
(1975) 12 OHC CK 0031
In the Orissa High Court
Case No : First Appeal No. 176 of 1969

State of Orissa

APPELLANT

Vs

Chandan Singh

RESPONDENT

Date of Decision : 23-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 25(3)
Limitation Act, 1963 — Article 52, 18

Citation : (1976) 42 CLT 244

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; P. Kar, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—The Defendant the State of Orissa, has preferred this appeal against the decision of the Subordinate Judge, Jajpur in Title Suit No. 12 of 1968.

2. The Plaintiff's suit is for eviction from the suit house of the Defendant the State of Orissa (hereinafter referred to as "State") who was in occupation of the said house as a tenant through its officers in the P.W. (Roads and Buildings) Department and for recovery of arrear rent of the said house from the State for the period from 21-8-1962 to 5-7-1968 at the rate of Rs. 105/- per month coming to a total of Rs. 7402.50 Paise, and for future interest on that amount.

3. The Plaintiff's case, in short, is that on 21-8-1962 he purchased the suit house from its previous owner and by the time of the said purchase the Defendant was in occupation of the said house. It is an admitted fact that after the purchase of the house by the Plaintiff the Defendant attained to the Plaintiff as his tenant in respect of the said house. As the Defendant did not pay rent to the Plaintiff, he on 20-12-1967 gave notice to the concerned officer for payment of the arrear rent and to give vacant possession of the said house to the Plaintiff.

According to the Plaintiff, on 29-12-1967 the Executive Engineer, Balasore (R and B) Division on behalf of the State intimated the Plaintiff that the matter relating to payment of rent of the said house was under consideration and the same would be paid shortly. As no rent in fact was paid to the Plaintiff, notice u/s 80, CPC was served on the Defendant, and thereafter this suit was filed for the reliefs as stated above.

4. The Defendant in the written statement controverted the Plaintiff's allegations both on factual and legal aspects. It has however been admitted by the Defendant that the sectional Officer, P.W.D. (R and B), Jajpur Road was in occupation of the house in question on behalf of the state, and that the Defendant could not pay any rent for the said house since the time the Plaintiff purchased the same as the fair rent for the same, to which only the Plaintiff was entitled, had not been fixed. It is also admitted that after the fact of the transfer of ownership of the house to the Plaintiff was intimated to the Defendant, the latter accepted the Plaintiff to be the owner of the said house. It is however stated that the Plaintiff is not entitled to the amount or the rate of rent claimed by him in this suit. The Defendant vacated the house on 1-11-1968 and handed over vacant possession of the same on that date.

5. The Court below has decreed the Plaintiff's prayer in the suit for realisation of arrear dues at the rate of Rs. 105/- per month for the entire period claimed by him i. e. from 21-8-1962 to 5-7-1968. The prayer for eviction was not granted in view of the admitted fact that the Defendant vacated the suit house during the pendency of the suit.

6. The learned Advocate General appearing for the Appellant contended that as the suit was instituted on 10-7-1968, the Plaintiff could have claimed realisation of arrear rent only for a period of three years just preceding the institution of this suit i.e. only from 10-7-1965 till the institution of the suit, and not for any period previous to 10-7-1965 as provided under Article 52 of the new Limitation Act. While making that submission the learned Advocate-General in the same strain has canceled that in view of the letter (Ext. 6) dated 29-12-1967 written by the Executive Engineer, Balasore (R and B) Division, the Plaintiff can at best claim arrears of rent of the said house only from 29-12-1964 till the institution of the suit, and not for any earlier period, as there is nothing on record to entitle the Plaintiff to realise the arrear rent on any rate whatsoever for that earlier period as the same is clearly barred by limitation. He contends that Ext. 6 can at best be considered to be an acknowledgment coming within Section 18 of the Limitation Act, and can never be construed as a promise to pay time barred debts as per Sub-section (3) of Section 25 of the Contract Act.

7. Mr. Kar, the learned Counsel for the Respondent, however contends that in the letter (Ext. 6) dated 29-12-1967, there is clear admission on behalf of the Defendant that the entire arrear rent due on the Defendant would be paid to the Plaintiffs" and that being so, the entire arrear rent from 21-8-1964 till the institution of this suit can be realised in this suit in view of the provisions of

Section 25(3) of the Indian Contract Act.

8. No doubt, a promise to pay a barred debt is by itself a valid consideration, and as per Section 25(3) of the Contract Act, if there is any such express promise on behalf of the Defendant to pay the entire arrears of rent claimed in this suit including for the period for which the claim therefor is barred by limitation, then the Plaintiff will be entitled to claim the entire amount due on that account from the Defendant. But law is well settled that in order to invoke the provisions of Section 25(3) of the Contract Act, there must be an express promise to pay the barred debt. Though the word "express" is not used in Section 25(3) of the Contract Act that is to be construed that way as otherwise there will be no promise to pay in writing as required under that provision. Where there is no express promise to pay but the intention is inferred only indirectly cannot be treated as a promise in writing to pay the time-barred debt so as to come within Section 25(3) of the Contract Act.

