

(2005) 04 OHC CK 0002
In the Orissa High Court
Case No : Writ Petition (C) No. 13141 of 2004

Debendra Jha

APPELLANT

Vs

Smt. Minakshi Das

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 36, 37, 38, 6
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2005 Ori 172 : (2005) 2 OLR 5

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.P. Mishra, S. Mishra and J. Dash, for the Appellant; R.C. Sarangi, J.K. Mohapatra, S.S. Mohanty, A.K. Dash, P.M. Pratihari and D. Panda, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This writ application is directed against the order dated 15.11.2004 passed by the learned Additional District Judge, Fast Tract Court No. III, Bhubaneswar in F.A.O. No. 23/149 of 2004 allowing the appeal and setting aside the order dated 7.10.2004 passed by the learned Civil Judge (Junior Division), Bhubaneswar in I.A. 425 of 2004 directing the defendant-opposite party to restore electricity and water supply to the suit premises and for further restraining the defendant-opposite party from evicting the plaintiff-petitioner from the suit premises during pendency of the suit.

2. The case of the plaintiff-petitioner is that he was inducted as a monthly tenant in the suit house in April, 1995 by one Ratnamani Dash, who happens to be the mother-in-law of the defendant-opposite party. The plaintiff-petitioner was paying monthly rent of Rs. 2,500/- including electricity and water charges and after death of Ratnamani Dash, the defendant-opposite party was receiving house rent and also granting receipts. While the matter stood thus, dispute arose

between the defendant and daughters of the deceased Ratnamani Dash relating to collection of rent and ultimately a Partition Suit (C.S. No. 20 of 2003) was filed. On 12.9.2004 the defendant-opposite party with the help of some anti socials threatened the plaintiff-petitioner to vacate the suit house otherwise she would disconnect the electricity and water supply. Having received the threat, the plaintiff-petitioner approached the learned Civil Judge (Junior Division), Bhubaneswar for permanent injunction. In the said suit an application under Order 39, Rules 1 and 2 was also filed by the plaintiff-petitioner for restraining the defendant-opposite party from disconnecting the electricity and water supply as well as for an interim direction not to evict him during pendency of the suit. The said petition was allowed by the learned Civil Judge on 7.10.2004. Challenging the said order an appeal was filed before the learned Additional District Judge, Fast Tract Court No. III, "Bhubaneswar and the said appeal having been allowed, the plaintiff-petitioner has filed this writ application.

3. Shri S.P. Mishra, the learned counsel appearing for the petitioner submitted that admittedly the monthly tenancy has not been terminated by notice u/s 106 of the Transfer of Property Act nor the tenancy has expired by efflux of time. Since the tenancy is still continuing, the plaintiff-petitioner cannot be evicted by force nor can electricity and water supply be disconnected. The learned counsel appearing for the defendant-opposite party, on the other hand, submitted that there cannot be any order of injunction against the true owner and, therefore, the appellate Court was justified in setting aside the order of injunction granted by the trial Court. In support of their respective contentions, the learned counsel appearing for both the parties have referred to some decisions.

4. Prima facie it appears that the plaintiff-petitioner was inducted as a tenant in the suit house in the year 1995 by one Ratnamani Dash. The defendant-opposite party is one of the daughters of late Ratnamani Dash. It further appears that during the life time of Ratnamani the petitioner was paying house rent of Rs. 2,500/- including electricity and water charges. It further appears that after death of Ratnamani Dash the defendant-opposite party was collecting rent from the plaintiff-petitioner. When dispute arose between the daughters of late Ratnamani Dash, a suit for partition was filed and when the matter stood thus, it is alleged by the plaintiff-petitioner that the defendant-opposite party with the help of some anti socials forcibly tried to evict the plaintiff-petitioner from the suit house.

5. With this factual backdrop, the question that is to be decided is as to whether an order of injunction restraining the defendant-opposite party from forcibly evicting the plaintiff-petitioner from the suit house and directing restoration of electricity and water supply can be passed or not.

6. Shri Mishra, the learned counsel appearing for the petitioner submitted that the tenancy having not been terminated, the petitioner continues to be a tenant and so long as his tenancy is continued, he cannot be evicted by force and disconnection of electricity and water supply to the suit premises is indirect way

of forcing the plaintiff-petitioner to vacate the suit house. It was further contended by Shri Mishra that even accepting for the sake of argument that the petitioner continues to be a tenant even after termination of tenancy by way of notice or by efflux of time and is in lawful possession of the suit premises, he becomes a tenant holding over or tenancy in sufferance. In any event his possession as a tenant is legal and he cannot be evicted by force. According to Shri Mishra, even a rank trespasser cannot be evicted without due process of law. The only ground on which the learned counsel appearing for the opposite party challenged the order passed by the learned trial Court is that injunction can never be granted against the true owner and in relation to this, the learned counsel relied on a decision in the case of *Sopan Sukhdeo Sable and Ors. v. Asst. Charity Commissioner and Ors.* reported in 2004 (1) CJD (SC) 114. The Supreme Court in the aforesaid decision referring to Section 6 of the Specific Relief Act, 1963 read with Sections 36, 37 and 38 of the Act observed that no injunction can be granted against the true owner at the instance of a person in unlawful possession though he can seek restoration of possession u/s 6 of the Act. A similar view has also been taken by the Punjab and Haryana High Court in the case of *Gram Panchayat, Village Rukari v. Singh Ram* reported in 1983 (3) CCC 577 (P & H). The aforesaid decisions are clearly distinguishable since the possession of the petitioner cannot be treated as unlawful. There is no denial of the fact that the petitioner was inducted as a tenant in the suit premises and the tenancy has not been terminated either by way of notice u/s 106 of the Transfer of Properties Act or by way of efflux of time. Since the petitioner continues to be a tenant and is in lawful possession of the suit premises, I am of the view that the decisions cited by the learned counsel for the defendant-opposite party have no application to the facts of the present case. On the other hand, the Apex Court in the case of *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*, has clearly held that even a rank trespasser cannot be evicted without due process of law. Since the allegation is made that attempts have been made by the defendant-opposite party for evicting the plaintiff-petitioner from the suit premises by force, I am of the view that the order of injunction granted by the trial Court was justified and proper. Apart from the above, it further appears that electricity and water supply to the suit premises had been disconnected deliberately by the defendant-opposite party to force the plaintiff-petitioner to vacate the suit premises and, therefore, the trial Court was justified in directing restoration of the electricity and water supply.

7. In view of the discussions made above, I allow the writ application and set aside the judgment and order passed by the learned Additional District Judge, Fast Track Court No. III, Bhubaneswar in F.A.O. No. 23/149 of 2004 and confirmed the order dated 7.10.2004 passed by the learned Civil Judge (Junior Division), Bhubaneswar in I.A. No. 425 of 2004.