

**Manika Dei and ors. Vs. Dhadia Madgul and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/525300](http://sooperkanoon.com/525300)

**Court :** Orissa

**Decided On :** Mar-04-1986

**Reported in :** AIR1987Ori74; 61(1986)CLT436

**Judge :** K.P. Mohapatra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11; Orissa House Rent Control Act, 1958 - Sections 7 and 14

**Appeal No. :** Civil Revn. No. 15 of 1984

**Appellant :** Manika Dei and ors.

**Respondent :** Dhadia Madgul and ors.

**Advocate for Def. :** N. Das and ;M.M. Das, Advs.

**Advocate for Pet/Ap. :** A.K. Mohapatra, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

K.P. Mohapatra, J.

1. This revision is against the order passed by the learned Munsif, First Court, Cuttack rejecting a petition under Section 10 of the Civil P.C. ('Code' for short). The plaintiffs are the petitioners.

2. The facts may be recounted in brief. Deceased Nilap Naga was the owner of the schedule 'C' land of the plaint. He had one son, opposite party No. 2(b) and four daughters, petitioner 1, opposite party No. 2(c), opposite party No. 2(d) and Jamuna (defendant No. 2(e) in T.S. No. 132 of 1979). Petitioner No. 2 is the husband and petitioner No. 3 is the son of petitioner 1. Opposite party No. 1 is the husband of opposite party No. 2(c).

Opposite party No. 1 initiated two proceedings (H.R.C. Case No. 32 of 1979 and H.R.C. Case No. 52 of 1979) against the petitioners under Section 7 of the Orissa House Rent Control Act ('Act' for short) before the learned House Rent Controller, Cuttack on the grounds that there was an agreement for sale of the schedule 'C' land with a house standing thereon for consideration of Rs, 3,000/- between Nilap Naga and Opposite party No. 1 on 27-11-1978 and on the same day the suit land was delivered by the former to the latter. On 28-3-1979 Nilap Naga executed and registered a sale deed in favour of opposite party No. 1 in respect of the suit land. The petitioners being close relations were inducted as monthly tenants at will in respect of the house on the suit land with effect from 1-12-1978 on a monthly rent of Rs. 25/- and again with effect from 14-1-1979 on a monthly rent of Rs. 50/-. Opposite party No. 1 required the suit land for his own occupation and further the petitioners defaulted in payment of rent. Therefore, in the two house rent control proceedings, opposite party

No. 1 prayed for eviction of the petitioners from the house on the suit land. The petitioners resisted and denied the relationship of landlord and tenant. Their case was that at the time of marriage of petitioner 1 with petitioner 2 in 1944 the latter became the illatom son-in-law of Nilap Naga who made a gift of the suit land with a house thereon in favour of petitioner No. 1 and delivered possession of the suit land to her. After the gift, the petitioners are not only in possession of the same, but also added houses thereto. They have acquired title in respect thereof by adverse possession.

3. While the eviction proceedings were pending before the learned House Rent Controller, the petitioners instituted Title Suit No. 132 of 1979 against opposite party No. 1 and others. They alleged in the plaint that at the time of marriage between petitioner 1 and petitioner 2 in the year 1944 Nilap Naga made a gift of the schedule 'C' land to petitioner No. 1. After the marriage, petitioner 2 lived with Nilap Naga as his illatom-son-in-law and both the husband and wife remained in occupation of the schedule 'C' land by adding houses thereto. Since then they have been in possession of the suit land continuously and without interruption to the knowledge of the opposite parties on the strength of their own right and have acquired title by adverse possession. Their prayer is to restrain the opposite parties permanently from entering upon the schedule 'C' land of the plaint. The defence of opposite party No. 1 is that there was an agreement for sale of the schedule 'C' land between him and Nilap Naga on 27-11-1978 in pursuance of which he came into possession thereof. The petitioners were inducted as tenants with effect from 1-12-1978. There was no gift of the suit land by Nilap Naga in favour of petitioner 1, nor were the petitioners in possession thereof since 1944 on the strength of their own right.

