

## HIGH COURT OF ORISSA, CUTTACK

**R.F.A. No. 171 OF 2009**

From the judgment and decree dated 28.03.2009 and 07.04.2009 respectively passed by Shri S.K.Swain, Civil Judge (Senior Division) 1st Court, Cuttack in C.S. No. 537 of 2007..

Brahmananda Sahoo

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.....

Appellant

Versus.

Laxman Kumar Shah & anr.

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Respondents

For Appellant :

M/s. Gopal Agarwal, K.K.Mishra,  
advocates.

For Respondent:

M/s. K.K.Jena, A.K.Mohapatra,  
S.N.Das, K.P.Mohapatra,  
Tanmaya Mishra, P.K.Das,  
advocates

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**PRESENT :**

**THE HON'BLE MR. JUSTICE D.DASH**

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**Date of hearing : 24.12.2014**

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**Date of judgment: 22.01.2015**  
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The unsuccessful defendant in C.S. No.537 of 2007 of the Court of the Civil Judge (Sr. Division), First Court, Cuttack has challenged the judgment and decree passed therein by filing this appeal.

2. For the sake of convenience, clarity and to avoid confusion, the parties hereinafter have been referred to as they have been arrayed in the court below.

3. The case of the plaintiff is as follows:-

The suit property which is a shop room of the size of 10 ft. x 8 ft. situated at Choudhury Bazar, Cuttack assigned with Holding no.32 within the area of Cuttack Municipal Corporation originally belonged to one Nanda Kishore Goyanka. The plaintiffs purchased the suit property from him by registered sale deed dated 26.06.1995. Prior to such transfer the defendant had been inducted as a monthly tenant under the vendor of the plaintiffs. After the transaction of sale, defendant was intimated about the same to treat the plaintiffs as landlords and to pay the monthly rent to them. Thus, the defendant became a tenant under the plaintiffs since their purchase.

Defendant filed Title Suit No.361 of 1995 against the plaintiffs and that has been dismissed for default. So, further proceedings were carried out for restoration of the suit and that was dismissed. So there was an appeal and then revision which did not yield any result in getting the suit restored. In those proceedings accepting the prayer of the plaintiffs, order was passed directing the defendant to deposit the monthly house rent of `475/- in court and the defendant though had deposited the same for four years, but thereafter again defaulted. It is further stated by the plaintiffs that the suit house being not used, its condition became dilapidated. So, finally notice under section 106 of T.P. Act was issued by the plaintiffs terminating the tenancy of the defendant and asking him to

vacate the same. That having not been done, the suit for eviction has been filed with claim of arrear rent and damage.

4. The case of the Defendants is as under:-

Preliminary objections as regards the maintainability, lack of enforceable right in favour of the plaintiffs, non-joinder of necessary party, the suit being barred by limitation have all been raised. It is also stated that the plaintiffs approach to the court is not with clean hands and rather in concealment and suppression of material facts.

It is further stated that the shop room was never purchased by the plaintiffs. Relationship of the landlord and tenant stands denied. Therefore, it is stated that the question of termination of tenancy does not arise and so also the entitlement to the decree as brought for by the plaintiff is devoid of merit.

It is next stated that the plaintiffs in order to take possession of the suit shop room have taken all steps in accordance with law and having failed, again approached in this way. The defendant claims to be in possession of the shop room since long and he is also stated to be in peaceful and continuous possession to the knowledge of the true owner for upward of the statutory period. Thus, the defendant claims to have acquired title by adverse possession when they also deny the plaintiffs right, title, interest and possession in any manner over the shop room.

5. On such rival pleading the court below has framed seven issues. Issue nos.1 to 4 are relating to the preliminary objections, such as, maintainability lack of cause of action etc. The vital issue in the suit is issue No.5, which concerns with the grant of the decree of eviction based upon the relationship of landlord and tenant between the parties.

Finding on this issue has decided the fate of the suit and, therefore, the affirmation of the said finding or otherwise would also decide the fate of this appeal. The next issue concerns with the realization of the arrear of house rent and damage and this is mainly dependent on the answer to the former issue besides the decision on quantum.

6. The trial court on analysis of evidence in the touch stone of the discussed legal position has answered issue no.5 in favour of the plaintiffs holding the plaintiffs to be entitled to the decree for eviction and accordingly in respect of issue no.6 the finding has been rendered entitling the plaintiffs to get monthly house rent @ `475/- from 23.12.2004 to 31.12.2006 and thereafter the damages @ `950/- per month.

7. Learned counsel for the appellant submits that the finding on issue no.5 is wholly against the weight of evidence. According to him, the plaintiffs have utterly failed to prove the relationship of landlord and tenant between the parties. Therefore, he

contends that when the foundation of the suit crumbles, the plaintiffs ought not to have been made entitled to the relief of eviction and realization of house rent as well as the damage. He further submits that the suit as laid is not maintainable in the present form since here the appellant has perfected title over the said suit room by way of adverse possession. He has placed reliance in case of '**Nair Service Society Ltd. Vrs. K.S. Alexander and Others**'; A.I.R. 1968 S.C. 1115; **Ajit Chopra Vrs. Sadhu Ram and Others**; A.I.R. 2000 SC 212 and **Tribhuvan Shankar Vrs. Amrutlal**; 2014 (2) SCC 788.

8. Learned counsel for the respondent, on the other hand, submits that the trial court has made an elaborate discussion of evidence as well as position of law and has rightly arrived at a conclusion as regards the existence of relationship as landlord and tenant between the plaintiffs and the defendants. Since the plaintiffs became the owner of the suit shop room having stepped into their shoes of the vendor erstwhile landlord.

