

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.**

Present:

**Dr. D.P. Choudhury,**  
District Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 19<sup>th</sup> Jan. '15.*

**R.F.A. No.38 of 2013.**

[Arising out of the judgment dated 30.04.2013 & decree dated 10.05.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.293 of 2012.]

Antaryamy Senapati, aged about 36 years, S/o. Harihar Senapati, Plot No.585, Pallaspalli, P.S. - Airfield, Bhubaneswar, Dist. - Khurda.

... **Appellant.**

***-V e r s u s-***

Manoranjan Das, aged about 24 years, S/o. Hrushikesh Das, Plot No.585, Pallaspalli, P.S. - Airfield, Bhubaneswar, Dist. - Khurda.

... **Respondent.**

**Counsel :**

For Appellant -- Shri A.K. Mohanty & Associates.

For Respondent -- Shri S.N. Das & Associates.

Date of arguments : 02.01.2015.

Date of judgment : 19.01.2015.

**J U D G M E N T**

This appeal is directed against the judgment dated 30.04.2013 & decree dated 10.05.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.293 of 2012, dismissing the suit of the plaintiff. Appellant was the plaintiff and respondent was the defendant before the Court below.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

**FACTS :**

3. The case of the plaintiff, succinctly stated, is that there are six rooms over suit land appertaining to plot No.585 in mouza Bhimpur. He is in occupation of two rooms and balance four rooms have been let out by him to different tenants. The defendant approached the plaintiff to take the suit premise consisting of one room, out of the said four rooms, and induct him as a tenant. Accordingly, the defendant was inducted as a monthly tenant under the plaintiff with agreement to pay Rs.1,000/- per month as rent. On 11.02.2011, an Agreement was executed between the plaintiff and the defendant. It is alleged, inter alia, that rent was paid till July, 2011; but since August, 2011, no rent was paid. Then, the plaintiff issued notice to the defendant through his Advocate to vacate the suit premise within fifteen days from the date of

receipt of such notice and postal notice was duly served. In spite of receipt of notice, the defendant did not vacate the suit premise within the stipulated period. As such, the tenancy of the defendant was determined and his further stay in the suit premise becomes illegal. Therefore, the plaintiff claims Rs.2,000/- per month as damage till vacation of the suit premise by the defendant. On the other hand, the plaintiff filed the suit for eviction of the defendant from the suit premise, to pass a decree for recovery of arrear rent @ Rs.1,000/- per month from August, 2011 till June, 2012 and after that @ Rs.2,000/- per month during pendency of the suit till vacant possession is delivered by the defendant. Hence the suit.

4. The defendant filed Written Statement stating that the suit is not maintainable in the eye of law, there is no cause of action against the defendant to file the suit and the plaintiff has no locus standi to file the suit. The defendant disputes the suit being hit under Order 7, Rule 3 of the C.P.C. as there was no proper description of the suit property. He denies the relationship of landlord and tenant between him and the plaintiff. The defendant also refutes the fact that the plaintiff being the landlord in respect of suit plot No.585 has let out four rooms to different persons. According to the defendant, since he was not the tenant under the plaintiff, the question of

execution of Agreement does not arise. The plaintiff being a Moharior in the Court must have prepared stamp papers and utilised the same as lease Agreement and that the defendant has not signed any lease Agreement. He denies to have received any notice from the Advocate. Rather, it is pleaded by the defendant that the plaintiff has got very rude attitude and behaviour towards the plaintiff and Basti people for which they have drawn the attention of the D.C.P. It is stated by the defendant that he was never a tenant under the plaintiff and, as such, the plaintiff has no cause of action to file the suit. That apart, the suit is undervalued. So, it is prayed to dismiss the suit.

5. On the pleadings of both parties, the following issues have been settled by the learned Court below :

- (i) Whether the suit is maintainable in the present form ?
- (ii) Whether the plaintiff has cause of action to file this suit ?
- (iii) Whether any relationship of landlord and tenant exists between the plaintiff and the defendant in respect of the suit land ?
- (iv) Whether the suit is hit under the provisions of Order 7 Rule 3 of the C.P.C. ?
- (v) Is the plaintiff entitled to a decree for recovery of arrear rent at the rate of Rs.1,000/- per month from August, 2011 till June, 2012 and damage at the rate of Rs.2,000/- per month during pendency of

the suit ?

(vi) To what other relief(s), the parties are entitled ?

6. During trial, plaintiff examined two witnesses, including himself, whereas one witness was examined from the side of the defendant, who is none other than the defendant himself. The learned trial Court, after considering the evidence of witnesses examined by plaintiff and defendant and the documentary evidence produced, took up issue Nos.(iii), (iv) & (v) together and answered the same against the plaintiff. Similarly, the learned Court below took up issue Nos.(i), (ii) & (vi) at a time and decided the same against the plaintiff. Finally, the learned lower Court dismissed the suit on contest against the defendant.

