

(1953) 09 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 564 of 1948

Baban Rana

APPELLANT

Vs

Narashing Swar, after him Parbati alias Suna Bewa and
Others

RESPONDENT

Date of Decision : 04-09-1953

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 107

Citation : (1955) 21 CLT 97

Hon'ble Judges : Mahapatra, J

Bench : Single Bench

Advocate : P.C. Chatterjee, for the Appellant; S. Misra, for the Respondent

Judgement

Mohapatra, J.—It is the Defendant No. 1 who was unsuccessful in both the Courts below and has filed this Second Appeal against the judgment and decree dated 30th of October, 1948 of Shri B.K. Patro, Sub-Judge of Puri. The appeal arises out of suit brought by the Plaintiff for ejectment of the Defendant in respect of the suit plot which is a homestead land situated in the town of Puri on the allegation that it was leased out to the present Appellant by the Respondent and his brother who were jointly interested in the properties. The tenancy, according to the Plaintiff, commenced on 8-6-39 on an annual rental of Rs. 7/-/- and the tenancy was to terminate on expiry of 7 years from that date. The terms however were reduced to writing but it was not a registered document. Plaintiff's further case is that on partition between himself and his brother, the property has been allotted exclusively to the Plaintiff's share and Plaintiff is the 16 annas landlord. The tenancy terminated in accordance with the terms dated above as alleged by the Plaintiff on 8-6-1946. The Plaintiff brought this suit for ejectment of the Defendant on 22nd of November, 1946, treating the Defendant as a mere trespasser as the tenancy terminated by efflux of time according to him. The Plaintiff further claimed rental from 10-7-45 till 30-10-46 and claimed damages for a period subsequent to it. The defence was that in fact the contract was for creating a permanent tenancy in favour of the Defendant and as the Defendant is

a permanent tenant he is not liable to eviction. It is to be noted that the purpose for which this tenancy was created, according to the admitted case of both parties, is to construct a house on the said land. The Courts below rightly found against the Defendant that the permanent tenancy cannot be created without any registered document and as such defence plea of permanent tenancy must fail. The Courts below further found that on the expiry of 7 years of tenancy under the terms as alleged by the Plaintiff, the Defendant is a mere trespasser and as such is liable to eviction.

2. It appears to me that the selfsame ground on which the defence plea of permanent tenancy has been rejected can be used against the Plaintiff for the purpose of establishing his case of tenancy for a period of 7 years. Undoubtedly under the provisions of Section 107 of the Transfer of Property Act a tenancy for a period of more than a year can be created only by a registered document. There being no registered document in the present case the Plaintiff's case of tenancy for a fixed period of 7 years has got to be ignored in as much as the contract creating a valid tenancy to the effect requires registration and in the absence of a registered document the contract is to be deemed to be inoperative. Now when the Plaintiff's case of tenancy for a period of 7 years has got to be ignored, but when the fact remains that the Defendant No. 1 paid rental and the Plaintiff accepted it, I have got to find that the relationship between the Plaintiff and Defendant No. 1 was a relationship between a landlord and a tenant. But the question remains about the nature of the tenancy. For the purpose of determining this pertinent question about the nature of the tenancy, we have to fall back upon the provisions of Section 106 of the Transfer of Property Act which raises a presumption on the basis of the purpose for which the tenancy was created. As I have indicated above, the contract of tenancy as alleged by the Plaintiff is inoperative and the presumption raised u/s 106 of the T.P. Act is to prevail and we have got to find that the tenancy in question is a monthly tenancy as the purpose was for construction of a house. In this view of the matter the Plaintiff is not entitled to a decree for eviction without valid 15 days notice as provided under the provisions of Section 106 T.P. Act. I am supported in this view, that I have taken, by the authority of a decision of their Lordships of the Supreme Court in the case of Ram Kumar Das v. Jagadish Chandra Deo 1951 S.C.J. 813. In that case also the terms of the alleged tenancy of the Plaintiff was found to be inoperative, but on the basis of the fact that the Plaintiff had received rent from the Defendant, the Defendant was found to be a tenant and the tenancy was a monthly tenancy. The Attorney general of India strongly contended that the fact that annual rental was being paid is sufficient for the purpose of raising a presumption of implied contract between the parties of annual tenancy and not a monthly one. Indeed he was supported by the authorities of a few decisions of the High Courts in India. But their Lordships of the Supreme Court rejected the contention on the observation which runs as follows-

But one serious objection to this view seems to be that this would amount to

making a new contract for the parties. The parties here certainly did not intend to create a lease for one year. The lease was intended to be for a period exceeding one year, but as the intention was not expressed in the proper legal form, it could not be given effect to. It is one thing to say that in the absence of a valid agreement, the rights of the parties would be regulated by law in the same manner as if no agreement existed at all it is quite another thing to substitute a new agreement for the parties which is palpably contradicted by the admitted facts of the case.

In this view of the matter their Lordships thereof found that the presumption u/s 106 T.P. Act is to prevail and that the tenancy was a monthly tenancy. In conclusion, the Plaintiff's suit for ejectment of the Defendant must fail on the ground that the Plaintiff has not been able to establish service of a valid notice terminating the monthly tenancy. But nevertheless the Plaintiff is entitled to the rent claimed and decreed by the lower appellate Court. The appeal therefore succeeds in part, but as the allegation of the Plaintiff that the tenancy was for 7 years and the allegation of permanent tenancy of the Defendant have both been negatived, each party to bear his own cost throughout.