

(1986) 07 OHC CK 0007
In the Orissa High Court
Case No : OJC No. 1409 of 1978

Jaisingh ' Gujarmal Salopal	APPELLANT
Vs	
Smt. Rajendra Kaur and Others	RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:

Evidence Act, 1872 — Section 116
Orissa House Rent Control Act, 1967 — Section 2(4), 7

Citation : (1986) 62 CLT 268 : (1986) 2 OLR 232

Hon'ble Judges : Agrawal, C.J.; S.C. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Mohapatra, for the Appellant; A.K. Mohanty, for Opp. party No. 1 and Addl. Standing Counsel for Opp parties 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Agrawal, C.J.—In this writ application by a tenant, the interesting question of law that arises for consideration is as to whether on the facts and in the circumstances of the case he could deny the relationship of landlord and tenant between him and opposite party No. 1.

2. The facts:

The petitioner challenges the order of the House Rent Controller, Panposh at Uditnagar affirmed in appeal vide Annexure-1 and 2 to the writ application. Opp. party No. 1 filed an application before the House Rent Controller against the petitioner u/s 7(2)(i) of the Orissa House Rent Control Act, 1967 (hereinafter called the "Act") for eviction of the petitioner from the house bearing Holding No. 74 in Ward No. 3 of Biramitrapur Tahasil on the following allegations :

Opp. party No. 1 had let out the house in question to the petitioner on a monthly rent of Rs. 60/- some time in the year 1967. The petitioner paid rent for about a year and then stopped paying the rent in spite of repeated demands. Thereupon, she served a lawyer's notice demanding payment, but in spite of that, the

petitioner did not pay the rent. Thus, according to opp. party No. 1, the petitioner was a wilful defaulter having failed to pay rent from the year 1968 and was therefore liable to be evicted from the house in question.

3. In his show-cause, the petitioner made the following averments :

He was a tenant in the house in question since 11-9-1964 and not from the year 1967 and he had paid rent till 11-12-1976 and thus was not in arrears.

The other relevant statement in the show-cause which has given rise to the present controversy is that the petitioner was inducted as a tenant in the house in question by Bhagwati Kaur, mother-in-law of opp. party No. 1, and that he paid some rents to opp. party No. 1 on the direction of the said Bhagwati Kaur. The petitioner has further averred that the demand for enhancement of the monthly rent by opp. party No. 1 from Rs. 30/- to Rs. 60/- was unreasonable and that as the petitioner refused to pay the rent at the enhanced rate, the application for eviction was filed.

4. In support of her case, opp. party No. 1 examined before the House Rent Controller her brother holding power of attorney who proved the lawyer's notice which opp. party No. 1 had served on the petitioner and the reply (Ext. 7) of the petitioner to the said notice. This fact is not in dispute or controverted in the show-cause filed by the petitioner. He denied the allegation of the petitioner that rent was paid to opposite party No. 1 on the direction of Bhagwati Kaur and that it was she who was the owner of the house.

5. The petitioner examined two witnesses besides himself. Opp. party No. 1, Santon Singh, is the son of the sister of Bhagwati Kaur. He supported the ownership of Bhagwati Kaur to the house and collection of rent by her from the tenants. Bhagwati Kaur herself was examined as a witness for the petitioner. She claimed to be the owner of the house, but admitted in her evidence in chief of the filing of the application for eviction by opp. party No. 1 with her permission. In Her cross-examination, she refuted the case of the petitioner that it was on her instruction that he paid rent to opp. party No. 1. This statement of Bhagwati Kaur cuts at the root of his case regarding the circumstances in which he paid rent to opp. party No. 1. She did not produce any documentary evidence in support of her claim of being the owner of the house. Still the petitioner in his evidence (O. P. W. 3) asserted that "sometimes rent has been collected by the applicant on behalf of Smt. Bhagwati Kaur", a stand which falls to the ground in view of the statement of O. P. W 2 who was the best witness on this point. The rest of the evidence is not necessary to be discussed except the reply given by the petitioner to the lawyer's notice served on him by opp. party No. 1 which in my opinion would clinch the issue.

In the reply to the lawyer's notice, the following stand was taken by the petitioner which is worth mentioning :

"Let your clientess be reasonable in accepting the monthly rent of Rs. 30/- as

before and continue the harmonious relationship of landlord and tenant".

In the reply to the lawyer's notice no whisper has been made regarding the denial of the relationship of landlord and tenant between the parties, much less there is any mention that it was Bhagwati Kaur who was the landlord of the house in question. There is a clear admission by the petitioner of payment of rent, of course at the rate of Rs. 30/- per month to opposite party No. 1 all through and about his making a request to opp. party No. 1 to accept the monthly rent at the same rate as before and continue the harmonious relationship of landlord and tenant. Thus, the petitioner has admitted in categorical terms the relationship of landlord and tenant between him and opposite party No. 1 apart from payment of rent to her and in the circumstances the payment of rent to opposite party No. 1 could not be said to be in any other capacity than that of landlord.

6. According to the definition given in the Act, "Landlord" includes any person who is receiving or is entitled to receive the rent of a house whether on his own account or on behalf of another or on behalf of himself and others. [Section 2(4) of the Act].

Section 7 of the Act lays down the conditions under which a tenant can be ejected. One of the conditions is that if the tenant has denied the title of the landlord or claimed a right of permanent tenancy and such denial or claim is not bona fide, the House Rent Controller shall make an order directing the tenant to put the landlord in possession of the house.