**CONTENTIONS :**

7. Learned counsel appearing for the appellant submitted that the impugned judgment dated 30.04.2013 and decree dated 10.05.2013 passed by the learned trial Court are wrong, illegal and against the weight of evidence on record. The learned Court below has erred in law by discussing section 6(1) of the Specific Relief Act instead of directing the judgment for extending the relief of ejection of tenancy, which is a prerequisite condition to give a finding on landlord and tenant relationship and compliance of the provisions under section

106 of the Transfer of Property Act. The learned trial Court has erred in law by referring to the provisions of the Specific Relief Act and citing the decision of the Hon'ble High Court, which has no application to the facts and circumstances of the present case. The learned Court below has erred in law by not appreciating the Lease Deed vide Ext.1 in proper perspective. The learned Court below has not considered the evidence on record and held that the suit is hit under Order 7, Rule 3 of the C.P.C. He further submitted that the learned trial Court has failed to appreciate the evidence of plaintiff's witnesses in a proper manner so as to find out the landlord and tenancy relationship and the notice issued to determine the tenancy. The learned Court below has also committed grave error by not deciding the issue with regard to arrear rent and damage. It was further submitted by him that he filed a petition under Order 41, Rule 27 of the C.P.C. to admit the documents filed during pendency of the appeal as those documents are required to be considered in view of cross-examination made to P.W.1 and the said documents are necessary in deciding the present appeal. Thus, he submitted to allow the appeal and set aside the impugned judgment and decree.

8. On the other hand, learned counsel appearing for the respondent submitted that the suit land is a land belonging

to the State Government and the plaintiff has no manner of right, title and interest thereon for which the learned trial Court has rightly discussed the provisions under section 6 of the Specific Relief Act and correctly decided that Ext.1 does not spell out the suit schedule property. He further submitted that the learned trial Court is correct in observing that the plaintiff has failed to establish the existence of landlord and tenancy relationship between himself and the defendant by taking into consideration Ext.1. Learned counsel for the respondent further submitted that since the suit schedule property is not properly described, the learned trial Court has rightly held that the suit is hit under Order 7, Rule 3 of the C.P.C. The learned trial Court has also rightly concluded the other issues since the relationship of landlord and tenant has not been established by the plaintiff. So, he supported the entire findings of the learned Court below and submitted to dismiss the appeal.

**DISCUSSIONS :**

9. Being the Appellate Court, this Court has to go through the entire materials on record, including the evidence, as the first appeal is in continuation of the suit in the appeal and there the procedural aspect has to be gone through. The First Appellate Court has got its duty to see whether justice

has been meted out with proper perspective by the learned Court below. Accordingly, this Court has got enormous duty to award even justice.

10. It is the cardinal principles of onus probandi that if neither of the parties will adduce evidence, the suit of the plaintiff will fail. On the other hand, it is always the duty of the plaintiff to discharge onus by leading evidence.

11. Perused the pleadings of both parties, evidence adduced by them, impugned judgment and decree, memorandum of appeal, petitions and other materials on record. It is the case of the plaintiff that the defendant is inducted as a tenant under him, whereas the defendant has denied the said relationship. The plaintiff has adduced Ext.1 to prove such relationship, but the defendant has denied the execution of the said document. There is an issue framed by the learned trial Court to find out whether any relationship of landlord and tenant exists between the plaintiff and the defendant in respect of the suit land? At the same time, there is an averment in the written statement that the suit schedule property is not properly described for which the suit is hit under Order 7, Rule 3 of the C.P.C. and an issue has also been framed in that regard. When description of the suit property is in issue, it should be answered at the first instance instead of

deciding the said issue along with the issue whether any relationship of landlord and tenants exists between the parties inasmuch as the suit schedule property has to be decided first before going to decide the relationship. Not only this, but also in the impugned judgment, the learned Court below has decided issue No.(v) in relation to recovery of arrear rent and answered in negative against the plaintiff along with issue Nos.(iii) & (iv), which are not interlinked with one another although appear to be so. In my considered opinion, each and every issue should be answered separately basing on the materials adduced on record. Order 20, Rule 5 of the C.P.C. specifically states that each and every issue should be answered by the Court independently. This provision also gets support from the decision reported in **AIR 1985 SC 736 (M/s. Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato da Cruz Pinto)**, where Their Lordships have been pleased to observe that where there are several issues, the judgment should be on all points and not on single point.

12. With due respect to the said decision, I find that in the instant case, the learned trial Court has committed error by not stating its findings, with the reasons therefor, upon each separate issue, but decided the issues together though the same are not interlinked with each other.

