
(2011) 11 OHC CK 0010
In the Orissa High Court
Case No : Writ Petition No. 12605 of 2010

M/s. Bibek Motors

APPELLANT

Vs

Pyarimohan and Pramila Trust.

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 226, 227
Specific Relief Act, 1963 — Section 6
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2012 Ori 87

Hon'ble Judges : B.K. Misra, J

Bench : Single Bench

Advocate : B. Bhuyan, B.N. Das, S.K. Panda, R. Ray, R.N. Pratihari, A.K. Rout, N.P. Patra and B.N. Mishra, for the Appellant; N.P. Parija, A.K. Mohanty and S.K. Rout, for the Respondent

Final Decision : Allowed

Judgement

B.K. Misra, J.—The petitioner has filed this writ petition under Articles 226 & 227 of the Constitution of India challenging the impugned order (Annexure-6) dated 22.5.2010 of the ad hoc Additional District Judge, (Fast Track-I), Cuttack in F.A.O. No. 30 of 2010 in reversing the decision of the Civil Judge (Sr.Division), 1st Court, Cuttack in I.A. No. 125 of 2010 arising out of C.S. No. 137 of 2010. The facts of the case may be briefly stated as follows:-

The petitioner for carrying out her business in motor parts took shop room No. 2 from Pyari Mohan and Pramila Trust in the year. 2001 on monthly rent basis. It is the case of the petitioner that the said trust was created by Pyari Mohan Samantaray and his wife Pramila Sundari Devi in the name of Pyari Mohan and Pramila Trust (in short P.P. Trust) and the beneficiaries of the trust were late Pyari Mohan Samantaray, his wife Pramila Sundari Devi and their five sons Arun Kumar Samantaray, Dillip Kumar Samantaray, Pradyuma Kumar Samantaray, Sujogya Kumar Samantaray, Binod Kumar Samantaray and grand son Anjan Kumar

Samantaray. Late Pyari Mohan Samantaray till his death in the year, 2007 was functioning as the Managing Trustee of the said P.P. Trust and was receiving rent from the petitioner as well as other tenants in respect of the other shop rooms. The annual rent was fixed in respect of the shop room No. 2 at Rs. 2000/- per month and the petitioner also deposited cash security of Rs. 1,00,000/- with the trust. The rent of Rs. 2000/- was enhanced to Rs. 2400/- in the year, 2005. A deed of agreement was executed in between the petitioner with the trust on 1.10.2004 for taking the demised premises by the petitioner on monthly rent and it remained valid till 30.04.2005. It was further renewed for three years thereafter i.e. till 30.04.2008. Thereafter it is alleged that since Pyari Mohan Samantaray was suffering from various ailments because of his advanced stage, therefore, he instructed the petitioner to pay the rent in respect of the demised premises to another trustee, namely. Binod Kumar Samantaray by cheque in the name of P.P. Trust. Accordingly, the petitioner was going on paying the rent as well as enhanced house rent from time to time. It is the further case of the petitioner that till December, 2009 there was absolutely no problem with the possession of the shop room by the petitioner but disturbance arose when the present Opposite Party, who by proclaiming him as the Managing Trustee of P.P. Trust demanded rent for the month of December, 2009 and January, 2010 as he was authorized by a majority of members of the trust. It is alleged that in the month of February, 2010 power supply was disconnected to the tenanted premises and when the Opposite Party created disturbances during business hours of the Petitioner Firm and when threats were hurled for forcible eviction of the petitioner, the petitioner filed a suit i.e. Civil Suit No. 137 of 2010 in the Court of Civil Judge (Sr.Divn.). First Court, Cuttack with a prayer for restraining the opposite parties from evicting her from the suit premises without following due process of law and also for mandatory injunction for restoration of the power supply to the petitioner's shop.

2. The present opposite party, Pyarimohan & Pramila Trust (for short. P.P. Trust) represented through its Managing Trustee contested the suit in the Court below by filing written statement/counter claim wherein while admitting the fact that the petitioner was inducted as a tenant in respect of shop room No. 2 by P.P. Trust in the year 2001 inter alia pleaded that the tenancy of the petitioner came to an end with the expiry of the lease period on 30.04.2008. It is the further case of the Opposite Party that the possession of the suit shop room by the petitioner after the expiry of the lease period on 30.04.2008 is illegal and not recognized in the eye of law and the petitioner is a trespasser. It is also the case the Opposite Party that Binod Kumar Samantaray was not authorized by the trustees to enter into any agreement with the petitioner and he was also not authorized to collect rent from the petitioner. Accordingly when because of nonpayment of house rent and electricity energy charges, notice u/s 106 of the Transfer of Property Act was served on the petitioner to avoid eviction, the petitioner by creating some forged documents has filed the suit and prayed for injunction mischievously.

