

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.

T.S.459/84 of 2004/1991

1. Sedari Bai, (Deceased)
W/O- Late Seth Bhawan Das
2. Anshiram, (Deceased)
S/O- Late Seth Bhawan Das
- 2.(a) Smt. Leelawanti Motiwala,
aged about 6 years
W/O-Late Anshi Ram
- (b) Sri Shanker Ram@ Motiwala,
aged about 48 years,
S/O- Late Anshi Ram
- (c) Sri Sushil Kumar Motiwala,
aged about 46 years,
S/O- Late Anshiram
- (d) Sri Suraj Kumar Motiwala,
aged about 44 years,
S/O- Late Anshi Ram
- (e) Sri Prem Kumar Motiwala,
aged about 37 years,
S/O- Late Anshi Ram
All are resident of
Plot No.166 & 167,
Bapujinagar, Bhubaneswar,
District – Khurda.

- (f) Smt. Champa Mandhyan @ Motiwala,
aged about 49 years,
D/O- Late Anshi Ram,
W/O-Sri Nirmal Kumar Mandhyan,
resident of C-1/301, Kedar Gouri Apartments,
Garage Chowk, Lewis Road, Bhubaneswar.
- (g) Smt. Hema Raitani @ Sonu Motiwala,
aged about 43 years,
D/O- Late Anshi Ram,
W/O- Sri Chandan Kumar Raitani,
resident of C/O "Maharani" family shop,
Kanpur Road, Ramnagar,
Alambag, Lucknow-5.
- (h) Smt. Mamta Lakhmani @ Kanta Motiwala,
aged about 39 years,
D/O- Late Anshi Ram,
W/O- Sri Sanjay Lakhmani
resident of Sector-18/442,
Indira Nagar, Lucknow.
- (i) Smt. Vidhi Tejwani @ Deepa Motiwala,
aged about 35 years,
D/O- Late Anshi Ram,
W/O- Sri Dinesh Tejwani,
resident of Jeriphatka,
Nagpur.

... Plaintiffs

-Versus-

1. Nabin Chandra Patel,
aged about _____ years,
S/O- Nanji Patel,
resident of Old Rly. Station Bazar,
P.O./P.S.- Laxmisagar, Bhubaneswar.

2. M/S- Jagannath Saw Mill,
a Partnership firm, represented
by its Managing Partner,
Sri Navin Ch. Patel (D-1),
Old Rly. Station Bazar,
Bhubaneswar
- ... Defendants.

COUNSEL APPEARED

For the Plaintiffs : Sri J. Raheman & Associates
For Defendants : Sri S.C. Ghose & Associates

DATE OF CONCLUSION OF ARGUMENT : 25-02-2014
DATE OF JUDGMENT : 26-02-2014

J U D G M E N T

This is a suit for eviction with consequential relief.

2. The case of the plaintiff in brief is that original plaintiff no.1 is the adoptive mother of original plaintiff no.2 and had executed a General Power of Attorney in his favour to look after all her affairs. The suit property morefully described in the plaint comprises of open land meant for stacking timber and

sheds for running a saw mill and other sheds adjoining the saw mill. Defendant no.2 is a Saw Mill running in partnership which is represented by defendant no.1. It is further stated that defendant no.1 is a monthly tenant at Will inducted to the suit property on a monthly rental of Rs.600/- which he was paying to the plaintiffs but surreptitiously stopped payment from the month of June, 1987. In spite of personal approaches and written reminders when defendant no.1 did not vacate the suit premises nor paid the outstanding rent, the plaintiffs through advocate served a notice on defendant no.1 on 23-05-1990 u/s. 106 of T.P. Act thereby terminating the tenancy with effect from 01-07-1990 and requesting defendant no.1 to vacate the suit premises immediately after midnight of 30-06-1990. The defendant though received the said notice on 28-05-1990 but turned a deaf ear for which the present suit.

3. The defendants have filed a written statement challenging the maintainability of the suit on the ground that original plaintiff no.2 is not the legal heir of late Bhawan Das after death of plaintiff no.1. They have further pleaded that the tenancy is not lawfully terminated as per provisions of Section 106 of T.P. Act. It is their case that defendant no.1 and his brothers have lawfully purchased and entered into an agreement