13. It is further revealed from the judgment of the learned trial Court that the plaintiff has not filed any document concerning the ownership of the suit plot. On the contrary, the defendant claims that the suit land belong to the Government. In para-8 of his cross-examination, P.W.1 has admitted that the suit land is now under Government holding. Nevertheless, the learned Court below went on discussing section 6 of the Specific Relief Act. Their Lordships of the Hon'ble Apex Court in the case of ***Joginder Singh and Another Vs. Smt. Jogindero and Others*** reported in **AIR 1996 SC 1654** have been pleased to observe as under :

“.....This being the position the tenants could not be permitted to deny or dispute the title of the owner. This is a settled view that having regard to the provisions of Section 116 of the Evidence Act no tenant of immovable property or person claiming through such tenant shall during the continuance of the tenancy, be permitted to deny the title of the owner of such property..... A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord”.

14. With due respect to the said decision, I find that the tenant, who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession of his house to his landlord. In the case at hand, the question of application of section 6 of the

Specific Relief Act does not arise even if the defendant denies title of the plaintiff. Moreover, the discussion on Ext.1 has not been made to find out the relationship of landlord and tenant; rather, the learned trial Court has amplified in one paragraph at page-8 that : “.....although the Agreement vide Ext.1 indicates landlord tenant relationship between the plaintiff and the defendant, the plaint is not harmonious with the Agreement vide Ext.1 xx xx xx Thus, the plaintiff has failed to establish clear cogent and credible evidence to establish the existence of landlord-tenant relationship between himself and the defendant”. It appears that appreciation of evidence on record has not been properly made by the learned trial Court inasmuch as on the one hand admits Ext.1 that establishes the relationship of landlord and tenant and on the other disbelieves the documents in question. So, analysis on this issue is more necessary by the learned trial Court to find out whether there is relationship of landlord and tenant between the parties.

15. Moreover, the evidences of P.Ws.1 & 2 and the evidence of D.W.1 have not been discussed in the impugned judgment to decide such issue. The documentary evidence, along with oral evidence, must be subjected to discussion to arrive at a right finding. So, the issue with regard to relationship between the parties as landlord and tenant has to

be addressed afresh by the learned trial Court.

16. There is clear pleading in the plaint and the evidence of P.W.1 as to description of the property, but the defendant in his written statement has simply submitted that there is no boundary mentioned in the plaint schedule property. The evidence of P.W.1 is also clear to show that the defendant has been inducted in respect of one of the rooms, out of four rooms. Since this is a suit for eviction of the tenant, necessary description with regard to room, which is suit premise, is available. So, the finding of the learned trial Court on this issue is also not acceptable as the pleadings and evidence of the parties have not been appreciated in proper manner. Other issues have not been categorically decided by the learned trial Court although they are required to be answered specifically, as discussed in the foregoing paragraphs.

17. In the case of *Bhanu Bhola and others* Vs. *Sindhu Bhuyan (dead) after him Prafulla Kumar Bhuyan and others* reported in **2000 (1) OLR - 616**, His Lordship has been pleased to observe at para-7 as under :

“In suit for eviction on the basis of termination of tenancy, the question of title of the plaintiff is immaterial and the plaintiff can succeed only if it is established that the defendant was a tenant under the plaintiff and tenancy had been terminated in accordance with law. In the present case, there is no dispute that the plaintiff had issued notice

terminating the alleged tenancy. Therefore, the only question which should have been decided by the lower appellate Court as to whether there was any relationship of landlord and tenant between the plaintiff and defendant No.1. Even though the trial Court had given a finding, since the appellate Court has not given any finding on this aspect, it is necessary that the matter should be remanded to the lower appellate Court to consider the question afresh.....”.

18. With due respect to the said decision, I find that in the instant case since issues have not been answered correctly, it is a fit case to be remanded to the lower Court. It is further found that the documents have been filed by the appellant in this Court to admit the same into evidence. When the suit is to be remanded, the parties may adduce further evidence in support of their respective pleas. Hence ordered :

### **O R D E R**

The appeal is allowed on remand without cost and the judgment dated 30.04.2013 & decree dated 10.05.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.293 of 2012 are hereby set aside.

With the observations, as indicated above, the suit is remanded to the lower Court for fresh disposal according to law. It is directed that the learned trial Court will dispose of the matter within a period of three months from the date of receipt of this judgment after giving reasonable opportunity to

both parties to file their pleadings and to adduce evidence, if any.

**District Judge, Khurda  
at Bhubaneswar.**

19.01.2015.

Dictated, corrected by me and pronounced in the open Court  
this day the 19<sup>th</sup> January, 2015.

**District Judge, Khurda  
at Bhubaneswar.**

19.01.2015.