3. The learned Civil Judge (Sr.Divn.). First Court, Cuttack on the prayer of the petitioner in I.A. No. 125 of 2010 restrained the opposite party, namely Pyarimohan & Pramila Trust represented through its Managing Trustee Subrata Kumar Samantaray from forcibly dispossessing of the petitioner from the suit premises till disposal of the suit and also a direction was given for restoration of power and water supply to the suit shop room with immediate effect. The said order was passed on an application filed by the petitioner under Order 39 Rules 1 & 2 of the C.P.C. read with Section 151 of the C.P.C. vide Interim Application No. 125 of 2010 which arises out of Civil. Sail No. 137 of 2010. The said order of the learned Civil Judge (Sr.Divn.)- First Court, Cuttack was challenged by the opposite party, namely Pyarimohan & Pramila Trust by filing F.A.O. No. 30 of 2010 before the learned District Judge. Cuttack which was subsequently transferred to the file of the Ad-hoc Additional District Judge (Fast Track Court No. 1), Cuttack and the learned Ad-hoc Additional District Judge (Fast Track Court No. 1), Cuttack allowed the appeal and set aside the order dated 23.3.2010 passed by the learned Civil Judge (Sr.Divn.). First Court, Cuttack in I.A. No. 125 of 2010.

4. I have heard learned counsel for the respective parties in the matter.

Learned counsel for the petitioner while assailing the impugned order at Annexure-6 contended that when admittedly the petitioner was inducted by P.P. Trust lawfully and even after expiry of the lease period on 30.4.2008. the petitioner with the full knowledge of the trust and its member remained in possession of the suit shop Room No. 2 and rent was accepted by the said trust till January, 2010 it cannot be said that the possession of the suit shop room No. 2 was illegal and she is a trespasser. It was contended by the learned counsel for the petitioner that the possession of demised premises by the petitioner cannot be styled as a tenant-at-sufferance and is disentitled to the equitable relief of injunction. It was also contended by the learned counsel for the petitioner that the findings of the learned Ad-hoc Addl. District Judge, (F.T.C.-I), Cuttack that the petitioner did not approach the Court with clean hand and there was suppression of material facts before the Court are totally unsustainable, in view of the settled position of law that even if a person can be termed as a trespasser, but he or she cannot be evicted from the tenanted premises under his/her possession without following due process of law.

5. Learned counsel appearing for the Opposite Party on the other hand while supporting the impugned order at Annexure-6 contended that with the expiry of the lease period on 30.4.2008 the possession of the petitioner in respect of shop room No. 2 has become illegal and the petitioner is a trespasser and when she has not paid the rent she is entitled to be evicted and besides that when in 2006 the petitioner Company paid rent to the opposite party, Subrat Kumar Samantaray, the petitioner Company cannot take the stand that rent was being paid to Binod Kumar Samantray a member of the Managing Trustee. It was also contended that the agreement which is being relied upon by the petitioner dtd.

1.5.2008 has been created for the purpose of filing the suit as the parties to the agreement signed the same on 31.1.2010 and thus when the petitioner has not approached the Court with clean hand and there is suppression of material facts she is not entitled to the equitable relief of injunction.

6. I have very carefully gone through the impugned order passed by the learned Ad-hoc Additional District Judge (F.T.C.-I), Cuttack (Annexure-6) as well as the order of the learned Civil Judge (Sr.Divn.), 1st Court, Cuttack dated 23.3.2010 at Annexure-5. Perused the copy of the plaint in Civil Suit No. 137 of 2010 (Annexure-1). the Written Statement/Counter Claim filed by the present opposite party and also the documents which have been relied upon by the parties in support of their respective case.

7. The admitted fact is that the petitioner was inducted as a tenant in respect of shop No. 2 which situates on Holding No. 64 appertaining to Sabik Plot No. 3494 in Mouza Bahar Bisinabar of Cuttack corresponding to Hal Khata No. 375 and Plot No. 388/944 by the Managing Trustee Sri Pyari Mohan Samantaray on behalf of Pyarimohan and Pramila Trust (in short "P.P. Trust") and the petitioner remained in possession till the dispute arose when the opposite party demanded rent for the months of December, 2009 and January, 2010 claiming to be the Managing Trustee of P.P. Trust. It is also an admitted fact that there was an agreement while inducting the petitioner as tenant in respect of shop No. 2 from 1.5.2005 till 30.4.2008. Admittedly also, the petitioner even after expiry of the agreement period on 30.04.2008 remained in possession of the shop room No. 2 and was going on paying rent to the said P.P. Trust and was carrying on her business in the said suit shop room.

8. Learned counsel appearing for the petitioner contended that even after expiry of the lease period when the petitioner remained in possession of the shop room that too within the knowledge of everybody including the opposite party Trust and when rent was being paid regularly even at enhanced rate, such possession by the petitioner of the suit property can be called a tenant holding over and the petitioner cannot be said to be a tenant at sufferance. It was also contended that the learned appellate court failed to appreciate the distinction between the tenant holding over and a tenant at sufferance. It was also further argued that even if the petitioner can be called as a tenant at sufferance but when the petitioner is running her business in the demised premise she cannot be evicted otherwise than under due process of law.

