
(2016) 11 OHC CK 0033
In the Orissa High Court
Case No : R.S.A. No. 550 of 2005

Jogeswar Pandey

APPELLANT

Vs

Trilochan Chandra Kakani @ Trilok Chand Kakani

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Transfer of Property Act, 1882 — Section 106

Citation : (2017) 169 AIC 887 : (2017) 1 OJR 156

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. K.M. Mishra, Advocate, for the Appellant; Mr. N.C. Pati, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J. - This is an appeal against the judgment and decree dated 24.2.2005 passed by the learned Addl. District Judge, Jharsuguda in R.F.A. (T.S.) No.3 of 2004 reversing the judgment and decree dated 24.4.2004 and 7.5.2004 respectively passed by the learned Civil Judge (Junior Division), Jharsuguda in T.S. No. 24/120 of 1997-98.

2. The plaintiff is the appellant in a suit for eviction and realization of rent. The case of the plaintiff is that he has inducted the defendant as a tenant into a part of the suit house bearing holding no.98 appertaining to M.S. Plot No.554/3970, area Ac.0.13 dec. He used to pay rent till 1994. Thereafter he stopped payment. In spite of several requests, he did not pay the rent for which the plaintiff issued notice under Section 106 of Transfer of Property Act, 1882 (hereinafter referred as "T.P. Act") on 21.02.1997 to vacate the suit house.

3. Pursuant to issuance of summons, the defendant entered appearance and filed written statement contending, inter alia, that there is no relationship of landlord and tenant between the plaintiff and defendant. The father of the plaintiff is the owner of the suit premises. Thus, the plaintiff is not competent to issue notice

under Section 106 of T.P. Act and as such the suit is not maintainable.

4. On the interse pleadings of the parties, learned trial court struck six issues. They are:-

"(1) Whether the defendant is a tenant of the suit house under the plaintiff ?

(2) If it is held that the defendant is the tenant under the plaintiff, whether he is to be evicted from the suit house ?

(3) Whether the plaintiff is entitled to realize Rs.5400/- towards arrears rent ?

(4) Whether the suit is maintainable due to nonjoinder of necessary party ?

(5) Whether the plaintiff has any cause of action to file this suit ?

(6) Whether the plaintiff is entitled to any other relief claim in the suit ?"

5. To substantiate the case, the plaintiff had examined three witnesses and on his behalf eight documents had been exhibited. The defendant had examined one witness and on his behalf eleven documents had been exhibited.

6. Learned trial court came to hold that the defendant is a tenant of the suit shop room under the plaintiff, his brother and father. Notice under Section 106 of the T.P. Act is a valid one. Plaintiff being the landlord has right to determine the tenancy. It further held that the defendant is liable to pay an amount of Rs.5400/- and accordingly, answered issue nos.1 to 3. It further held that the suit is maintainable and answered issue no.4. Held so, learned trial court decreed the suit.

7. Aggrieved by and dissatisfied with the judgment and decree passed by the learned trial court, the defendant filed R.F.A. (T.S.) No.3 of 2004 before the learned Addl. District Judge, Jharsuguda. Learned lower appellate court came to hold that the father of the plaintiff never inducted the defendant as a tenant. Rent was collected from the defendant by the father of the plaintiff and his uncle. The plaintiff is not competent to terminate the tenancy. Held so, learned lower appellate court allowed the appeal.

8. The second appeal was admitted on the following substantial question of law:

"Whether the learned lower Appellate Court has committed illegality recording finding that a suit for eviction of the tenant filed by the son, when the father has inducted the tenant, is not maintainable?"

9. Heard Mr. K.M. Mishra, learned counsel for the appellant and Mr. N.C. Pati, learned counsel for the respondent.

10. Learned counsel for the appellant submitted that the plaintiff being one of the co-sharer of the suit can maintain the suit for eviction. One co-sharer can issue notice under Section 106 of T.P. Act for eviction of the defendant. The defendant was inducted as a tenant. He used to pay rent to the plaintiff.

Sometimes he paid rent to the father of the plaintiff and his uncle. Thus the defendant cannot deny the relationship of landlord and tenant on jejune grounds. To buttress his submission, he cited decisions in the case of *Sri Ram Pasricha v. Jagannath and others*, AIR 1976 SC 2335, *Smt. Kanta Goel, v. B.P. Pathak and others*, AIR 1977 SC 1599, *Debi Dayal Sharma and others v. Ramesh Kumar Agarwala and others*, AIR 2009 ORISSA 19.

11. Per contra, Mr. Pati, learned counsel for the respondent submitted that the father of the plaintiff and his uncle had inducted the defendant as tenant in respect of the entire house. The plaintiff is not the landlord. Thus, notice issued under Section 106 of T.P. Act is bad in law. He further submitted that learned trial court has not framed issue and abruptly came to a conclusion that there is existing relationship of landlord and tenant between plaintiff and defendant. The plaintiff in his evidence has admitted that his uncle, Jayadev, sold his half share to the defendant on 21.10.87 and his father and uncle inducted the defendant as tenant and at different times different co-owners have collected the rent. There are other co-sharers. In view of the same, the plaintiff cannot maintain the suit for eviction. He cited the decisions in the cases of *Ratanlal Bansilal and others v. Kishorilal Goenka and others*, AIR 1993 CALCUTTA 144 and *State of U.P. v. Mumtaz Hussain*, AIR 1979 ALLAHABAD 174.

12. Before delving deep into the matter, it is apt to refer the decisions cited at the Bar. In *Sri Ram Pasricha (supra)*, the apex Court held that jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. A co-owner is as much an owner of the entire property as any sole owner of a property is. The same view was reiterated in *Smt. Kanta Goel (supra)*.

13. In *India Umbrella Manufacturing Co. and others, v. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt.) and others*, (2004) 3 SCC 178, the apex Court held that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disengagement. It was further held that a suit filed by a co-owner is maintainable in law. This Court in *Debi Dayal Sharma and others (supra)* reiterated the same.

14. Mr. Pati, learned counsel for the respondent, submitted that the decisions in the case of *Sri Ram Pasricha (supra)* and *Smt. Kanta Goel (supra)* are distinguishable on facts inasmuch as the apex Court had the occasion to consider the provisions of West Bengal Premises Tenancy Act in the case of *Sri Ram Pasricha (supra)* and Delhi Rent Control Act in the case of *Smt. Kanta Goel (supra)*. The submission has no legs to stand. The ratio in both the cases apply

with full force to a suit instituted in the civil court for eviction of tenant. The decision in the case of Ratanlal Bansilal and others (supra) relied on by Mr. Pati, learned counsel for the respondent, is distinguishable. In the said case, Section 100 C.P.C. was the subject matter of interpretation before the Full Bench of Calcutta High Court. The decision in the case of Mumtaz Hussain (supra) is distinguishable on facts.

15. Admittedly, the plaintiff is the co-owner of the suit premises. The defendant admits that he used to pay rent to the plaintiff. Sometimes, he paid rent to the father of the plaintiff and plaintiff's uncle. A fair understanding of the relationship between the parties leaves little room for doubt that the defendant was the tenant of the premises. The plaintiff together with the other co-owners constituted the body of landlords and by consent implicit or otherwise, of the plurality of landlords, the plaintiff representing them all was collecting rent. For all practical purposes, he functioned as the landlord and was entitled to institute proceedings qua landlord.

16. In the wake of the above, the judgment and decree of the learned lower appellate court is set aside. The suit is decreed. The appeal is allowed. There shall be no order as to costs.