In *Ratanchand Damntmal's case* AIR 1954 MB. 11 it has been observed that the promise to, necessary to being a case within Section 25(3) of the Contract Act, must be an express promise. An unconditional acknowledgment by a debtor implies a promise to pay. But in no case, an implied promise can be construed to be a promise in writing to pay for the purpose of Section 25(3) of the Contract Act. The above view also finds favour from the decisions. In *Ramprasad Jagbandhoo and Ors. v. Anadi Brindawan Rawat* AIR 1958 Nag. 180, *Shivjiram Dharmulal Marwari and Anr. v. Gulabchand Kalooram Marwari* AIR 1941 Nag. 100, and the majority view in the Full Bench decision in *Jeevraj and Anr. v. Lalchand and Ors.* AIR 1969 Raj. 191.

9. On the above view of the law on this point it is to be seen whether Ext. 6, the letter written by the Executive Engineer, Balasore (R and B) Division to the Plaintiff is really such an acknowledgment which would satisfy the requirements of Section 25(3) of the Contract Act so as to make the Plaintiff entitled to the beneficial provision made in the said section. The subject-matter referred to in that letter is as follows:

Pleader's notice for assessment for rent for the house occupied by the sectional Officer, (R and B) Jajpur Road at Jajpur Road.

With regard to that subject-matter, the contents in the main body of the letter are as follows:

With reference to your above notice I am to state that the matter is under correspondence regarding finalisation of the case and the rent claimed by your client is expected to be paid within a month's time.

From the subject-matter and the contents of the letter quoted above it can hardly be said that there was a promise in express terms to pay the arrears of rent due on the Defendant. The letter read as a whole suggests that the matter regarding the assessment of rent of the said house was under correspondence

and that matter had not been finalised till the writing of that letter, and that the rent claimed by the Plaintiff was expected to be paid within a month thereof. The expectation of the officer cannot be construed as an express promise to pay barred debts as required u/s 25(3) of the Act., Moreover there is nothing on record to show at what rate rent was demanded by the Plaintiff and for what period it was claimed in the Pleader's Notice referred to in that letter. It cannot also be said from that letter that the Plaintiff's demand of rent was accepted in clear and unequivocal terms. That being so, it is difficult to construe from Ext. 6 a promise to pay the barred arrears of rent claimed in this suit so as to entitle the Plaintiff to the beneficial provision of Section 25(3) of the Contract Act.

10. Mr. Kar for the Plaintiff contends that from the averments in para 5 of the plaint it is quite clear that by the notice referred to in Ext. 6 the Plaintiff claimed the entire arrears of rent from the Defendant, and by Ext. 6 the Defendant's agent admitted that liability and promised to pay the same. The relevant portion of para 5 merely shows that the Plaintiff gave notice "for arrears of rent and to give delivery" of the house to the Plaintiff. The Defendant in the written statement categorically denied the averments made in para 5 of the plaint asking the Plaintiff to strictly prove the same. Apart from that in para 5 of the plaint there is no specific averment of the fact that the Plaintiff demanded the entire rent for the period and at the

rate as claimed in this suit. Moreover even after the above stand was taken by the defendant in the written statement, the Plaintiff did not adduce any convincing evidence to prove the nature and the extent of the demand made by him in the said notice.

11. Moreover the suit as framed is not on the basis of the provisions of Section 25(3) of the Contract Act. In the absence of adequate averments in the plaint in conformity with the requirements of Section 25(3) and without proof of the basic facts attracting the beneficial provision of that Sub-section the Plaintiff cannot raise such a plea in argument.

12. No doubt, by the letter Ext. 6 the Defendant certainly acknowledged his liability to pay arrear rents of the house though there was no express promise to pay the entire arrear dues as claimed by the Plaintiff in this suit. The exact nature and extent of the liability or the specific character of the same was not specifically acknowledged, but by the said letter the existence of a relationship between the parties was accepted that is, the Defendant was liable to pay to the Plaintiff arrear house rent due to the occupation of the said house. The intention to admit the said relationship is inferred by implication from the contents of the said letter. That being so, Ext. 6 can be said to be an acknowledgment of liability coming within Section 18 of the Limitation Act, and so a fresh period of limitation shall be computed from the time when the acknowledgment was made. This acknowledgment of course cannot resuscitate a barred claim, because under the law an acknowledgment can only be for a subsisting liability. See *Rajah of Vizianagaram v. The Official Liquidator*,

Vizianagaram Mining Corporation Ltd. Vizagapatam AIR 1932 Mad. 136.

The Advocate General was right in fairly conceding that the Plaintiff can, on the basis of the said acknowledgment dated 29-12-1967, claim arrears of rent only from 29-12-1964 on wards and not for any period previous to that date. So the Court's decision enabling the Plaintiff to realise rent from 21-8-1962 to 28-12-1964 has to be and is hereby set aside as the same is barred by limitation.

13. The finding of the Court below that the Plaintiff is entitled to get Rs. 105/ - per month as the rental for the said house for the aforesaid period could not be successfully assailed by the learned Advocate General appearing for the Appellant. On hearing the counsel appearing for both the parties and on a perusal of the evidence on record on that aspect of the matter I do not see any reason to interfere with that finding of the Court below, and hence the said finding is confirmed.

14. The impugned judgment is not questioned on any other ground.

15. On the above discussions and considerations the decree of the Court below be corrected and amended as stated above.

16. The appeal accordingly is partly allowed, but in the circumstances of the case there will be no order as to costs of this a appeal.

Appeal partly allowed.