

Mst. Sevati Devi and anr. Vs. Ram Pratap Bansal and anr.

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SooperKanoon Citation : sooperkanoon.com/524628

Court : Orissa

Decided On : Jan-03-1972

Reported in : AIR1973Ori25

Judge : A. Misra, J.

Acts : [Registration Act, 1908](#) - Sections 17

Appeal No. : First Appeal No. 277 of 1967

Appellant : Mst. Sevati Devi and anr.

Respondent : Ram Pratap Bansal and anr.

Advocate for Def. : R. Mohanty and ;R.K. Kar, Advs.

Advocate for Pet/Ap. : D. Mohanty and ;P.V. Ramdas, Advs.

Disposition : Appeal allowed

Judgement :

A. Misra, J.

1. The Plaintiffs are the appellants. Their case, in brief, is as follows:--

The suit Plot No. 443 appertaining to Khata No. 94 belonged to one Gopal Chandra Dwivedi. On his death, his two daughters (plaintiffs) as his sole surviving heirs

inherited the same. There are six shop rooms on the said plot as indicated in the sketch plan attached to the plaint. Defendants are brothers. On 1-9-64, defendant No. 1 entered into an agreement with the plaintiffs to take room Nos. 2 and 3, besides the adjacent room on the east, on a monthly rent of Rs. 125/- per room for a period of eleven months. This agreement was reduced to writing and executed by plaintiff No. 2 and defendant No. 1. Though the agreement recited advance of Rs. 375/- as security, besides payment of Rs. 375/- towards one month's rent; in fact, no amount was paid by defendant No. 1 to the plaintiffs. On 6-9-64, one Darsan Singh forcibly occupied the easternmost room, which is described as room No. 1 in the plan. On 31-10-64, the defendants occupied room Nos. 2 and 3. The defendants have failed to pay rent as stipulated in the agreement in spite of repeated demands and also continued in occupation of the said rooms beyond the stipulated period. Therefore, the plaintiffs filed the suit to recover arrears of rent at the rate of Rs. 125/- per room per month for eleven months as stipulated in the agreement and at the same rate for the subsequent period till the date of institution of the suit on 6-7-66. In all, they claimed recovery of Rs. 5,050/-.

2-3. Defendants in their written statement pleaded that the suit rooms were let out to defendant No. 1 on a monthly rent of Rs. 50/- per room in August, 1963 for a period of eleven months. Defendant No. 1, besides stating that he paid rent at that rate during the said period, alleged that the plaintiff's father and plaintiff No. 2 had received from him from time to time a total amount of Rs. 3,480/-. Defendant No. 1, while admitting execution of the agreement dated 1-9-64, states that in spite of execution of this document, it was agreed that he would continue occupation of the rooms paying rent at the rate of Rs. 50/- per month for each room which was to be adjusted against the outstanding amount of Rs. 3,480/-. The enhanced rate of rent was mentioned in the agreement dated 1-9-64, as by then, rents in the locality had increased and the plaintiffs wanted to reduce other tenants to pay higher rents. Defendant No. 2 denies to have forcibly or otherwise occupied the suit rooms and disclaims any sort of liability. In short, the defence is that defendant No. 1 has been occupying the suit rooms on a monthly rent of Rs. 50/- each since 1963 and the same is to be adjusted towards the alleged advances made by him to the plaintiffs and their father.

4. The trial Court decreed the suit in part for Rs. 1,644.33 on the following findings; (1) Defendant No. 2 is not a trespasser and did not occupy any of the suit rooms. As such, he is not liable for any portion of the plaintiff's claim, (2) defendant No. 1 executed the agreement dated 1-9-64 but did not occupy the suit rooms in pursuance of this agreement; (3) defendant No. 1 was inducted as a tenant of the two rooms in August, 1963 on a monthly rent of Rs. 50/- per room and continues to occupy the same at the same rate; (4) defendant No. 1, therefore, is liable to pay rent at the rate of Rs. 50/- per month per room for the period from 1-11-64 till the date of suit, i.e., 6-7-66; (5) defendant No. 1 failed to prove advance of Rs. 3,480/- in different instalments to plaintiff's father or plaintiffs and no such sum is outstanding against them and (6) plaintiffs received Rs. 375/- as advance of licence fee for one month at the time of execution of the agreement dated 1-9-64.

