

Majati Subbarao

Vs

P. V. K. Krishna Rao (Deceased) by Lrs.

Civil Appeal No. 2732 of 1980

(M. H. Kania, Kuldeep Singh JJ)

19.09.1989

JUDGMENT

KANIA, J. -

1. This is an appeal by special leave against the judgment of a learned Single Judge of the Andhra Pradesh High Court in Civil Revision Petition No. 7974 of 1979. The appellant before us is the tenant and the original respondent is the landlord who is dead and is represented by this legal representatives.
2. The premises in question are in Eluru Town in Andhra Pradesh. The appellant is carrying on business in the name and style of Sri Panduranga Engineering Company. According to the original respondent (who will hereinafter be referred to as "the respondent") he was the owner of the building in which the said premises was situated and hence, the owner of the said premises. The respondent filed an eviction petition against the appellant on the ground on bona fide requirement as he wanted to set up his eldest son in business by starting a photo studio in the said premises. The appellant disputed the correctness of the said claim. The appellant in his counter to the eviction petition, inter alia, alleged that the said property in which the said premises were situated was the absolute endowed property of Punyamurthulavari Choultry of which the original respondent was the de facto trustee and that the original respondent had no personal or proprietary interest in the said property. He asserted that the said property belonged to the said Choultry and that the original respondent had no manner of right to evict the appellant on the ground of personal use and occupation. The appellant asserted that the said premises were not the individual property of the original respondent but trust property. The respondent filed a rejoinder denying that the said premises were the endowed property or that the said property was a part of Punyamurthulavari Choultry. He asserted that he was the absolute owner of the said property which was purchased by his father under a registered sale deed dated June 29, 1908. The respondent submitted that the appellant had denied his title and, as the said denial was not bona fide, the appellant was liable to be evicted also on the ground of denial of title of the landlord. The Rent Controller passed a decree for eviction on the ground that the bona fide requirement of the landlord-respondent was made out and also on the ground that the appellant-tenant had denied the title of respondent-landlord which denial was not bona fide. The appellant preferred an appeal against the said decision to the Appellate Authority. The Appellate Authority, however, dismissed the appeal upholding both grounds of eviction found by the Rent Controller. Against this decision, the appellate preferred a revision petition to the High Court. The High Court in its impugned judgment upheld the order of eviction only on the ground of denial of title which was not a bona fide denial. It is this decision of the High Court which is challenged before us.

3. The finding that the denial of title was not bona fide, is essentially a finding of fact and, fairly enough, no dispute has been raised by learned counsel for the appellant in respect of that finding. It is, however, submitted by him that in order to constitute a ground for eviction the denial of title must be anterior to the filing of the eviction petition and a denial of title in the course of eviction petition would not constitute a ground for eviction. He drew our attention to the provisions of Section 10 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as "the A.P. Rent Act"). The A.P. Rent Act was enacted with a view to consolidate the law relating to regulation of leasing of buildings, control of rent thereof and prevention of unreasonable eviction of tenants in the State of Andhra Pradesh, Section 10 of the A.P. Rent Act deals with eviction of tenants. Sub-section (1) of that section prohibits eviction of tenants except in accordance with the provisions of that section or Sections 12 and 13 of that Act. The relevant part of sub-section (2) of Section 10 of the A.P. Rent Act runs as follows :

"(2) A landlord who seeks to evict his tenants shall 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;....

(vi) 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."

It was urged by learned counsel for the appellant that the ground for eviction must come into existence before the application to the Rent Controller for eviction is made and hence, a denial of title which can be relied upon by the landlord-respondent for eviction must be anterior to the eviction petition.

4. In support of his contention, Mr. Rangan, learned counsel for the appellant placed reliance on the decision of a bench of this Court in *Kundan Mal v. Gurudutta* ((1989) 1 SCC 552). In that case it has been observed that in providing disclaimer as a ground for eviction of a tenant in clause (f) of Section 13(1) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 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 of title has to be clear and in unequivocal terms. In our view, this decision is hardly of any assistance to learned counsel. The principle laid down in that case is that, in order to constitute a ground for eviction, the denial of title has to be clear and in unequivocal terms. In the present case, the facts found show that the denial of title of the respondent by the appellant was in clear and unequivocal terms. Although it is observed in the said judgment that in providing this ground for eviction, the legislature of the State of Rajasthan decided to give effect to the provisions of clause (g) of Section 111 of the Transfer of Property Act, the judgment nowhere lays down that the denial title must be anterior to the eviction petition nor does it say that the provisions relating to eviction of tenants under the Transfer of Property Act are applicable to the eviction of tenants under the Rajasthan Rent Act. In this connection we may point out that it is well settled that the court hearing a suit or appeal can taken into account events which are subsequent to the filing of the suit in order to give appropriate relief or mould the relief appropriately. Moreover, it is significant that in the present case, the denial of the landlord's title was not the only ground pleaded in support of

the claim for eviction but it was also contended by the respondent that the appellant was liable to be evicted as the respondent wanted the said premises for his personal bona fide use and occupation.