4. The learned House Rent Controller on consideration of the evidence and materials placed before him came to hold that there was no relationship of landlord and tenant between Opposite Party No. 1 and the petitioners. Therefore, he rejected both the petitions for eviction. Opposite party No. 1 preferred two appeals (H.R.C. Appeals Nos. 44 of 1981 and 43 of 1981) before the learned Chief Judicial Magistrate, Cuttack who reversed the findings and held that there was relationship of landlord and tenant between opposite party No. 1 and the petitioners. Accordingly he directed eviction of the petitioners from the house on the suit land. Against the decisions of the learned Chief Judicial Magistrate two writ petitions registered as O.J.C. Nos. 111 of 1983 and 112 of 1983 have been admitted and are pending disposal in this Court.

5. The petitioners filed a petition under Section 10 of the Code for stay of the trial of the suit till disposal of O.J.C. Nos. 111 of 1983 and 112 of 1983 pending for decision in this Court. Their apprehension is that the finding of relationship of landlord and tenant will operate as res judicata in the suit and so it is desirable to await disposal of the writ petitions. Opposite party No. 1 opposed the stay petition. After hearing both parties, the learned Munsif rejected the petition and refused to stay the suit.

6. Section 10 of the Code provides that where a suit is instituted in a Court to which the Code applies, the Court shall not proceed with the trial of the suit, if--

First, the matter in issue in the suit is also directly and substantially in issue in a previously instituted suit between the same parties or their privies, secondly, the previously instituted suit is pending--

(a) in the same Court in which the subsequent suit is brought, or

(b) in any other Court in India (whether superior, inferior or co-ordinate), or

(c) in any Court beyond the limits of India established or continued by the Central Government, or

(d) before the Supreme Court, and

thirdly, where the previously instituted suit is pending in any of the Courts mentioned above, such Court is a Court of jurisdiction competent to grant the relief claimed in the subsequent suit.

The object of the section is to prevent Courts of concurrent jurisdiction from simultaneously trying two

parallel suits in respect of the same matter in issue. (See AIR 1972 Punj & Har 421, Smt. Naurati v. Mehma Singh, AIR 1972 Andh Pra 186, Manta Subbaramayya v. Batchu Narasimha Swamy and AIR 1984 Pat 161, Anant Ram v. Mahesh Prasad Thathera).

7. In their 54th report, the Law Commission of India recommended to insert a new Section 11A to the Code to the following effect : --

'11 A. The provisions of Section 11 apply, as far as may be, to--

(a) proceeding in execution, and

(b) civil proceedings other than suits.'

The joint Committee of the Parliament who examined the matter was of the view that the decisions of the Courts of limited jurisdiction should, in so far as such decisions are within the competence of the Courts of limited jurisdiction, operate as *res judicata* in a subsequent suit although the Court of limited jurisdiction may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. Therefore, they proposed insertion of Explanation VIII to Section 11 of the Code which was accordingly done.

8. By C.P.C. (Amendment) Act, 1976 Explanation VIII was added to Section 11 which is quoted below for easy reference.

'Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.'

9. One of the tests of the applicability of Section 10 is whether the final decision in a previous suit would operate as *res judicata* in the subsequent suit. For this proposition reference may be made to AIR 1971 Cal 345, Life Pharmaceuticals Private Ltd. v. Bengal Medical Hall, AIR 1972 Punj & Har 421, Smt. Naurati v. Mehma Singh, AIR 1973 Mad 253, C.P. Srinivasam Pilai v. Chellakumara Gounder, AIR 1973 Pat 196, Fulchand Motilal v. Manhar Lall Jetha Lall Mehta and AIR 1978 Delhi 221, C.L. Tondon v. Prem Pal Singh Rawat.