7. The question therefore is as to what will be the effect of the stand of the petitioner taken in his reply to the lawyer's notice and as to whether in view of his earlier stand, he can be permitted to change the front and deny the relationship of landlord and tenant between him and opposite party No. 1 in Court.

Neither of the Courts below has addressed himself to this line. The House Rent Controller has however observed in his order as follows :

"The applicant has produced a number of documents in the Court to prove that she is the owner of the case house. In that situation, no document has at all been filed by the opposite party members to prove that O. P. W. 2 is the real owner of the case house."

He accordingly accepted the case of the applicant (opposite party No. 1) that the petitioner was her tenant and held that the petitioner, having wilfully defaulted to pay the rent beyond the statutory period, was liable to be ejected.

The appellate Court after considering the various circumstances and the evidence on record has affirmed the findings of the House Rent Controller.

8. In this Court, the learned counsel appearing for the petitioner submitted that in view of the evidence on record and the denial of title by the petitioner, the

evidence of opposite party No. 1 was insufficient to come to the conclusion that she was the landlady of the house in question, and in any view of the matter, on the evidence of her mother-in-law (O. P. W. 2) that the rent was paid by the petitioner to opposite party No. 1 as her agent and not in her (opp. party No. 1) own rights, opposite party No. 1. who did not even examine herself as a witness, was not entitled to maintain the action for adjustment.

I have already referred to the findings of the Controller which are said to be based on various documents filed by opposite party No 1 to prove her ownership to the house. This finding of fact recorded by both the Courts below on the question of existence of relationship of landlord and tenant between the parties cannot be allowed to be challenged in the writ jurisdiction.

The learned counsel for the petitioner however tried to wriggle out from the obvious handicap which the petitioner faced on account of the admissions made by him in his reply to the lawyer's notice by urging that in view of non-filing of the lawyer's notice it could not be conclusively assumed or held that the petitioner had admitted himself to be a tenant under opposite party No. 1. His contention was that it may well be that opposite party No. 1 might have served the lawyer's notice not on her own behalf but as an agent of her mother-in-law. This contention is only an argument of labour, because the notice served on the petitioner was also proved by P. W. 1, and if it could have supported him, then the original being in his possession, he could have filed the same in this Court. Non-filing of the same by the petitioner before us would rather go against her. The Court is entitled to presume that the said notice was addressed by opposite party No. 1 in her capacity as the landlady. Once this conclusion is reached, then the petitioner would be hit by the mischief of the doctrine of estoppel contained in Section 116 of the Evidence Act which completely debars a tenant to deny the title of his landlord.

Apart from this fact, the petitioner has clearly admitted the fact of payment of rent to opposite party No. 1. Therefore, even in a case where a tenant may be in possession before the new tenancy begins, he may attorn to another landlord by payment of rent or by executing a lease deed. Although attornment is a creature of contract, it is not the case of the petitioner that the acknowledgement of tenancy in his reply to the notice was under any mistake of fact or coercion, misrepresentation or fraud etc., Which might invalidate the contract, and unless such plea is specifically taken and established, a person who has attorned to the lessor as a tenant is estopped from denying the landlord's title (Pahilajrai v. Arunkumar AIR 1982 NOC 8)

9. Section 116 of the Evidence Act embodies the principle of estoppel arising from the contract of tenancy and is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some unequitable situation taking undue advantage of the possession that he got and any probable defect in the title of the landlord. If any

reference is required in support of this well-established proposition, it may be made to the case of Jaikaran Singh Vs. Sita Ram Agarwalla and Others, It is the liability to pay rent which establishes the relationship of landlord and tenant. Even the actual payment of rent is not necessary to constitute or maintain that relationship, nor thereafter mere non-payment of rent does determine the tenancy and the tenant is not entitled to set up a jus tertii in a third person. That is why the definition of "landlord" in the Act is so wide and comprehensive, as already noticed earlier. In view of the comprehensive definition of the term "landlord" in the Orissa Act, it can be safely contended on behalf of opposite party No. 1 that even if she received the rent from the petitioner not on her own behalf as the landlady but on behalf of her mother-in-law, she was covered within the definition of "landlord" and entitled to maintain the action for the petitioner's ejectment.

Section 7(I) of the Act does not postulate that the "landlord" should be owner of the suit premises. It merely uses the expression "landlord" and does not qualify it with the further requirement that the landlord should be also the owner of the premises. Proof of ownership therefore cannot be regarded as sine qua non for the maintainability of the suit for ejectment brought u/s 7 (2)(ii) I find support for this view as well from Pahilajarai's case (supra).

I have discussed the matter rather in great detail, and no further discussion now seems to be necessary to answer the point. But before closing, I must also refer to a decision of the Supreme Court in the case of Sri Ram Pasricha Vs. Jagannath and Others, where dealing with Section 116 of the Evidence Act, it was observed that the tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant.

10. From the above discussions, the irresistible conclusion that follows is that the petitioner was not at all entitled to dispute the right of opposite party No. 1 to maintain the action for his ejectment. As non-payment of rent by the petitioner to opposite party No. 1 is a non-issue and a finding to this effect has also been recorded by both the Courts below, as also on the ground of denial of title of opposite party No. 1 which cannot be said to be bona fide on the evidence on record, the pre-conditions mentioned in Section 7(2) of the Act for passing an order for ejectment of the petitioner have been fully established.

The writ application therefore has no merit and must fail. I would accordingly dismiss the same with costs. Hearing fee is however fixed at Rs. 250/- only.