



IN THE HIGH COURT OF ORISSA AT CUTTACK
RSA No. 149 of 2023

Indian Bank

....

Appellant

Represented by
Mr. S.K. Dey, Advocate

-Versus -

Uma Prasad Sahu and Others

....

Respondents

Represented by

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

11.09.2024

Order No.

2.

1. This matter is taken up through hybrid mode.
2. Heard Mr. S.K. Dey, learned counsel appearing for the appellant. Perused the impugned judgments.
3. Considering the submissions and the grounds raised, the second appeal is admitted on the following substantial questions of law:-

“i. Whether the judgment and Decree of the Lower appellate court affirming the finding of the trial court is sustainable under law as regard to the eviction of the defendant from the suit premises and for payment of rent /damages @ Rs 40 /- Per SFT, when the lease agreement was in force and admittedly there was no clause in Ext 3 for payment of enhanced rent after expiry of Five years and all through the defendants went on paying the monthly rent which was accepted and there by the provision of section 106 of the Transfer of the Property Act had no application?

ii. Whether the judgment and Decree of the Lower appellate court confirming the finding of the trial court is sustainable under law directing for payment of Rent @40/- per SFT in absence of any documents being proved in support of such claim by the plaintiff when burden of proof lies on the plaintiff



and the plaintiff had filed directing for payment of Rent @ Rs 40 /- per SFT in absence of any documents being proved in support of such claim by the plaintiff when burden of proof lies on the plaintiff and the plaintiff had failed to discharge their burden?

iii. Whether the judgment and Decree of the Lower appellate court affirming the finding of the trial court as regard to the payment of damages is sustainable under law which has been arrived at basing on a photocopy of a document which is inadmissible in evidence on the ground that there was a failing clause in ext. 3 in fact when there was no such failing clause in ext. 3 and the findings were based on no evidence?"

4. Issue notice to the respondents by registered post with A.D. making it returnable within four weeks. Requisites be filed within three working days.
5. Call for the LCR.
6. List this matter in the week commencing 9th December, 2024.

(Sashikanta Mishra)
Judge

I.A. No. 367 of 2023

Order No
3.

1. Learned counsel for the petitioner submits that he does not wish to press I.A.
2. The I.A. is accordingly dismissed as not pressed.

(Sashikanta Mishra)
Judge

I.A. No. 899 of 2024

Order No
4

1. Further proceeding in E.P. No. 3 of 2021 pending in the court of learned Civil Judge (SD), Berhampur shall remain stayed till the



next date.

2. Urgent certified copy of this order be granted on proper application.

(Sashikanta Mishra)
Judge

B.C. Tudu