for sale of the eight annas share in the suit property from the legal heirs of late Raghunath Badajena, the suit for eviction and recovery of arrear rent and damages is not maintainable. They have denied the claim of plaintiff no.2 that he is the adopted son of plaintiff no.1 and was holding a Power of Attorney executed by plaintiff no.1 in his favour. On the southern half of the suit land, one Juman Das, the brother's son of Bhawan Das is residing and defendant no.1 alongwith his brothers is residing in a house on the North-Eastern corner of Plot no.22 and are in occupation of the Saw Mill and the vacant land used for stacking timber. So far as plot no.30 is concerned, major portion of the same has been leased out by the Govt. to different persons who have constructed their houses on the same. Hence, the defendants are not in occupation of Ac.0.462^{1/2} decimals of land as claimed by the plaintiffs. It is alleged by them that original plaintiff no.1 by misrepresentation of facts claimed herself to be the absolute owner of the suit land and was realising some rent from defendant no.2 under threat of eviction and to ruin the business. They have also claimed that no notice was ever served on them terminating the tenancy u/s. 106 of the T.P. Act and if at all there was any such notice the same is not legal and valid on them. They have also challenged the suit as undervalued. Their further case is

that plot no.30 is Govt. land which was leased out by the Govt. to Bhawan Das and Raghunath Badajena for a period of 99 years by a registered lease deed dtd.21-03-1961 each having half out of the same. The entire land lying to the western side of the road was leased out by the Govt. to other persons who have constructed their houses and only a small portion to the eastern side is available which is in occupation of defendant no.1 and his brothers and defendant no.2. Suit plot no.22 and plot no.23 were purchased by Bhawan Das and Raghunath Badajena from the recorded owner each having half share therein. Bhawan Das let out the northern portion of the suit land and the residential house to defendant no.2 and was realising rent. In an amicable arrangement the defendants and the brothers of defendant no.1 continued to occupy the same on payment of rent to Bhawan Das and plaintiff no.1 till filing of the suit. After the death of Raghunath Badajena his legal heirs & successors issued notice to original plaintiff no.1 on 04-01-1989 calling upon her to purchase their eight annas share in the suit property but as she did not turn up, they executed a R.S.D dtd.19-09-1990 in favour of defendant no.1 and his four brothers in respect of half share in suit plot no.22 & 23 for consideration of Rs.1,99,000/- and delivered possession of the same to them. Again by a registered

agreement dtd. 11-11-1992 the legal heirs of Raghunath Badajena also agreed to sale away their half share to the defendant no.1 and his brothers from out of suit plot no.30 for Rs.1,25,500/- and received Rs.1,25,000/- as advance and delivered possession to them with condition that the defendants will not pay any rent till registration of the sale deed. So, they have become absolute owners in possession of the half share of Raghunath Badajena in the suit land as such the prayer of the plaintiff for their eviction and recovery of rent and damages is not maintainable. It is the further case of the defendants that Bhawan Das and his two brothers namely Karamchand and Budhar were the members of a Hindu Joint family and Bhawan Das being the Karta and Managing member of the family acquired the suit land and other properties in his name for the benefit of the members of joint families. The legal heirs of Karamchand & Budhar have filed T.S.298/93 for partition including the suit property. In the said suit the two sons of Raghunath Badajena namely Harihar & Bhagirathi have been impleaded as defendant nos.10 & 11. In that suit the legal heirs & successors of Budhar have alleged that the original plaintiff no.2 of this suit who is defendant no.6 in that suit is not the son and legal heirs of Bhawan Das or his widow and has no right, title, interest in the

suit property. Hence, the suit is not maintainable and liable to be dismissed.

4. With the aforesaid pleadings on record the following issues are settled.

I S S U E S

1. Is the suit maintainable ?
2. Have the plaintiffs any cause of action to file the suit ?
3. Whether there is landlord-tenant relationship between the plaintiffs & defendants ?
4. Whether the defendants are liable for eviction from the suit premises ?
5. Whether the plaintiffs are entitled to recover arrear house rent and mesne profit from the defendants ?
6. To what other reliefs the plaintiffs are entitled ?

5. In order to prove their case, the plaintiffs have examined P.W.1 who is original plaintiff no.2, Ansi Ram whereas defendant no.1 examined himself as D.W.1. Neither party has examined any independent witness.

Besides oral evidence, the plaintiffs have proved

the office copy of legal notice, postal receipt and postal A.D marked as Ext.1, 2, 3 respectively while Ext.4 is certified copy of agreement between Raghunath Badajena and Bhawan Das dtd. 17-09-1960; Ext.5 is the certified copy of deposition of defendant no.1 in G.R.207/1985; Ext.6 is the assessment order for Estate duty; Ext.7 is the Estate duty challan and Ext.8 is the Power of Attorney.

On the other hand, no document has been admitted into evidence from the side of the defendants.

So, with the aforesaid materials on record the issues settled are to be answered.

