

Kundan Mal

Vs

Gurudutta

Civil Appeal No. 1048 of 1980

(L. M. Sharma, M. H. Kania JJ)

25.01.1989

JUDGMENT

SHARMA, J. –

1. This appeal by special leave is directed against the decision of the Rajasthan High Court confirming the decree of eviction of the appellant from certain premises under Section 13(1)(f) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter referred to as 'the Act'), on the ground that he had denied the title of the respondent-landlord.

2. The appellant has been in possession of the structure in question since 1953, when he was inducted therein by the owner one Nawab M. Ali Khan. In 1969 Nawab M. Ali Khan died, and it appears that some dispute arose between his legal representatives and the present respondent 1. It further appears that the dispute was finally settled in favour of respondent 1 and according to the case of the appellant he duly recognised him as his landlord and started paying rent. In 1973 the appellant received a notice from the Municipal authorities asking him to remove the disputed structures on the ground that it was erected on government land. According to the appellant's case, the notice was issued at the instance of respondent 1, who was anxious to evict the appellant. The appellant, in the situation, was forced to file a suit in the civil court challenging the validity of the notice and praying for injunction against the Municipal authorities from interfering with his possession. Respondent 1 filed the present suit on the twin grounds of default in payment of rent and denial of his title. The case of default in payment of rent was rejected but the suit was decreed on the ground of denial of title. On appeal, the Additional District Judge confirmed the decree. The appellant's second appeal was also rejected by the High Court at the admission stage.

3. The appellant's plaint in the earlier suit by which it is suggested that he challenged the respondent's title was filed in the present case and marked as Ex. 1. The first appellate court has while recording its finding against the appellant observed that the statements in the plaint amount to disclaimer and, in any event, it appears that the appellant failed to acknowledge the landlord's title therein and consequently he was liable to eviction under clause (f) of Section 13(1) of the Act, which reads as follows :

13. Eviction of tenants. - (1) Notwithstanding anything contained in any law or contract, no court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent thereof to the full extent allowable by this Act, unless it is satisfied -

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant;
or

We do not agree. There is no statement in the plaint at all challenging the landlord's right and there was no occasion for the appellant to deal with this aspect in view of the scope of his suit. On the other hand, the pleading shows that he described the nature of his possession as that of a tenant and the interest of the present respondent 1, who was defendant 2 in that suit, as that of a landlord.

4. Mr. S. S. Khanduja, the learned counsel for the respondent, relied on the last sentence of paragraph 1 of the plaint, as mentioned below, and contended that since defendant 2 was not one of the heirs of the deceased Nawab M. Ali Khan, this sentence should be read as denial of his title :

He sold out some portion of his property in his lifetime and the remaining property came to be owned by his heirs i.e. defendants 2 to 6.

Firstly it has to be noticed that although the respondent was wrongly described as an heir, his title to the property was acknowledged. Further this sentence cannot be read in isolation. The position is explained in paragraph 5 of the abovenoted plaint in the following terms :

5. That the land where the stall type kachhi shops of the plaintiffs have been constructed, defendant 2 has built his house after taking the land on a long term lease from Nawab Mukarram Ali Khan. In between these there is a pukka 'Dola'. There is dispute about the ownership of the land between defendant 2 and defendants 3 to 6 since the death of Nawab Mukarram Ali Khan in the year 1969. Later on the matter has been compromised in between the four heirs, defendant 2 developed a bad motive and he wants that anyhow the plaintiffs should be evicted from the premises as early as possible and he should occupy the same.

The argument is that the title of the respondent (defendant 2 in the earlier case) was nowhere accepted in the plaint. After mentioning the dispute between him and the legal representatives of the deceased Nawab the appellant did not proceed to clarify the position. So far as the statement in paragraph 1 of the plaint is concerned, the grievance is that the title of the landlord was denied, if not completely then at least in part by describing the defendants 3 to 6 as co-owners with him. We are not in a position to agree with the contention of the learned counsel that for these reasons the appellant has to be evicted. Even interpreting the plaint in a manner as favourable to the landlord as may be possible, it has to be accepted that the document cannot be construed to clearly deny the respondents' title in unambiguous terms. One thing that is conspicuous is that the appellant did not claim any title in himself. He expressly described the character of his possession as that of a tenant. Is it in this situation permissible to forfeit his lease on the ground of disclaimer of title ? In providing disclaimer as a ground for eviction of a tenant in clause (f) of Section 13(1) of the Act, the legislature decided to give effect to the provisions of clause (g) of Section 111 of the Transfer of Property Act. The principle of forfeiture on disclaimer is founded on the rule that a man cannot approbate and reprobate at the same time. Since the consequence of applying the rule is very serious, it must be held that the denial has to be clear and in unequivocal terms. The decision of this Court in Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur (AIR 1965 SC 1923), relied upon by the learned counsel for the appellant highlights this aspect. The facts in that case would show that the tenant there had made statements against his landlord which were far more serious than those in the case before us and still was not penalised. It may be appreciated that in the present case the 1973 suit was not directed against any of the defendants excepting the Municipality

and the statements in the plaint referred to above were made by way of giving the background in which the impugned notice by the Municipal officers had been issued. No relief against the other defendants including the present respondent was prayed for. Examining the entire plaint in this background we are of the opinion that the ground contemplated under Section 13(1)(f) of the Act is not made out. We, therefore, set aside the judgments of the courts below and dismiss the suit. The appeal is accordingly allowed with costs throughout.

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