
(2008) 05 OHC CK 0044
In the Orissa High Court

Manguram Agarwal @ Agarwalla (dead) and Others	APPELLANT
Vs	
Sri Pyaralal (dead) and after him L.Rs. Budhi Dei and Others	RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 53

Citation : (2008) 106 CLT 351 : (2008) 2 OLR 269

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—Challenge in this appeal is to the judgment dated 19.02.1983 and decree dated 26.02.1983 passed by the learned Subordinate Judge, Sambalpur in T.S. No. 61 of 1978.

2. The facts of the case, in a nutshell, are as follows;

Plaintiff is the appellant. He purchased the suit land on 20th April, 1957 by a registered sale deed and constructed a house thereon. The defendant was a tenant of the same on a monthly rent of Rs. 60/-and the tenancy was completed according to the English calendar. As the defendant was a chronic defaulter and did not pay the rent since February, 1974 in spite of repeated demand, plaintiff filed the suit for eviction from Schedule-A property and prayed for delivery of possession of the same to him through Court on the allegation that defendant damaged the suit house as a result of which the value of the house was diminished and plaintiff wanted the suit house for his own use. As the defendant did not vacate the suit house, he issued a notice on 6.6.1975 by registered post demanding eviction and for arrear rent. As the defendant did not give any reply to the said notice nor did he do anything to vacate the suit house, plaintiff again issued another notice on 10th April, 1978 u/s 106 of the Transfer of Property Act (in short "the Act") terminating the tenancy and demanding possession of the suit premises. But the defendant did not reply to the said notice also. Therefore,

the plaintiff has filed the suit for eviction along with a prayer for arrear rent of last three years i.e. Rs. 2160/-.

3. The defendant In his written-statement, while traversing the plaintiff's allegations, admitted that though the plaintiff purchased the vacant piece of land in the year 1957, he did not construct the house thereon. According to the defendant, he wanted to settle at Gomadera and for that purpose approached the plaintiff to sell the suit land to him to which the plaintiff agreed in the year 1962. The defendant pleaded that sale of the suit house was fixed for a consideration of Rs. 600/- and the plaintiff received an advance of Rs. 200/- towards the part consideration from him and delivered possession of the suit land to him. It was agreed that balance consideration of Rs. 400/- would be received by the plaintiff when he would execute the registered sale deed. In pursuance of the oral agreement for sale, the defendant constructed a "Jhunipudi" on the land in question and possessed the entire land under a fence and after three years, he constructed a Pucca Khaparli house consisting of four rooms and a verandah and continued to live in the said house. Thereafter, plaintiff did not receive the balance consideration nor did he execute the registered sale deed in spite of repeated requests. The defendant has taken a further stand that by virtue of his adverse possession for more than 12 years, he has derived title over the suit property and is not liable to be evicted from the suit house as he was never a tenant in respect of the suit house under the plaintiff. On the aforesaid grounds, he prayed that the suit was not maintainable and plaintiff has no cause of action to file the suit and the suit should be dismissed with costs.

4. On the aforesaid pleadings of the parties, the learned Subordinate Judge formulated as many as five issues which are as follows;

1. Whether the defendant is in possession of the suit house as a tenant or in pursuance of the agreement for sale ?
2. Is the defendant entitled to protect his possession u/s 53(a) of the Transfer of Property Act ?
3. Has the defendant perfected his title by adverse possession ?
4. Is the suit maintainable ?
5. To what relief ?

5. The trial Court on analysing the evidence adduced by the parties in support of their respective claims came to the following findings;

From the oral evidence of defendant, it can not be believed that the defendant possessed the suit land by virtue of an agreement for sale and he constructed the house thereon. The plaintiff established by oral and documentary evidence a probable case to the effect that he has actually constructed the suit house on the suit land and he is the owner of the property and defendant was in occupation of the suit house before 1968. Plaintiff has failed to prove the relationship of

landlord and tenant between him and the defendant. The defendant was in permissive possession of the suit house. Therefore, issue Nos. 2 and 3 were not pressed. Since notice u/s 106 of the Act has been complied with the suit was maintainable. As the plaintiff has not been able to prove the relationship of landlord and tenant between him and the defendant, he was not entitled to the relief of eviction, recovery of possession and consequentially he was not entitled to arrear rents. On the above findings, it dismissed the suit.