FINDINGS

6. Issue nos.3, 4 & 5

All these three issues being vital ones considering the case of the parties, hence, those are taken up together first. So far the landlord-tenant relationship between the plaintiff & defendant is concerned, there is no document to that effect. So, that relationship is to be gathered from the conduct of the parties. At the outset, it is made clear that the defendants have disputed the status of original defendant no.2, Ansi Ram being the adopted son of Bhawan Das & Suduri Bai. But considering the nature of the dispute the Court is not required to give a finding on such dispute. On the other hand, the Court is to see whether original defendant no.2 had ever exercised any right of a landlord

in respect of the suit premises and the defendant had ever recognised the same. The defendants in their Written Statement admitted that suit plot no.30 was Govt. land which was leased out to Bhawan Das and Raghunath Badajena for 99 years by virtue of a registered lease deed dtd.21-03-1961 each having half share therein. Suit plot nos.22 & 23 were purchased by Bhawan Das & Raghunath Badajena from the recorded owner each having half share therein. Bhawan Das had taken the share of land of Raghunath Badajena by way of lease to construct a Saw Mill, let out the northern portion of the suit land and the residential house to defendant no.2 and was realising rent for the same. Rajaram Patel, the grandfather of defendant no.1 constructed the said houses and installed the Saw Mill and in an amicable arrangement the defendants and brothers of defendant no.1 continued to occupy the same on payment of rent to Bhawan Das & Suduri Bai till filing of the suit. Defendant no.1 as D.W.1 has admitted that his grandfather Rajaram Patel has taken the suit land on rent from Bhawan Das. After the death of Bhawan Das they paid rent to his widow till 1987 but thereafter did not pay rent to anyone as Bhawan Das died heirless.

7. The plaintiffs have filed the certified copy of deposition of defendant no.1 as P.W.3 in G.R. Case No.207/1985 which was recorded on 22-08-1987. During his cross-examination by the prosecution he has admitted that at that time he was paying Rs.600/- as rent to Ansi Ram (original plaintiff no.2). This is a

clear admission of defendant no.1 that he used to pay rent to Ansi Ram as on the date of his examination in Court in that case. During his cross examination in this case, he admitted his such deposition in G.R. Case no.207/86 to be correct as regards his paying of rent for the Saw Mill to Ansi Ram. By payment of rent he admitted original plaintiff no.2 to be the landlord and was entitled to realise rent. It is not necessary that the landlord should be the title holder of the tenanted premises. The tenant also cannot question the title of the landlord over the disputed premises.

The plaintiffs have also produced & proved Ext.6 which is the proceeding of the Asst. Controller of Estate Duty and the order dtd.20-12-1971. The assessment order discloses that said Bhawan Das died on 02-10-1969 leaving behind original plaintiff no.1 as his wife and original plaintiff no.2 (Ansi Ram) as his adopted son and accordingly Estate Duty return was filed on 28-01-1970. This is a document of undisputed time and carries much weight so far as the status of original plaintiff no.2. Ext.7 is the Challan showing deposit of Estate duty by original plaintiff no.2 in respect of the properties of Bhawan Das. Ext.8 is the original General Power of Attorney dtd.17-04-1962 executed by original plaintiff no.1 in favour of original plaintiff no.2 showing him as their son. This is also a document of undisputed time. The aforesaid evidence on record from the side of the plaintiffs and the clear admission of defendant no.1 that he was inducted as a tenant by Bhagwan Das and his payment of rent of

Rs.600/- to original plaintiff no.2 after death of Bhawan Das adequately establish the fact that there was landlord and tenant relationship between Bhawan Das and the defendants and thereafter between original plaintiff no.2 and the defendants.

8. The next question comes whether the defendants are liable for eviction from the suit premises. Though the defendants have pleaded in the written statement that defendant no.1 and his brothers had purchased the half share of Raghunath Badajena from out of suit plot no.22 & 23 from the legal heirs of the said Raghunath Badajena by registered sale deed dtd.19-09-1990 for Rs.1,99,000/- and took delivery of possession and again by a registered agreement for sale dtd.11-11-1992 the said legal heirs agreed to sell their half share from out of suit plot no.30 to defendant no.1 for Rs.1,25,500/- out of which they received Rs.1,25,000/- as advance and delivered possession to him on stipulation that he will not pay any rent until registration of the sale deed but they failed to substantiate the same as no such documents have been filed in this case from their side. On the other hand, the plaintiffs have produced & proved Ext.4 which is the certified copy of agreement dtd.17-09-1960 between Raghunath Badajena and Bhawan Das in which it has been clearly mentioned that both parties had purchased the 'A' Schedule property of that document under two registered sale deeds and were possessing the same as co-owners without any partition. It is further mentioned in the said document that Bhawan Das at his

own cost had constructed sheds, buildings & other structures and had decided to start a Saw Mill and plant machineries for which it was agreed by both the parties that Bhawan Das will occupy the said premises and run the Saw Mill and pay rent to Raghunath Badajena @ Rs.30/- per annum so long as Bhawan Das desired to occupy the same. If Raghunath Badajena wanted to sell his interest over the said property at any time he would sell the same to Bhawan Das and will have no right to eject him from the said premises. In view of the terms of agreement and in absence of any document of purchase or agreement for purchase from the side of the defendants, it can be safely concluded that Bhawan Das and after him his legal heirs and successors such as the plaintiffs are in occupation of plot no.22 which is part of the suit properties of the present suit.