5. It was argued by learned counsel for the appellant that even accepting that there was a denial of title by the appellant the result would be only that the respondent-landlord became entitled to forfeit the lease and in order to be a ground for eviction in a suit that forfeiture would have to precede the suit or petition for eviction. It was submitted by him that it was not open to a landlord to take advantage of a denial of title by the tenant in the very proceeding for eviction in the course of which the denial was made. The denial must be anterior to the eviction proceedings. In support of this argument learned counsel placed reliance on the decision in *Maharaja of Jeypore v. Rukmani Pattamahdevi* (46 IA 109 : AIR 1919 PC 1 : 42 Mad 589 : 17 ALJ 552 : 21 Bom LR 655). In our view, this argument also does not stand scrutiny. In *V. Dhanapal Chettiar v. Yesodai Ammal* ((1979) 4 SCC 214 : (1980) 1 SCR 334 : AIR 1979 SC 1745) a constitution Bench of this Court comprising seven learned Judges held that in the matter of determination of tenancy the State Rent Acts do not permit a landlord to snap his relationship with the tenant merely by serving on him a notice to quit as is the position under the Transfer of Property Act. The landlord can recover possession of the property only on one or more of the grounds enacted in the relevant section of the Rent Acts. Even after the termination of the contractual tenancy the landlord under the definitions of landlord and tenant contained in the Rent Acts, remains a landlord and a tenant remains a tenant because of the express provision made in the enactments that a tenant means 'a person continuing in possession after the termination of the tenancy in this favour'. Yet another important feature of the Rent Acts is that either by way of a non-obstante clause or by necessary implication these enactments have done away with the law contained in Section 108 of the Transfer of Property Act dealing with rights and liabilities of the lessor and the lessee. The difference between the position obtaining under the Transfer of Property Act and the Rent Acts in the matter of determination of a lease is that under the former Act in order to recover possession of the leased premises determination of the lease is necessary because during the continuance of the lease the landlord cannot recover possession of the premises while under the Rent Acts the landlord becomes entitled to recover possession only on the fulfilment of the conditions laid down in the relevant sections. He cannot recover possession merely by determining the tenancy. Nor can he be stopped from doing so on the ground he has not terminated the contractual tenancy. In the case before us, we find that the denial of landlord's title by the tenant has been expressly made a ground for eviction under Section 10(2)(vi) of the A.P. Rent Act which we have already set out earlier. In view of this, the entire basis for the argument that the denial of title must be anterior to the proceedings for eviction under the A.P. Rent Act is knocked out. In our opinion, the argument of learned counsel for the appellant must, therefore, be rejected. We find, on the other hand, that a number of High Courts have taken the view that even a denial of the landlord's title by a tenant in a written statement in an eviction petition under the Rent Act concerned furnishes a ground for eviction and can be relied upon in the very proceedings in which a written statement containing the denial has been filed (See *Sada Ram v. Gajjan Shiama* (AIR 1970 P&H 511 : 1970 Cur LJ 88 : 1970 Punj LJ 89); *Shiv Parshad v. Shila Rani* (AIR 1974 HP 22 : 1973 Ren CR 548) and *Machavaram Venkata Narayana Rao v. Sarvepalli Narayana Rao Sarada* ((1978) 1 RCJ 368 (AP)). As observed by the Punjab and Haryana High Court to insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejection of the tenant on the ground of forfeiture entailed by the tenant's denial of his character as a tenant in the written statement.

6. It was submitted by learned counsel for the appellant that, in any event, the respondent failed to

apply for amendment of his plaint and incorporate the ground of denial of title therein as he was bound to do so in order to get relief on that ground which had arisen after the eviction petition was filed. We agree that normally this would have been so but, in the present case, we find that the trial court, namely, the Rent Controller, framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition that the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that contention at the stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition. No other arguments have been advanced before us.

7. In the result, the appeal fails and is dismissed with costs.

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