

(1999) 03 OHC CK 0026

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8594 of 1994

Indramani Sahu and Others

APPELLANT

Vs

Vedvyas Gupta and Others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 2, Order 1 Rule 3A, Order 1 Rule 9

Citation : (1999) 1 OLR 605

Hon'ble Judges : P.K. Misra, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : Susant Kumar Dash, Biswajit Mohapatra and S.K. Misra, for the Appellant; R.N. Acharya and S.K. Pradhan-1 (OPs. 1-3), for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—This writ application is directed against the orders passed by the House Rent Controller and the appellate authority rejecting the application for eviction filed by the present petitioners on the ground that such application was not maintainable.

2. The present petitioners filed H.R.C. Case No. 83 of 1986 for eviction. It was claimed in the said petition that present opposite parties 1 to 3 were the tenants in respect of a building under present opposite parties 6 to 8 who had sold the said property to present opposite party No. 9. It is claimed that present petitioners have purchased different and definite portions of the said building from opposite party No. 9 by six different sale deeds. It is further alleged that opposite parties 4 and 5 were sub-tenants inducted by opposite party No. 3. On behalf of the contesting opposite parties, objection was raised regarding maintainability of one eviction proceeding. The House Rent Controller upheld such objection and held that one proceeding for eviction of different tenants who are alleged to be in possession of different portions was not maintainable. In appeal at the instance of the present petitioners, the appellate authority has upheld the finding of the House Rent Controller on this aspect and dismissed the

appeal.

3. In this writ application, the counsel appearing for the petitioners has placed reliance upon the provisions contained in Order 1, Rules 1 and 3, Code of Civil Procedure, (in short, the "C.P.C.") and submitted that since the petitioners have purchased different portions of the same building from the very same landlord, and opposite parties 1 to 3 were the tenants of different portions of the same building under one landlord, a common proceeding was maintainable, as common question of law or fact would arise for determination in the house rent control proceeding even if separate applications would have been filed from the beginning.

4. Though it is true that according to the allegations, opposite parties 1 to 3 were allegedly tenants under the same owner, it is now claimed that the present petitioners have purchased different portions of the same building and opposite parties 1 to 3 as well as opposite parties 4 and 5 are in possession of different portions of the very same building. Even assuming that all the petitioners could have been joined as co-petitioners and all the contesting opposite parties could have been joined as opposite parties keeping in view the principles contained in Rule 1 (b) and Rule 3 (b) of Order 1, C.P.C., as a common question of law or fact would have arisen, even then a single trial of the case would definitely cause embarrassment in conducting the proceeding. Present opposite parties 1 to 5 are occupying different portions of the same building and the petitioners have also purchased separate and distinct portions of the same building. Though the ground of eviction may be based on common allegations, the defence may be different. The findings of the authorities below to the effect that there has been misjoinder of parties cannot be said to be illegal or erroneous in view of the peculiar facts and circumstances of the present case. However, even though a common proceeding for eviction was rightly found to be not maintainable, the Courts below should not have dismissed the proceeding particularly in view of the provisions contained in Order 1, Rule 9, C.P.C. as well as in Order 1, Rule 2 and Rule 3-A, C.P.C. As already indicated, joinder of petitioners and joinder of opposite parties in the very same proceeding would have caused embarrassment in the matter of trial of the proceeding. However, keeping in view the principle contained in Order 1, Rules 2 and 3-A, C.P.C, the trial Court could have directed for separate trials or could have permitted the petitioners to file appropriate application for amendment enabling them to proceed against proper party in respect of particular portion of the building claimed by each petitioner. Rules of procedure are said to be the handmaid of justice. The proceeding had been initiated in 1986 at a time when the Orissa House Rent Control Act was in force. By the time the matter came to be disposed of by the trial Court, the said Act, which was a temporary statute, had already expired. The observation of the appellate Court to the effect that dismissal of the proceeding on technical ground would not stand in the way of initiating appropriate proceeding might not be in the interest of justice, as many technical questions relating to filing of fresh proceeding may crop up. Having regard to all these aspects and particularly

keeping in view the principles envisaged in Order 1, Rules 2 and 3-A, C.P.C, we think interest of justice would be best served by giving the following directions :

(a) The petitioners shall be permitted to file appropriate application for amendment confining the claim of each petitioner to the specific portion of the property claimed by him against the person in occupation of the said portion. On such appropriate application for amendment being filed within a period of one month from today, necessary order would be passed by the House Rent Controller permitting amendment and thereafter each such case should be treated to be a separate proceeding for eviction.

(b) Though a new by-number of the case may be given for the purpose of administrative convenience in respect of each of the petitioners, such proceedings for eviction can be taken to have been initiated on the date when the original joint application had been filed.

(c) The opposite party in respect of each such individual proceeding for eviction shall be given opportunity of filing written statement within a period of two months from the date of the order allowing amendment, as indicated above.

(d) The House Rent Controller should proceed to dispose of the proceedings in accordance with law within a period of six months thereafter on the basis of evidence to be adduced without being influenced by any observations made in the earlier orders and the present order should not be taken to be an expression of opinion on merits of the case.

5. The writ application is accordingly allowed in the manner indicated. There will be no order as to costs.

D.M. Patnaik, J.

6. I. agree.