

IN THE COURT OF 1ST ADDL.DISTRICT JUDGE-CUM-
SPECIAL JUDGE,VIGILANCE, BHUBANESWAR.

Dist. Khurda.

Present:

Shri N. Sahu, LL.B.,
1st Addl.District Judge-cum-
Special Judge,(Vig.),Bhubaneswar.

F.A.O.No.15/131 of 2012/2011

{Arising out of order dt.4.11.2011 passed in
I.A.No.501/2011 and further arising out of
C.S.No.987/2011 by the learned Civil Judge,
(Sr.Divn.),Bhubaneswar}

Dated,Bhubaneswar the 1st day of November, 2013

Sri Krushna Chandra Routaray, aged about 32 years,
Son of Late Sanatan Routray, At-Totapada, PS-Khurda,
District-Khurda, at present-Plot No.1052(B), Nayapalli,
PS-Nayapalli,Bhubaneswar, District-Khurda.

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Appellant.

-Vrs-

1. Sri Sadananda Mahapatra, aged about 67 years,
Son of Late Madhusudan Mahapatra, At/PO-Kasarada,
District-Katak, At present Plot No.158, Nayapalli,
PS-Nayapalli, Bhubaneswar, District-Khurda.

2. Kanakalata Mohapatra, aged about 65 years,
Wife of Sadananda Mohapatra, At/PO-Kasarada,
District-Katak, At present Plot No.158, Nayapalli,
PS-Nayapalli, Bhubaneswar, District-Khurda.

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Respondents.

Counsel for appellant – Sri R.C.Sarangi & Associates.

Counsel for respondents - Sri P.R.Sahoo & Associates.

Date of hearing of argument : 22.10.2013.

Date of delivery of judgment : 01.11.2013.

J U D G M E N T

1. This appeal is directed against the order, dt.4.11.2011 passed by the learned Civil Judge(S.D.), Bhubaneswar in I.A.No.501/2011 arising out C.S.No.987/2011 dismissing the petition of the appellant filed u/o.39, Rules 1 and 2 read with Section 151 CPC.

2. The appellant had filed a suit bearing C.S.No.987/2011 in the Court of learned Civil Judge(S.D.), Bhubaneswar against the respondents praying for permanent injunction restraining them from entering into the suit premises and to take any steps from forcibly evicting the petitioner and his family members including the girl students until his eviction in due course of law. His case is that the O.P.No.1 inducted the petitioner as a tenant in respect of the case building on monthly rent of Rs.35,000/- and the period of tenancy was 11 months commencing from 1.10.2010 to 31.8.2011. The petitioner has further stated that the O.Ps. were aware of the fact that the first floor of the building would be utilized for running a girls' hostel. On 15.2.2011 the O.P.No.1 with ill motive entered into the ground floor of the suit premises, misbehaved a girl and the O.Ps. are creating serious disturbance in the suit premises. So, he filed C.S.No.987/2011 and I.A.No.501/2011 for injunction.

On the other hand, the O.Ps. filed objection challenging the case as not maintainable. Their case is that the premises was let out for accommodation of the petitioner but not to sub-let the same to any girl student as sub-tenant. The petitioner started immoral activities with the said girls. Being intimated by the neighbours about this fact the O.P.No.1 on 20.4.2011 wrote a letter asking the petitioner to vacate the suit premises and

thereafter the petitioner filed the suit for injunction as well as the application for interim injunction on some false pleas. On these grounds the O.Ps. prayed for dismissal of the application for interim injunction.

3. The learned lower court after hearing the parties, dismissed the interim application holding that the petitioner has no prima facie case as he has violated the terms of the agreement and the balance of convenience tilts in favour of the O.Ps. and in case of injunction, the O.Ps. would suffer irreparable loss. The appellant has challenged the said order stating that it is illegal, arbitrary and against law.

4. Heard the parties. Perused the materials on record. Clause 4 of the agreement dt.22.9.2010 entered into between the petitioner and the O.P.No.1 in respect of the suit premises shows that the tenant cannot sub-let the said building to anybody else. Clause-6 of the agreement provides to terminate the agreement by giving two months prior notice in writing by each other. In the notice, dt.20.4.2011 the O.P.No.1 had asked the petitioner to vacate the suit premises w.e.f. 1.5.2011, inter alia asking him to hand over the management of the hostel to his wife (O.P.No.2). The learned counsel for the O.P.No.1 submitted that in the meantime, O.P.No.1 has filed a suit bearing C.S.No.2104/2011 before the Civil Judge(S.D.),Bhubaneswar for eviction of the petitioner. Whether the O.Ps. were aware of the fact that the first floor of the building would be utilized for a girls' hostel is a question of fact which cannot be conclusively decided at this stage. Similarly, the rights and liabilities of the parties can be conclusively decided during hearing of the suit. But, the fact that there was a tenancy agreement and the fact that the

petitioner is in possession of a portion of the case premises, is admitted which make out a prima facie case in favour of the petitioner.

5. So far the other ingredients, such as, balance of convenience and irreparable loss, it is needless to say that the O.P.No.1 being the landlord, has every right to evict the petitioner in due course of law, but he has no right to forcibly evict the petitioner who is in possession. Moreover, in case of forcible eviction during pendency of the main suit bearing C.S.No.987/2011, the same would be infructuous and it may give rise to further legal complication and so also, the petitioner would be put to irreparable loss. Hence, it is ordered.

ORDER

The appeal is allowed on contest without cost. The impugned order, dt.4.11.2011 of the learned Civil Judge(S.D.), Bhubaneswar passed in I.A.No.501/2011 is set aside. The O.Ps. are restrained from creating any overt act in respect of the suit property so as to forcibly evict the petitioner and his family members and the girl students from the same during pendency of the main suit bearing C.S.No.987/2011.

1st Addl.Dist.Judge-cum-
Special Judge(Vig.),Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open court on this the 1st day of November,2013 under my signature and seal of the court.

1st Addl.Dist.Judge-cum-
Special Judge(Vig.),Bhubaneswar.