
(2000) 03 OHC CK 0024
In the Orissa High Court
Case No : Second Appeal No. 270 of 1986

Bhanu Bhola and Others

APPELLANT

Vs

Sindhu Bhuyan (dead) after him Prafulla Kumar Bhuyan and Others

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Citation : (2000) 1 OLR 616

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : B.B. Rath, M. Mishra, R.P. Mohapatra, B. Senapati, Biswanath Rath and S.N. Mohapatra, for the Appellant; A.K. Misra, S.K. Das and S.B. Jena, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Legal representatives of the original defendant No. 1 have filed this appeal against a confirming decision.

2. Suit was filed for eviction of defendants. The plaintiff claimed that he had purchased the property from the previous owner and had allowed defendant No. 1, Ankura Swain, to occupy the house on monthly rent of Rs. 10/-. Subsequently, notice was issued terminating the tenancy but defendant No. 1 refused to accept the notice. Hence, suit was filed seeking for a direction to the defendants to vacate the disputed house and to restore possession to the plaintiff.

3. The defendants in their written statement denied the allegations made in the plaint and claimed that the plaintiff had not acquired any title by virtue of the sale deed. They also denied about the alleged relationship of landlord and tenants.

4. The trial Court, inter alia, held on the basis of oral evidence that defendant No. 1 had been inducted as a tenant and had refused to accept the notice terminating the tenancy. Accordingly, the suit was decreed. Appeal was filed by

all the defendants and during the pendency of the appeal, substitution in place of original defendant No. 1 had taken place. The appellate Court confirmed the decree of the trial Court. Hence, the present second appeal.

5. Keeping in view the nature of dispute involved, when the matter was taken up for hearing, it was indicated that the only question that arises in the appeal is as to whether there was relationship of landlord and tenant between the original plaintiff and original defendant No. 1, as once it is established that defendant No. 1 was inducted as a tenant under the plaintiff, the question as to whether the plaintiff had valid title to the property would recede into background. Therefore, 1 had suggested to the counsel for both parties to come ready on this aspect and, thereafter, the matter was taken up for further hearing today.

6. It appears that in the lower appellate Court, the present appellants had also challenged the finding of the trial Court relating to existence of relationship of landlord and tenant between defendant No. 1 and the plaintiff, as evident from contention No. 3 A perusal of the judgment of the lower appellate Court indicates that this aspect has not at all been considered and the lower appellate Court has mainly concentrated on the question of title of the plaintiff.

7. 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. If it is found that the defendant was tenant under the plaintiff, other contentions raised by the defendant would be of no avail. On the other hand, if it is found that defendant No. 1 was not a tenant, the plaintiff cannot succeed as the case is admittedly one for eviction on the basis of termination of tenancy.

Accordingly, the appeal is allowed and the matter is remanded to the lower appellate Court for fresh consideration. The appellate Court should dispose of the appeal after remand within a period of four months from the date of receipt of the record. The lower Court records shall be sent back immediately. The parties are directed to appear before the lower appellate Court on 24th April, 2000. There will be no order as to cost.