6. The learned Counsel appearing for the appellant submitted that the admitted facts are that plaintiff is the owner of the suit house and the land and the defendant is in permissible possession/occupation of the same. There was no oral agreement for sale between the parties. The defendant has rightly not pressed the plea of adverse possession in the trial Court. Therefore, the plaintiff's suit should have been allowed by the trial Court. Law is well settled that once permissive possession is admitted and continues, it always continues as permissive and it can never be said as adverse possession. The owner is entitled to recovery of possession by virtue of his title. He further submitted that when the plaintiff in his deposition has stated that he inducted the defendant in Jestha i.e. May, 1968, the finding of the trial Court that the plaintiff inducted the defendant in the suit house in February, 1968 is an error of record because plaintiff did not plead in his plaint or anywhere that he inducted the defendant in February, 1968. He has only pleaded in the plaint that defendant was inducted in the suit house in the year 1968. The defendant had not been able to establish the plea advanced by him that in pursuance of the oral sale, he had paid a part consideration and was ready and willing to perform his part of contract by offering the rest part of the consideration but the plaintiff did not execute the sale deed. As the defendant failed to prove the said plea, the trial Court should have passed the decree in favour of the plaintiff.

7. The learned Counsel appearing for the respondent, on the other hand, vehemently argued that the judgment and decree passed by the trial Court is just decision and since the plaintiff in the entire case has not been able to prove that the defendant was a licensee or a trespasser so as to mould the relief of eviction in his favour and whether the defendant is a licensee on tenant holding or a tenant under sufferance, he is not entitled to the decree of eviction and arrear rents.

8. From the above rival submissions of the parties and the evidence adduced by both the parties before the trial Court, it is to be determined in this appeal as to whether the plaintiff is entitled to relief of eviction and arrear rent.

9. On going through the records, the following admitted facts reveal;

The plaintiff is the owner of the suit land and the suit house. The defendant is not a licensee or trespasser to occupy the land and house for ever. The notice u/s 106 of the Act is valid for eviction of the defendant and for arrear house rent. The defendant has admitted the title of the plaintiff and he was in permissive

possession. The question of adverse possession does not arise as the defendant has not pressed the said plea in the trial Court. The defendant has not claimed possession over the suit land and house as of his own right to the knowledge of the true owner for a prescribed period. Since the plaintiff's title is admitted and defendant is in permissive possession, plaintiff is entitled to the decree for eviction. As the notice u/s 106 of the Act is valid, the plaintiff is entitled to arrear rents also.

10. The trial Court has committed an error of law as well as fact in recording the fact that as there was no alternative pleading or prayer and the relationship of the landlord and tenant has not been established, plaintiff's prayer for decree of ejectment cannot be sustained. The question of title has been raised in the trial of the suit and has been investigated, the parties knowing about it and adducing evidence on the point and Court is in a position to give the relief on the basis of title, there is no reason why the Court should drive the plaintiff to file another suit in order to get the relief provided the plaintiff has done nothing wrong to disqualify himself for receiving an equitable relief. In the present case, plaintiff's title is admitted and the plea of adverse possession has not been pressed by the parties. The defendant is in permissible possession as per his plea. Therefore, since the issue of title was an important issue and was fairly tried by both the parties by adducing evidence in support of their respective pleas and there was nothing done by the plaintiff to disqualify himself from receiving the equitable relief of eviction on the basis of title, the Court below has committed error in not granting the decree of eviction in favour of the plaintiff. AIR 1951 Pat 550, Mohammad Mian v. Jugeshwar Prasad). Relying on the ratio of the aforesaid decisions, this Court holds that the plaintiff is entitled to the decree of ejectment.

11. The trial Court has also further committed an error of law by recording the finding that the plaintiff has pleaded about the induction of the tenancy of defendant in February, 1968 whereas it is found from paragraph-2 of the plaint that he has pleaded about the induction of the tenancy in favour of the defendant but he has not given any specific date as recorded by the Court below. However, while he was examined as P.W. 1, he stated that in May, 1968 the defendant was inducted as a tenant. It is further revealed that the electricity bills submitted by the defendant cannot be relied on for coming to a conclusion that the defendant was in possession of the suit land before 1968. With the above erroneous conclusion, the learned Subordinate Judge, Sambalpur has disbelieved the plaintiff's case and held that plaintiff has failed to establish the relationship between the landlord and the tenant. It further reveals that the notice, Ext. 2, was served on the defendant on 19.4.1978 and it was specifically stated therein that the defendant was a tenant. He was inducted as a tenant and the defendant has not replied to the said notice nor has he taken any plea in the written-statement to disprove such facts. The trial Court has also failed to appreciate the proved facts that notice u/s 106 of the Act was issued to the defendant regarding his induction as tenant in the house and for eviction a notice was served on him on 19.4.1978 and neither he has given any reply to the said notice vide Ext. 2

nor has he denied the said fact in his written-statement or adduced any evidence to disprove the said facts.

12. Therefore on the above findings, this Court holds that the plaintiff has proved the fact of tenancy of the defendant and the notice was properly served on the defendant for eviction and the plaintiff is entitled to relief of arrear rents. Thus, this Court decrees the suit in toto by setting aside the order dated 19.02.1983 and decree dated 26.02.1983 passed by the learned Subordinate Judge, Sambalpur in Title Suit No. 61 of 1978.

13. The First Appeal is allowed. There shall be no order as to costs.