

PATNA HIGH COURT

Ganpat Turi

Vs

Mohammad Asraf Ali

A.F.A.D. No. 1344 of 1956

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

21.03.1960

JUDGMENT

V. Ramaswami, C.J.

1. In the suit out of which this appeal arises the plaintiff claimed arrears of house rent from the defendant at the rate of Rs. 20 per month from December, 1952 to March, 1955. The house was given by the defendant in usufructuary mortgage to the plaintiff by a registered document dated the 30th July, 1952. On the same date the plaintiff let out the house on lease to the defendant on a monthly rent of Rs. 20 and a Kirayanama was executed to this effect by the defendant on this date. Both the lower Courts have held that the usufructuary mortgage and the Kirayanama are not parts of one and the same transaction, but they are two different transactions and the plaintiff was entitled to get a decree for house rent, to the extent of Rs. 500 from December, 1952, till the filing of, the present suit of the rate of Rs. 20 per month.

2. On behalf of the defendant who has preferred this appeal it was contended, in the first place, that the usufructuary mortgage and the Kirayanama are parts of one and the same transaction and so the plaintiff cannot realise the amount of house rent due from the defendant by a separate suit based upon the Kirayanama. The principle to be applied in a case of this description has been elaborately considered by a Division Bench, of this High Court in *Umeshwar Prasad Singha v. Dwarika Prasad*¹, One of the tests laid down in that case is whether it appears on a reasonable construction of the two documents that the properties given in, security are not only for the principal amount secured under the sudbhama bond but also for the interest accruing thereupon. Applying this test to the present case, we hold that the kirayanama and sudbharna bond were two different transactions. On a perusal of the sudbharna bond it is clear that no rate of interest is prescribed, and that the amount to be paid under the kirayanama, namely, Rs. 20 per month, cannot be treated as interest due on the principal amount of Rs. 500 advanced upon the usufructuary mortgage bond. In view of the circumstances appearing in the present case, we are of opinion that the kirayanama and the usufructuary mortgage bond are not parts of one and the same transaction, and the view taken, by the lower Courts is correct. We overrule the contention of learned counsel for the appellant on this part of the case.

3. The second argument advanced on behalf of the appellant is that, even if the two transactions

are different, the plaintiff cannot succeed in getting a decree for house rent because the kiryanama is not a registered instrument and is not signed by the lessor and the lessee as required by Section 107 of the Transfer of Property Act. In support of this argument learned counsel referred to the decision in *Rama Sahu v. Gowro Ratho*², which is a decision of the Full Bench of the Madras High Court. This point does not appear to have been raised in the lower Courts. But even assuming that the contention of learned counsel for the appellant is correct and the kiryanama between the parties should have been registered, it does not necessarily follow that the plaintiff cannot realize the amount of house rent for the period in question; for it is well established by numerous authorities that if a tenant is in possession under an unregistered lease and the landlord recognised his right by acceptance of rent, then the presumption of Section 106 of the Transfer of Property Act comes into operation.

In support of this contention learned counsel for the respondent has relied upon a decision of this High Court in *Darbari Lal v. Raneeganj Coal Association Ltd*³. In the present case it was alleged in the plaint that rent was paid under the unregistered kiryanama by the defendant to the plaintiff for a period of four months from August, 1952, to November, 1952. The receipt for rent (Exhibit 5) was exhibited on behalf of the plaintiff in the trial Court, and signature of the defendant has also been proved on this receipt as Exhibit 6. The finding of the trial Court is that the receipt is genuine, and, in view of the payment of rent for four months from August, 1952, to November, 1952, the plaintiff was not entitled to realise rent for this period in the present suit. In view of this finding, therefore, it is clear that by payment for the period in question, the defendant has become a monthly tenant of the plaintiff because of the provisions of Section 106 of the Transfer of Property Act. We, therefore, overrule the contention of learned counsel for the appellant that there is no relationship of landlord and tenant between the parties.

4. In our opinion, there is no merit in this Second Appeal. It is accordingly dismissed with costs.

Appeal dismissed.

Cases Referred.

¹ ILR 22 Pat 320

² ILR 44 Mad 55

³ AIR 1944 Pat 30