

Kalyani Sharan and Upendra Nath Sharan Vs Indian Steel and Wire Products Ltd.

Court: Jharkhand High Court

Date of Decision: Dec. 10, 2009

Acts Referred: Penal Code, 1860 (IPC) â€” Section 453

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K. Merathia, J.

This second appeal has been filed against the judgment and decree dated 30.4.2008, passed by learned Additional

District Judge, FTC-II, Jamshedpur in Title Appeal No. 19 of 2007 affirming the common judgment and decree dated 14.3.2007, passed by

learned Sub Judge-I, Jamshedpur in Title Suit No. 60 of 1998 and Eviction Suit No. 3 of 1999.

2. The said Title Suit No. 60 of 1998 was instituted by appellant No. 1 for declaring that she was the tenant under the respondent in respect of the

suit quarter and for restraining the respondent from interfering with the amenities of electricity and water supply. Her case in short, was that she

was office bearer of a political party and she got the suit quarter on rent from the respondent for the purpose of party work from November,

1995.

3. Eviction Suit No. 3 of 1999 was instituted by the respondent for a decree of eviction of appellant No. 1 and her husband (appellant No. 2)

from the said suit quarter and for damages for illegal use and occupation thereof. The case of the respondent, in short, was that the husband of

appellant No. 1 (appellant No. 2) was a clerk in the Postal Department and on sympathetic ground, he was permitted to occupy another quarter

as a licensee for the period he remained posted in the local post office, though he was a Central Government employee and was not entitled to

claim any accommodation from the respondent but even then the appellant No. 1 and appellant No. 2 attempted in various manner to occupy the

suit quarter illegally and finally in the night of 18/19th March, 1997 along with their associates broke open the lock of the suit quarter and

trespassed into the same.

4. As the parties, the property and the issues in the said suits were common, they were tried together. The main question involved was whether the

appellants were tenants of respondent or were trespassers.

5. In Title Suit No. 60 of 1998, the parties led evidence. In Eviction Suit No. 3 of 1999, the appellant No. 1 was debarred from filing written

statement by order dated 9.5.2002 and therefore respondent was directed to prove its case under Order 8, Rule 5 (2) CPC. Respondent proved

its case on the basis of the testimony in connected Title Suit No. 60 of 1998. The trial court dismissed Title Suit No. 60 of 1998 with cost on

contest and decreed Eviction Suit No. 3 of 1999 with cost on contest and directed appellant No. 1 and her husband to handover the vacant

possession of the suit quarter to the respondent within three months and also pay the damages to the tune of Rs. 81,000/- and also pendent lite and

future damages @ Rs. 100/per day. The appellants challenged the said judgment by filing appeal, which has been dismissed by lower appellate

court.

6. Mr. Rajiv Ranjan, learned Counsel appearing for the appellants, submitted that the evidence of Title Suit No. 60 of 1998 could not be taken

into consideration in Eviction Suit No. 3 of 1999 and the respondent was required to prove its case even if the appellants were debarred from filing

written statement. He further submitted that in ground-h of Memo of Appeal, it was pointed out that the appellants have been acquitted for the

charges u/s 453 IPC of illegal trespass on 18/19th March, 1997, which order was available on record but the same was not discussed while

passing the impugned judgment.

7. It is not possible to accept the said submissions. The two suits were tried together. The parties, the suit premises and the issues were common

i.e. whether appellant No. 1 and her husband (appellant No. 2) were tenants of respondent or were trespassers. The appellants were debarred

from filing written statement in Eviction Suit No. 3 of 1999 and such order became final. The trial court directed the respondent to prove its case

under the provisions of Order 8, Rule 5 (2) CPC. The respondent on the basis of evidences brought on record in the connected Title Suit No. 60

of 1998 proved that the appellants were not tenants and that they trespassed into the suit quarter on 18/19th March, 1997. Admittedly, the

purported order of acquittal from the charges of trespass has not been brought on the record by the appellants and therefore they cannot complain

that the same was not discussed by the courts below.

8. After considering the respective cases and the evidences brought on the record, by the parties, concurrent findings of facts have rightly been

recorded by the learned courts below. In my opinion, no substantial question of law is involved in this second appeal, which is accordingly

dismissed.