5. The following facts are not disputed. Gopal Chandra Dwivedi was the owner of plot No. 443 in khata No. 94, and on his death, the property was inherited by his two daughters (plaintiffs), his sole surviving heirs. Out of the shop rooms existing on the said plot, admittedly, defendant No. 1 has been in occupation of room Nos. 2 and 3 as indicated in the sketch plan annexed to the plaint and the rent for the period of claim is outstanding. It is also not disputed that defendant No. 1 executed an agreement marked Ex. 6 in August, 1963, for occupation of a house consisting of two rooms belonging to the plaintiffs on the same plot and he also executed the agreement (Ex. 1) on 1-9-64 for occupation of three rooms including the two in dispute now. Under Ex. 6, the monthly licence fee agreed to was Rs. 50/-per room, while under Ex. 1, the monthly licence fee was agreed at Rs. 125/- per room.

6. The main question for determination in this appeal is whether the tenancy of defendant No. 1 which was created under Ex. 6 continued during the suit period or a fresh tenancy was created under Ex. 1. This will necessarily involve the question whether the rooms into which defendant No. 1 was inducted under Ex. 6 in 1963 and the rooms in respect of which the suit claim has been preferred are identical or they are different. According to defendant No. 1, his tenancy created under Ex. 6 in 1963 continued during the suit period also and he has been in occupation of the same rooms into which he had been inducted at that time. On the other hand, the case of the plaintiffs is that the rooms which had been let out to defendant No.

1 under Ex. 6 were kutcha rooms in a dilapidated condition and as their condition deteriorated and there was risk of their falling, the plaintiffs constructed new pucca rooms, two of which, have been occupied by defendant No. 1 with effect from 31-10-64. The monthly rent for each such room had been agreed at the rate of Rs. 125/-under the agreement (Ex. 1) dated 1-9-64.

7. Four witnesses including plaintiff No. 2 were examined on the side of the plaintiffs. P. W. 2 is a formal witness. P. Ws. 1 and 3, besides plaintiff No. 2, have deposed that the suit rooms were constructed sometime in the middle of 1964 whereafter Ex. 1 was executed. As against this, the defendants examined four witnesses including defendant No. 1. Their evidence is that defendant No. 1 was in occupation of the same rooms since 1963 having been inducted under Ex. 6. D. W. 4 happens to be the husband of plaintiff No. 2. The learned Subordinate Judge has preferred to rely on the testimony of the D. Ws. primarily being influenced by the evidence of D. W. 4 whom he considers disinterested. Admittedly, D. W. 4, is the married husband of plaintiff No. 2, but the fact that he came to court even without being summoned and deposed against the plaintiffs would indicate that his relation with plaintiff No. 2 is not cordial. As a matter of fact, it has been suggested to him that he has given up his association with plaintiff No. 2 since the last fifteen years. In my opinion, the testimony of the D. Ws. is not of such a quality as would justify the same being preferred to the testimony of P. Ws. 1 and 3 who appear to be quite disinterested witnesses.

8. Apart from the oral testimony, the inference to be drawn from some of the documents filed in the suit clearly militate against the version of defendant No. 1 that he has been in occupation of the same rooms since 1963. Ex. 5 is an application dated 18-5-64 filed by plaintiff No. 2 before the Chairman of the Rourkela N. A. C. intimating that the existing mud-built rooms on the suit plot were in a dilapidated condition, there was risk of the structures falling and seeking permission to get them repaired. On this application, an amin was directed to make a local inspection and submit a report Ex. B/1 is the certified copy of the order by the N. A. C. authorities directing the amin to make a spot visit and submit a report and this is dated 20-6-64. On receipt of the amin's report, the order at Ex. B was passed to the effect that the party had constructed a building without