9. On such rival submission, this Court is now called upon to examine the sustainability of the finding of the trial court on issue no.5. The plaintiffs have proved to have purchased the suit shop room by registered sale deed marked as Ext.8. It is their case that when defendant was a tenant under the vendor by virtue of the sale by the vendors, the erstwhile landlord to the plaintiffs, they automatically became the landlord. However, such fact is denied by the defendants. While denying the relationship with the plaintiffs, it is

not stated as to whether he was a tenant under the vendor of the plaintiffs or not. In this connection, the evidence of the son of the vendor of the plaintiff is of definite significance, who has not only stated about the sale to the plaintiff but also the fact that the defendant was a tenant under his father prior to sale to the plaintiffs. He has further stated that such tenancy was attroned. The sale is not challenged by the defendants.

The position of law is settled that the transferee in the absence of anything to the contrary possesses all the rights of the lessor transferer over the leasehold. A fresh attronment under the circumstance is not the legal need. The assignee of the lessor as against the lessee enjoys all the rights of the lessor and that also includes the right to receive rent evict the lessee on termination of the lease.

10. Adverting to the instant case, here the sale deed by which the plaintiffs have purchased the suit shop room stands proved. Thus, the plaintiffs have stepped into the shoes of their vendor as regards the ownership of the suit shop room. The evidence on record is that the defendant was a tenant under the vendor of the plaintiffs. The vendor of the plaintiff has also given a notice intimating the factum of such sale of the leased out suit shop room to the plaintiffs. The defendants have made absolutely no response to the same and have rather chosen to observe sphinx like silence without any demur. In this connection, Ext.4 is seen to be an

important document, which is an order of the court in Misc. Case No.318 of 1996. The defendant had filed Title Suit No.361 of 1995 against the plaintiffs. Interestingly it stands admitted there that he is a tenant under the plaintiffs in respect of the said suit shop room. In view of that only in the aforesaid misc. case the defendant was directed to deposit the rent in court or to pay directly to the plaintiffs so far as the arrear rent from July, 1995 to October, 1996 is concerned and also for the future. This has been admitted by the defendant examined as D.W.1 that he had deposited the amount in court. Certified copy of the order of this Court (Ext.6) in AHO No.220 of 2001 and W.P.(C) No.9044 of 2004 reveal that the defendant was in occupation of the suit room as a tenant under the plaintiffs and, therefore, necessary order was passed therein that he could only be evicted following due process of law and not by arm twisting method and that has given rise to the suit, in view of nonvacation of the shop room after termination of tenancy.

On the aforesaid discussion and reason, the submissions of the learned counsel for the appellant are found to be having no force and thus untenable. Therefore, this Court affirms the finding of the trial court in respect of issue no.5 in the absence of any justifiable ground either on fact or law.

11. At this juncture the submission of the learned counsel for the appellant as regards acquisition of title by adverse possession needs to be addressed as also the decisions cited (supra)

As indicated in page-6 of the written note of argument that notice under Ext.12 was issued by plaintiffs on 02.09.1995 directing vacation by 30.09.1995. After lapse of period of notice, the defendant no more remained a tenant and he is a tenant by sufferance. Therefore, the plaintiff (P.W.1) having stated that since 1995, the defendant is illegal possession of the suit premises to his knowledge and no step having been taken to evict this defendant (tenant by sufferance) till 22.12.2007, the suit is barred.

A tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrongful possession after termination of the term or expiry of the lease by efflux of time. There is a difference between him and a trespasser. It is also the settled law that the possession of a tenant who has ceased to be a tenant is protected by law. He cannot be physically thrown out by force. After the termination of tenancy, the possession is juridical which is protected against wrongful dispossession.

The character of possession of a tenant at sufferance is not adverse. Moreover, in the present case, the defendant has not come out with a case of acquisition of title by adverse possession by pleading all necessary details as to when he started possessing denying the title of the plaintiffs asserting hostile animus to the knowledge of the plaintiffs or their vendor.

9. Now, let's come to the cited cases:-



(i) In case of Nair Service Society Ltd. (Supra) the principles settled is that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has perfectly good title against all the world but the rightful owner.

I fail to understand as to how it comes to the aid of the case of defendant as submitted regarding acquisition of title by adverse possession.

(ii) In the case of Ajit Chopra (supra) the Hon'ble Apex Court in the factual settings of that case which are completely different held that plaintiff having purchased the suit house subject to the result of the eviction proceeding pending between his vendor and tenant and tenant continuing with possession till conclusion of eviction proceeding, cannot claim adverse possession vis-à-vis plaintiff purchaser from the date of purchase as the latter have no right to immediate physical possession as per agreement between the parties. It is in no way helpful to the defendant here.

(iii) The case of Tribhuvan Shankar (supra) the relationship of landlord and tenant was in dispute and in that proceeding under Rent Control Act, the findings that the defendant had perfected his title by adverse possession were held to be beyond the jurisdiction of that proceeding and the plaintiff was held entitled to file fresh suit for recovery of possession.

In the case in hand the relationship has been established and the defendant being in possession after termination of tenancy

the ratio of this decision in no way helps him to non suit the plaintiffs.

10. Now comes the issue no.6. Looking at the evidence on record the trial court has found the defendant to have defaulted in making the payment of arrear house rent @ `475/- per month w.e.f. 23.12.2004 to 31.07.2006. The evidence on that score being let in by the plaintiffs, the defendant has not tendered any evidence to counter the same.

The tenancy having been terminated on expiry of 31.07.2006, the trial court's assessment of damage double the monthly rent, i.e., `950/- per month as against the claim of `7,500/- per month cannot be said to be unreasonable or excessive. Therefore, the trial court's findings as above is affirmed.

11. In the result, the appeal stands dismissed with cost throughout.

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**D. Dash, J.**