 ;
- Ext.J: Certified copy of order dtd.08-10-2009 in C.S.146/2008 of the Court of Civil Judge (Junior Division), Bhubaneswar ;

Ext.K: Certified copy of written statement and counter claim
in C.S.146/2008 of the Court of Civil Judge
(Junior Division), Bhubaneswar

Ext.L : Certified copy of memo filed on 08-10-2009
in C.S.146/2008 of the Court of Civil Judge
(Junior Division), Bhubaneswar

Ext.M: Certified copy of plaint copy in C.S.146/2008 of the
Court of Civil Judge (Junior Division), Bhubaneswar ;

Ext.N: Certified copy of order dtd.02-03-2015 of the Court of
A.D.J, Bhubaneswar in R.F.A no.41/2012;

Ext.P: Certified copy of Appeal memo in R.F.A 41/2012

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