10. In (1982) 54 Cut LT 67 : (AIR 1982 Orissa 207), Abhimanyu Jee v. Dr. Gayaprasad, it was held that the legislature has entrusted the Tribunal (House Rent Controller) under Section 7(2)(iv) of the Act with the jurisdiction to determine whether there is existence or non-existence of the relationship of landlord and tenant between the parties and upon determination of this preliminary state of facts to proceed further. It was also held that a finding in the house rent control proceeding with regard to existence or non-existence of relationship of landlord and tenant operates as *res judicata* and the said finding is not available to be reargued in the civil Court. In this decision two very important points were decided. First, the House Rent Controller, who is competent to determine the existence or non-existence of relationship of landlord and tenant, though a Tribunal has all the trappings of a court of limited jurisdiction whose finding about the existence or non-existence of the relationship of landlord and tenant between the parties is final and second, such finding of existence or non-existence of the relationship of landlord and tenant between the parties being final will operate as *res judicata* in a subsequent suit between the same parties. Though reference was not made to Explanation VIII, under Section 11, obviously the finding on the question of the *res judicata* was based on the principle explained in Explanation VIII. Reliance was placed on an earlier decision of this Court reported in AIR 1967 Orissa 172, Khalli Panda v. Dharam Gouda, the facts of which are quite distinguishable. In that case relationship of landlord and tenant was admitted and the dispute centered round arrear rents. It was held that the proceeding before a House Rent Controller is not a suit, although, it was noticed that the word 'suit' has not been defined in the Code. A decisive opinion about the character of a House Rent Control proceeding was thus not formulated. In AIR 1978 Cal 440, Nabin Majhi v. Tela Majhi, a Division Bench considered the meaning of the expression 'a court of limited jurisdiction' occurring in Explanation VIII, under

Section 11 and observed as follows : --

'.....The question is whether the Court of the Munsif is a Court of limited jurisdiction within the meaning of Expln. VIII. There can be no doubt that the pecuniary jurisdiction of the Court of the Munsif is limited and that of the Court of Subordinate Judge is unlimited. But can it be said that the expression 'a Court of limited jurisdiction\*' refers to a Court of limited pecuniary jurisdiction? If we are to interpret Explanation VIII without referring to Section 11, it may be said that a court of limited pecuniary jurisdiction is a Court of limited jurisdiction. An explanation to a section is primarily meant for explaining the section itself. In our view, in order to ascertain the true meaning of the Explanation VIII, it has to be read alongwith the provision of the Section and not de hors it. It has been already stated that one of the conditions for the applicability of Section 11 is that the Court in which the former suit was instituted must be competent to try the subsequent suit. If the former Court is unable to try the subsequent suit as it is beyond its pecuniary jurisdiction, the decision of the former court will not be res judicata in the subsequent suit, if the legislature had really intended to remove the condition relating to the competency of the former Court, in that case, it would have removed the same from the section itself. In the face of the provision of Section 11 retaining the said condition for the applicability of res judicata, that the former Court must be competent to try the subsequent suit, it is difficult for us to accept the interpretation of Explanation VIII as suggested on behalf of the appellant,

What is then the meaning of the expression 'a Court of limited jurisdiction'? In our view, Courts of limited jurisdiction are Courts other than the ordinary Civil Courts. These Courts are Revenue Courts, Land Acquisition Courts, Administrative Courts, Insolvency Courts, Guardianship Courts, Probate Courts etc. These Courts are to try certain specific matters and in that sense they may be said to be Courts of limited jurisdiction, in respect of the matters they are to try. The decisions of such Courts operate as res judicata in subsequent suits not by virtue of Section 11 but on the general principles of res judicata. By enacting Explanation VIII, the legislature brought the decisions of such Courts within the purview of Section 11. In other words, it is not necessary now to apply the general principles of res judicata, but in view of Explanation VIII the decisions of the Courts of limited jurisdiction or exclusive jurisdiction will operate as res judicata in subsequent suits under Section 11. The general principles of res judicata would apply where the former proceeding is not a suit but Section 11 would only apply where the two proceedings are suits. Under Explanation VIII, the provision of Section 11 will apply to the subsequent suit when an issue has been heard and finally decided by a Court of limited jurisdiction in a former proceeding.'

(also see AIR 1980 Cal 181, PromodeRanjan Banerjee v. Nirapada Mondal, in which identical view was taken).

The Division Bench decision of the Calcutta High Court (supra) came up for consideration before a Division Bench of the Kerala High Court in a case reported in AIR 1980 Ker 230, Puthen Veettil Nolliyodan Devoki Amma v. Puthen Veettil Nolliyodan Kunhi Raman Nair. Dissenting from the views expressed in the said decision partially, Eradi, C.J. (his Lordship as he then was) speaking for the Court held as follows : --