9. Learned counsel for the Opposite Party on the other hand contended that since the petitioner is a tenant at sufferance and when she has not paid rent after expiry of the lease period, the status of the petitioner is not less than a trespasser and thus, the learned Appellate Court rightly set aside the order of the learned Civil Judge (Sr.Divn.), 1st Court, Cuttack.

10. The word trespass in common English acceptation means and implies unlawful or un-warrantable intrusion upon land. In other words, it is a

transgression of law or right. Trespasser is a person, who enters the premises of another with knowledge that his entrance is in excess of the permission that has been given to him. But can the petitioner be called a trespasser, in the present facts and circumstances of this case?

11. Admittedly, the petitioner was inducted as a tenant in respect of the suit shop room by the Managing Trustee of P.P. Trust in the year, 2001 on payment of monthly rent of Rs. 2,000/- and the petitioner was allowed to run the business from year to year till 2004 and 2005. But on the strength of an agreement she was further allowed to run the business in the said suit shop room from 1.5.2005 for 3 years i.e. till 30.4.2008 and thereafter also she was allowed to run the business in the said shop room even if the lease period had expired. It is alleged by the opposite party Trust that the petitioner did not pay rent after expiry of the lease period and remained in illegal possession which cannot be protected.

12. It is a settled position of law that there is a subtle difference between a tenant holding over and a tenant at sufferance. Holding over stands equivalent to the retention of possession after determination of lease, but with the consent of the landlord. Whereas on similar circumstances if the possession is without the consent of the landlord then the same stands out to be a tenant at sufferance. Even in the worst case possession of the tenant at sufferance is protected till he is evicted in due course of law. But his possession is not legal. In other words, his possession is unlawful or litigious possession. Law respects possession even if there is no title to support and no one is permitted to take law in one's own hands and to dispossess the person in actual settled position without due course of law. The object of Section-6 of the Specific Relief Act is to discourage people to act in self-help, however, good their title may be. In the instant case, when after expiry of the agreement period on 30.4.2008 the petitioner continued in possession and even if it is said that without consent of the lessor, such possession of the petitioner even by sufferance cannot be considered as unauthorized and the same may amount to a "juridical" possession. Such possession of a tenant should be protected by the Courts and he is entitled remain in possession of the demised premises till he is evicted in the due course of law.

13. In the instant case, the petitioner alleges that the power supply to her business premises has been snapped and the opposite party is creating problem in her day-to-day business activities in the suit shop room. It is the settled position of law that the lessor with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by the forfeiture or otherwise. Under law the possession of a lessee, even after the expiry or its earlier termination is a "juridical" possession and forcible dispossession is prohibited, a lessee cannot be dispossessed otherwise than in due process of law *State of Uttar Pradesh and Others Vs. Maharaja Dharmender Prasad Singh and Others*, , *R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others*, *Kewal Chand Mimani (d) by Lrs. Vs. S.K.*

Sen and Others, , Mogilipuvvu Annapurnaiah Vs. Malampati Narasimha Rao and Another, .

14. The contentions raised by learned counsel for the Opposite Party regarding the genuineness of the agreement between Binod Kumar Samantray and M/s. Bibek Motors represented by Chhabita Routray on 1.5.2008 and that such a document has been created and is a forged one as the parties have signed it on 29.1.2010 and also payment of rent for the months of April to June, 2006 and grant of receipt by Subrata Samantaray are all disputed questions of facts. It is the trite law that the High Court in its writ jurisdiction will not enquire into the complicated questions of fact Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, .

15. After giving my anxious hearing to the matter and perusing the impugned order at Annexure-6 and the materials which shows that the petitioner-Company was inducted as a tenant on payment of monthly rent by the P.P. Trust and when such rent was also deposited in the name of the trust even after the expiry of the lease period and in view of the bank statement at Annexure-F, I am not able to sustain the findings arrived at by the learned Ad hoc Additional District Judge, (F.T.C. No. 1), Cuttack in F.A.O. No. 30 of 2010 as such findings have been recorded by the learned Appellate Court on a wrong appreciation of fact and position of law. On perusal of the entire materials on record, I found all the 3 essential ingredients for grant of injunction have been established by the petitioner. I find the approach of the learned, Civil Judge (Sr.Divn.) 1st Court, Cuttack in., deciding the interim application No. 125 of 2010 dated 23.3.2010 to be a very balanced one and based on proper appreciation of materials on record. Thus, I have no hesitation in my mind to quash the impugned order at Annexure-6 and restore the order of the learned Civil Judge (Sr.Divn.) 1st Court. Cuttack at Annexure-5. Accordingly, the impugned order at Annexure-6 is quashed and the order of the learned Civil Judge (Sr.Divn.), 1st Court, Cuttack under Annexure-5 restored. Since the dispute centers around the eviction of the petitioner from the suit shop room, the learned Civil Judge (Sr.Divn.) 1st Court, Cuttack should expeditiously dispose of the suit in accordance with law without being influenced by any of the observations made in this order. All endeavour should be made to dispose of the suit within a period of six months from the date of receipt of this order.

Thus, the writ petition stands allowed.