permission as required under the Orissa Municipal Act and asking them to demolish the constructions. These documents afford conclusive proof that during June and July of 1964, though the plaintiffs tried to avoid the necessity of obtaining permission from the N. A. C. for making new constructions, in fact, the existing mud structures being in a dilapidated condition, they were demolished and new constructions made. If in July, 1964 such new constructions were made by the plaintiffs, it cannot be said that the old kutchha rooms which were under occupation of defendant No. 1 since 1963 were still existing. This conclusion also finds support from the two documents marked Exs. 6 and 1, the former executed in 1963 and the latter in September, 1964. On Ex. 6 under which defendant No. 1 was put in occupation of the then existing rooms, the description is given in the schedule as two rooms measuring 16' X 36', the boundaries being house of the licensors to the east, west and south and the Bisra Panposh road to the north. The suit rooms given to the defendant No. 1 under Ex. 1 are shop No. 2 measuring 8' X 25' and shop No. 3 measuring 10' X 25', the boundaries being main road on the north, licensor's land on the south, shop No. 1 on the east and the gali on the west. This description of the rooms given under Ex. 1 tallies with the description of the rooms given in the plan attached to the plaint. It is not disputed that defendant No. 1 is in occupation of the rooms as description of the rooms given in the plan attached to the plaint. It is not disputed that defendant No. 1 is in occupation of the rooms as described in the Schedule of Ex. 1. Therefore, the rooms which had been occupied by defendant No. 1 under Ex. 6 in 1963 are not the same as room Nos. 2 and 3 which were occupied by him during the suit period. This together with the fact that in July, 1964 new constructions were made by the plaintiffs leave no room for doubt that defendant No. 1 had not been in occupation of the rooms which were originally let out to him in 1963 under Ex. 6, but those rooms were demolished due to their deteriorating condition and new pucca constructions were made, out of which, defendant No. 1 occupied two rooms with different dimensions and necessarily having different boundaries. This being the position, the finding of the trial Court that defendant No. 1 has been in occupation of the same rooms from 1963 as a tenant is not correct and cannot be sustained. My conclusion is that the rooms which had been let out to defendant No. 1 in 1963 either fell down or were demolished as they were kutchha constructions and on that site new shop

rooms were constructed in the middle of 1964 two of which, were occupied by defendant No. 1 in pursuance of the agreement (Ex. 1). No convincing proof has been offered to show that the recital about the rent of these rooms in Ex. 1 were only intended to enable the plaintiffs to get higher rent from their other tenants. As a matter of fact, when the constructions were changed from kutchha to pucca and by that time rents in that locality had increased, there is no reason to disbelieve the plaintiff's case that under a fresh contract entered into under Ex. 1, these two new rooms were occupied by defendant No. 1, though originally he wanted to occupy three rooms on a monthly rent of Rupees 125/- per room. Therefore, defendant No. 1 is liable to pay rent for the suit period at the said rate.

9. So far as defendant No. 2 is concerned, he is not a party to Ex. 1 and there is no proof that he was inducted as a tenant. It is possible that his brother (defendant No. 1) having occupied these rooms, he was going there, but that cannot saddle him with liability.

10. The learned Subordinate Judge has observed that Ex. 1 is not admissible for want of registration. A lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is required to be made by a registered instrument. Ex. 1 purports to be a lease for eleven months and it does not reserve a yearly rent. Therefore, the trial Court was in error in holding that Ex. 1 is inadmissible. Besides reciting the monthly rent agreed to between the parties, the contents of Ex. 1 show that Rs. 375/- as security and Rs. 375/- as advance licence fee for one month were paid by defendant No. 1 to the plaintiffs at the time of execution of the document. Of course, plaintiff No. 2 denies to have received this amount, but her oral testimony cannot outweigh the recitals in the document which was admittedly executed by her. Therefore, I hold that at the time of execution of Ex. 1, in all, Rs. 750/- had been received by the plaintiffs. This being so, the plaintiffs are entitled to recover rent for the suit period at the rate of Rs. 125/- per month per room less Rs. 750/-, receipt of which has been acknowledged in Ex. 1. Thus, they are entitled to a decree in part against defendant No. 1.

11. In the result, the appeal is allowed. The judgment and decree of the trial Court are set aside and the suit is decreed in part against defendant No. 1 for the suit

claim less Rs. 750/- with proportionate costs. The suit is dismissed against defendant No. 2 but in the circumstances without costs.

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