
(2003) 10 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 3808 of 1987

Shyam Sundar Mohapatra and Others	APPELLANT
Vs	
Brahmananda Sen and Others	RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 97 CLT 49

Hon'ble Judges : P.K. Tripathy, J;P.K. Misra, J

Bench : Division Bench

Advocate : N.C. Pati, S.K. Swain, B.K. Nayak, A.K. Mohapatra, S. Mishra, P.K. Khuntia and S.K. Acharya, for the Appellant; B. Rath, P.K. Parida and R.C. Rath, for the Respondent

Judgement

P.K. Tripathy, J.—Heard.

2. This writ application is precisely under Article 227 of the Constitution of India. Opposite Party Nos. 1, 2, 4 & 5 in H. R. C. Case No. 13 of 1982 of the Court of S.D.J.M. Balasore were appellant Nos. 1 to 4 in H.R.C. Appeal No. 6 of 1985 of the Court of Chief Judicial Magistrate, Balasore and they are the petitioners before us. Both the petitioners and opposite party Nos. 3 & 6 in that H.R.C. Case are respectively the Opposite Party Nos. 1 to 4 in this O.J.C. Opposite party No. 2 is one of the sons of deceased Opposite party No. 1. Therefore the other legal representatives of opposite party No. 1, on his death, were substituted as opposite party Nos. 1 (a) to 1 (d). On the death of Opposite Party No. 4 her legal heirs have been substituted as Opposite Party Nos. 4(a) to 4 (d). The substituted legal representatives of the above noted deceased Opposite Parties have not appeared and contested this case.

3. For the sake of convenience of reference and to avoid any confusion parties to the proceeding are referred to according to their status in the H.R.C. case. In other words petitioners in the H.R.C. Case (Opposite party Nos. 1 and 2 in this O.J.C.) are referred to as petitioners and Opposite Party members in that case

(Petitioners and Opposite Party Nos. 3 and 4 in this O.J.C.) are referred to as Opposite parties.

4. According to the facts pleaded and allegations made by the petitioners in their application before the House Rent Controller, they sought for eviction of the Opposite party members from the two rooms rented out on monthly rent to the Opposite Party No. 1. Petitioner No. 2 is the owner of those two rooms having received the same to his share in registered deed of partition (Exts. 1 and 2). His father i.e. Petitioner No. 1 was allowed to possess one of the said two rooms during his life time. Though Opposite party No. 1 took the said two rooms on rent, but none of the Opposite Party members, being belonging to one family, resided there. On the other hand, Opposite Party No. 3, one of the daughter-in-laws of Opposite Party No. 1 runs a medical clinic being a qualified doctor. Petitioners alleged that Opposite Party has failed to pay arrear house rent and that Petitioner No. 2 requires the said rented premises for his personal use as a part of his residential house. Accordingly application was filed for eviction u/s 7(2) (1) read with 7(4) of the Orissa House Rent Control Act, 1967 (in short "the Act").

5. Opposite Party members filed two separate written statements in as much as Opposite Party No. 3 filed a separate written statement. In substance the plea of the tenants/opposite parties is that the tenanted rooms are being used for running a "Clinic" of the Opposite Party No. 3 and there was no default in payment of the house rent in as much as in G.R.C. Misc. Case No. 1 of 1976 u/s 10(2) of the Act, the tenants were allowed to deduct Rs. 20/- per month from the house rent of each of the rooms and to adjust the same towards repairing cost of Rs. 800/-. Accordingly, the Opposite Party members claimed that there was no arrear house rent except the fact that the landlord refused to receive the house rent. Their further case is that there is no necessity by the landlords/petitioners to take back the rented rooms for residential purpose bonafidely and several applications for eviction filed in past had been rejected before institution of the present case. The Opposite Party members also raised the contention of mis-joinder of causes of action.

6. In support of their case, the landlord petitioners examined the petitioner No. 2 as P.W. No. 2 and another witness i.e. P.W. No. 1 to prove the document of partition and allotment of the suit house to the share of the petitioner No. 2. They relied on documents Ext. 1 i.e., the certified copy of the family settlement deed dated 7.8.1975, Ext. 2 the certified copy of family settlement correction deed dated 26.4.1974, Ext. 3 series i.e. the counterfoils of money orders and Ext. 4 i.e., the notice issued to the opposite Parties. Opposite Party members examined O.P. No. 1 as O.P.W. No. 1 and no other evidence was adduced from their side.

7. On the basis of the aforesaid contentions and the evidence on record, learned S.D.J.M. recorded the findings in favour of the landlord/petitioners and passed the order of eviction as per his judgment dated 15.5.1985. As against that order

of eviction, all the Opposite Party members except Opp. Party No. 3 preferred H.R.C. Appeal No. 6 of 1985. Learned C.J.M., Balasore as the appellate authority heard and disposed of that appeal on 3.12.1987. On re-assessment of fact and law and the evidence on record, learned C.J.M. concurred with learned S.D.J.M. on factual and legal findings. Accordingly, he dismissed the appeal.

8. It appears from the unchallenged evidence of P.Ws. 1 and 2 and particularly evidence of P.W. 2 and Exts. 1 and 2 that petitioner No. 2 i.e., Chidananda Sen, is the owner of that property and his father Brahmananda Sen was allowed to occupy a room i.e., one of the rented rooms, during his life time. It also appears from the L.C.R. that Brahmananda Sen authorised Chidananda Sen to look after the Litigations on his behalf because he was over 80 years old and was not capable of attending the Court. These factual findings of the trial Court based on evidence on record was not challenged before the appellate Court. It is undisputed case of the parties that Opposite Party No. 3 i.e., Smt. Radha Devi is in real occupation of those two rooms for running a Clinic there and the other Opp. Party members are not in occupation of that house at any point of time. Radha Devi though filed a separate written statement but she did not contest the case by examining herself or examining any witness on her behalf. She has also not challenged to the order of eviction passed by the Courts below.

9. Trial Court recorded the finding that non-acceptance of the rent by the landlord from April, 1980 onwards was appropriate because the tenants had no right to make a further deduction of Rs. 20/- per month after adjustment of Rs. 800/- as per the order passed in H.R.C. Case No. 1 of 1976 and therefore, there is no bona fide in the contention of the tenants that they tendered the house rent in accordance with the order of the H.R.C. Court. That finding was challenged in the appellate Court and on a fresh analysis of the evidence on record, learned C.J.M. held that after adjustment of the amount of Rs. 800/- spent towards the repairing, the tenant has no right to make further deduction of any amount from the monthly rent while tendering the same to the landlords and therefore, the tenants are in default in payment of arrear house rent. This Court finds such factual finding is based on proper appreciation of evidence. Learned Counsel for the petitioner has not been able to satisfy us about illegality or perversity in such factual findings.

10. It appears from the evidence on record and the findings recorded by the Courts below that petitioner No. 2 has make out a case in proof of bona fide requirement of the house by him.

11. The contentions of mis-joinder of cause of action, as it appears, was not pursued by the Opposite Party members i.e., the present petitioners in the trial Court, and therefore, that Court did not record any finding in that respect. The same position continued even in the lower appellate Court. Be that as it may, when the evidence on record proves that petitioner No. 2 is the owner of both the rented rooms and petitioner No. 1, during his life time, was allowed to occupy one of the rooms and in the meantime petitioner No. 1 has died, the

issue of mis-joinder of cause of action no more exists. Thus the impugned order of eviction is not liable to be set aside on that ground.

For the reasons indicated above, we dismiss the writ application.

Ch. P.K. Misra, J.

12. I agree.