

D. Satyanarayana

Vs

P. Jagadish

Civil Appeal No. 2223 of 1987

(A. P. Sen, B. C. Ray JJ)

15.09.1987

JUDGMENT

SEN, J. -

1. This appeal by special leave brought from the judgment and order of the High Court of Andhra Pradesh dated August 21, 1986 raises a question of general importance. The High Court has upheld the judgment of the Chief Judge, City Small Causes Court dated April 29, 1985 directing the eviction of the appellant from the demised premises under Section 10(2) (iv) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960. The question is whether the appellant was estopped from denying the title of the lessor under Section 116 of the Evidence Act, 1872 despite the fact that there was threat of eviction by the owner of the demised premises one Krishnamurthy i.e. the person having title paramount.

2. There is no material point of fact which is now in dispute. The demised premises which is a removable wooden cabin or kiosk located at one corner of a building belonging to one Krishnamurthy was let out on a rent of Rs. 6 per day which later was increased to Rs. 10, by the respondent P. Jagadish, son of the original tenant P. R. N. Upadhyaya on March 9, 1977. Admittedly, the main premises i.e. the building was demised by Krishnamurthy to the said P. R. N. Upadhyaya in the year 1972 and in course of time he had sublet different portions of the premises to different persons. By a notice dated November 8, 1980 the head lessor Krishnamurthy served a notice of eviction on the appellant and other sub-tenants alleging that there was unlawful sub-letting by the lessee and that he had decided to terminate the tenancy of the tenant Upadhyaya with the expiry of that month i.e. by the end of December 1980. Thereupon the appellant on December 4, 1980 was constrained to attorn in favour of the original lessor Krishnamurthy agreeing to pay him a rent of Rs. 300 per month. Evidently the appellant had paid rent to the respondent up to March 31, 1980. After becoming a direct tenant under the lessor Krishnamurthy the appellant stopped paying rent to the respondent W.e.f. April 1, 1980. On March 13, 1981 the respondent asserting to be the lessor commenced proceedings for eviction of the appellants from the demised premises under section 10(2)(i) and (iv) and 10 (3)(b)(ii) of the Act i.e. on the ground that the appellant was in willful default in payment of rent, that there was denial of title on his part and for his bona fide requirements. The First Additional Rent Controller, Hyderabad by order dated November 3, 1982 disallowed the application on the ground that the respondent not being the lessor had no locus standi to initiate the proceedings for eviction. On appeal the Chief Judge City small causes court Hyderabad by judgment dated April 29, 1985 reversed the order of the learned Rent Controller and directed the eviction of the appellant under section 10(2)(i) and (iv) holding that the premises in question was a building within section 2(iii) of the Act and that in view of the denial of his title as well as admitted non-payment of rent the appellant was estopped from denying the title. That

decision of his has been upheld by a learned single judge of the High Court by the judgment under appeal. The judgment of the High Court mainly rests on the rule of estoppel.

3. The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e. head lessor Krishnamurthy the appellant was not estopped under section 116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the respondent P. Jagadish as the lessor. Section 116 of the Evidence Act provides that no tenant of immovable property shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words " during the continuance of the tenancy" have been interpreted to mean during the continuance of the possession that was received under the tenancy in question and the courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession however defective it may be so long as he has not openly surrendered possession cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restricted not only in extent but also in time i.e. restricted to the title of the landlord and during the continuance of the tenancy; and by necessary implication it follows that a tenant is not estopped when he is under threat of eviction by the title paramount from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

4. The rule of estoppel embodied under section 116 of the Evidence Act is that a tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion as such a right to the knowledge of the landlord. See : Bilas Kunwar v. Desraj Ranjit Singh (ILR (1915)37 All 55 (PC)) and Atyam Veerraju v. Pechetti Venkanna ((1966) 1 SCR 831 : AIR 1966 SC 629). The general rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the person of the claiming through the landlord. See : Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal Concern Limited (AIR 1937 PC 251 : 169 IC 556 : (1937) 2 MLJ 286). Similarly the estoppel under section 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy. From this, the exception follows that it is open to the tenant even without surrendering possession to show that since the date of the tenancy the title of the landlord came to an end or that he was evicted by a paramount title holder or that even through there was no actual eviction or dispossession from the property under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount it has been established by decision in England and in India that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount no question of estoppel arise under section 116 of the Evidence Act. See : Adyanath Ghatak v. Krishna Prasad Singh (AIR 1949 PC 124). The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them. The law is stated in Vol. 27 Halsbury's Laws of England, 4th edn., Para 238 :

238. Eviction under title paramount. In order to constitute an eviction by a person

claiming under title paramount it is not necessary that the tenant should be put out of possession or that proceedings should be brought. A threat of eviction is sufficient and if the tenant in consequence of the threat attorns to the claimant he may set this up as an eviction by way of defence to an action for rent, subject to his proving the evictor's title. There is no eviction however if the tenant gives up possession voluntarily.

Quite recently this court in *Mangat Ram v. Sardar Meharban Singh* ((1987) 4 SCC 319) to which one of us was a party observed : (SCC p. 327, Para 11)

The estoppel contemplated by section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end.

See also : *Fida Hussain v. Fazal Hussain* (AIR 1963MP 232 : 1963 MPLJ 248) *K. S. M. Guruswami Nadar v. N. G. Ranganathans* (AIR 1954 Mad 402), *S. A. A. Annamalai Chettiar v. Molaiyan* (AIR 1970 Mad 396 : (1970) 2 Mad LJ 562 : 1969 Ren CR 1114 : 1971 Ten CJ 215) and *Chidambara Vinayagar Devasthanam v. Duraiswamy* (ILR (1967 1 Mad 624).

5. In the premises, the High Court as well as the learned Chief Judge of the City Small Causes Court were clearly in error in allowing the proceedings brought by the respondent under Section 10(2) (i) and (vi) of the Act by relying on the rule of estoppel embodied in Section 116 of the Evidence Act. The judgment of the High Court cannot be sustained for the reason that there is no finding that the dispute as to title was not bona fide in terms of Section 10(2) (i) and further inasmuch as the appellant could not be treated to be in arrears of rent since he has been paying rent to the head lessor Krishnamurthy after the attornment of the tenancy to him. The terms of Section 10(2) (i) and (vi) of the Act are set out below :

10. Eviction tenants. - (2) A landlord who seeks to evict his tenant shall be apply to the controller for a direction in that behalf. If the controller after giving the tenant a reasonable opportunity of showing cause against the application is satisfied -

(i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, or

(iv) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide.

the controller shall make an order directing the tenant to put the landlord in possession of the building and if the controller is not so satisfied he shall make an order rejecting the application.

6. The High Court failed to appreciate that there could be no order of termination in terms of section 10(2) (i) [sic (v)] unless it could be said that in the facts and circumstances of the case the dispute as to title was not bona fide. It cannot be said having regard to the facts that the appellant was under section 116 of the Evidence Act applied and therefore he was not entitled to dispute the title of the respondent. Furthermore the appellant having on December 4, 1980 after being served with the notice of eviction attorned to the head lessor there came into existence a direct tenancy. It has been brought to our notice that the appellant has since that date been paying rent to his present lessor

Krishnamurthy and is not in arrears of rent. The order of eviction passed by the learned Chief Judges as well as the High Court against the appellant under section 10(2) (i) and (iv) of the Act is not sustainable in law.

7. In the result the appeal succeeds and is allowed. The proceedings for eviction of the appellant from the demised premises under sections 10(2) (i) and (iv) and 10(3) (b) (iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) control Act 1960 are quashed No Costs.

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