'With respect, we do not find it possible to accept the aforesaid view as correct. In our opinion, the expression 'a Court of limited jurisdiction' is wide enough to include a Court whose jurisdiction is subject to a pecuniary limitation and it will not be right to interpret the said expression as connoting only Courts other than ordinary Civil Courts. Such a narrow and restricted interpretation is not warranted by the words used by the Parliament. The statement of objects and reasons for the bill which was subsequently enacted as amending Act 104 of 1976 and the report of the Joint Select Committee, which effected some substantial changes in the bill as originally drafted, make it abundantly clear that the intention underlying the introduction of Explanation VIII was that the decisions of the Courts of limited jurisdiction should operate as res judicata in a subsequent suit although the Court of limited jurisdiction may not be competent to try such subsequent suit. With respect, we are unable to agree with the view expressed by the Division Bench of the Calcutta High Court that by enacting Explanation VIII the intention of Parliament was only to bring the decisions of courts other than ordinary Civil Courts, such as revenue Courts, land acquisition Courts, insolvency Courts etc. within the purview of Section 11. In our opinion, the object and purpose underlying the introduction of Explanation VIII

was much wider, namely, to render the principle of res judicata fully effective so that issues heard and finally decided between the parties to an action by any Court competent to decide such issues should not be allowed to be reagitated by such parties or persons claiming through them in a subsequent litigation.'

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'.....We are, however, of opinion that the correct mode of interpretation is to read the section in combination and harmony with Explanation VIII. The result that flows from such an interpretation is that a decision on an issue heard and finally decided by a Court of limited jurisdiction (which expression will include a Court of limited pecuniary jurisdiction) will operate as res judicata in a subsequent suit notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit. This, according to us, is the true effect of the amended provisions of Section 11 read along with Explanation VIII thereto.'

11. Under Section 7 of the Act, the House Rent Controller has been vested with the exclusive jurisdiction to determine the issue with regard to the existence or non-existence of relationship of landlord and tenant between parties in house rent control proceedings and his decision, subject to the decision, if any, made in any appeal, is final and shall not be called in question in any court of law under Section 14. It is thus abundantly clear that the House Rent Controller according to law is a Court of limited jurisdiction within the meaning of Explanation VIII of Section 11 of the Code and the issue which he is competent to decide shall operate as res judicata in a subsequent suit between the same parties.

12. After exposition of the principles which centre round Section 10 and Explanation VIII of Section 11, it is to be considered whether in the facts and circumstances of the present case Title Suit No. 132 of 1979 now pending in the court of the Munsif, First Court, Cuttack should be stayed till disposal of O.J.C. Nos. 111 of 1983 and 112 of 1983. To recapitulate, the House Rent Controller found that there was no relationship of landlord and tenant between opposite party No. 1 and the petitioners in respect of the house on the suit land. The learned Chief Judicial Magistrate reversed the finding and held that there was existence of relationship of landlord and tenant between them. In the writ petitions this Court may either uphold the finding recorded by the learned House Rent Controller or that of the learned Chief Judicial Magistrate. In either case, the ultimate finding, being the finding of 'a Court of limited jurisdiction' will operate as res judicata in the suit on application of the provisions of Explanation VIII to Section 11, If the finding of the learned House Rent Controller of absence of relationship of landlord and tenant is upheld, no prejudice is likely to be caused to either party because, in order to succeed in the suit, the petitioners shall have to prove title in respect of the suit land by way of gift and adverse possession. Opposite party No. 1 shall also prove his title and possession in respect thereof by virtue of the sale deed. But in case the finding of the learned Chief Judicial Magistrate of existence of relationship of landlord and tenant between the parties is upheld and as this finding will operate as res judicata by application of the provisions of Explanation VIII to Section 11 in the suit, then the petitioners shall be precluded from establishing acquisition of title in respect of the suit by gift, as well as, by adverse possession. This is because, the finding of existence of relationship of landlord and tenant between the parties having been arrived at by 'a Court of limited jurisdiction' which is competent to decide the issue under Section 7 of the Act will operate as res judicata in the suit subsequently instituted although 'the Court of limited jurisdiction' is not competent to try the issue which has been raised in the suit. This being the position, the conclusion is irresistible that till disposal of O.J.C. Nos. 111 of 1983 and 112 of 1983 of this Court, Title Suit No. 132 of 1979 pending in the court of the Munsif, First Court, Cuttack should remain stayed.

13. In the result, the civil revision is allowed and the impugned order is set aside. The Suit No. 132 of 1979 pending in the court of the Munsif, First Court, Cuttack shall remain stayed until disposal of O.J.C. Nos. 111 of 1983 and 112 of 1983 of this Court. Parties shall bear their own costs.