Admittedly the defendants have stopped payment of rent and according to the plaintiffs they stopped payment of rents from the month of June, 1987. Ext.1 is the office copy of the notice dtd.23-05-1990 issued to defendant no.1 by original plaintiff no.2 through Advocate alleging that he defaulted payment of rent since May, 1987 @ Rs.600/- per month and was called upon to vacate the premises of M/s. Jagannath Saw Mill immediately after 30-06-1990 after clearing the arrear rent. Ext.2 is the postal registration receipt and Ext.3 is the postal A.D which bears signature of the addressee who is none other than defendant no.1. The said notice satisfies requirement of

Section 106 of the T.P. Act as it was a monthly tenancy and clear 15 days time was given for vacating the tenanted premises after termination of tenancy. Thus, the defendants are liable for eviction from the suit premises.

9. The third question is whether the plaintiffs are entitled to recover arrear house rents and mesne profit from the defendants. The defendants have not paid rent and as per the plaintiffs they defaulted from the month of June, 1987 and according to defendant no.1 as D.W.1 they paid rent till 1987 and not thereafter. Ext.1, the legal notice discloses that the defendants are in arrears since May, 1987. In the suit, the plaintiffs have claimed from 01-04-1988 to 30-06-1990 coming to a total sum of Rs.16,200/-. They have also claimed mesne profit @ Rs.600/- per month from 01-07-1990 to 21-04-1991 alongwith pendelite & future mesne profit till the suit premises is vacated. This Court does not find the claim to be unreasonable. The plaintiffs have also paid Court fee for the same. Hence, they are entitled to recover the arrear rent of Rs.16,200/- and mesne profit at the aforesaid rate from 01-07-1990 till delivery of vacant possession of the suit premises. Ofcourse the plaintiffs are liable to pay the balance Court fees.

10. Thus, in consideration of the aforesaid evidence on record and in view of the discussions in the foregoing paragraphs these three issues are answered in favour of the plaintiffs and against the defendants.

11. **Issue nos.1 & 2**

The plaintiffs filed the suit as the defendant did not respond to their notice,Ext.1 terminating their tenancy and calling upon them to pay the arrear rent and vacate the suit premises within the period stipulated therein. The defendants are still continuing occupying the suit premises but are not paying rent. This conduct of the defendants is a continuous cause of action for the plaintiffs to file the suit. Therefore the plaintiffs have the cause of action to file the present suit against the defendants and under the given circumstances their suit against the defendants is maintainable. Thus, both these two issues are answered in the affirmative and in favour of the plaintiffs.

12. **Issue no.6**

The Court has already granted reliefs to the plaintiffs as prayed for. They are not entitled to any other relief.

In view of the discussions in the foregoing paragraph under issue no.1 to 6 the plaintiffs are entitled to the reliefs as prayed for. Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against the defendants with cost. The defendants are directed to vacate the suit premises as described in the schedule of the plaint within a period of two months hence and are also liable to pay Rs.16,200/- towards arrear rent from 01-04-1988 to 30-06-90 and mesne profit of Rs.5,800/- covering the period from 01-07-90 to

21-04-91. In addition to the above, the defendants are also directed to pay mesne profit to the plaintiffs @Rs.600/- per month from the date of filing of the suit i.e. 03-05-91 till delivery of vacant possession failing which the plaintiffs are at liberty to enforce the decree through the process of the Court. The plaintiffs are liable to pay additional Court fee on the pendentelite & future mesne profit which will be assessed by the office.

***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 on the 26th day of February under my seal and signature.

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

List of Witnesses examined for the Plaintiffs:

P.W.1: Ansi Ram

List of Witnesses examined for the Defendants :

D.W.1: Nabin Chandra Patel

List of Documents marked as Exhibits for the Plaintiffs:

- Ext.1: Office copy of notice of the Advocate of plaintiffs;
Ext.1/a: Signature of advocate of plaintiffs on Ext.1;
Ext.2: Postal receipt concerning to Ext.1;
Ext.3: Postal A.D. Of Ext.1;
Ext.4: Certified copy of agreement;
Ext.5: Certified copy of statement of defendant no.1
in G.R.207/1985;
Ext.6: Assessment order Estate duty;
Ext.7: Estate duty chalan;
Ext.8: Power of Attorney;

List of Documents marked as Exhibits for the Defendants :

N i l

Judge,

1st. Addl. Senior Civil

Bhubaneswar.