Subhash Chandra

Vs

Mohammad Sharif and Others

Civil Appeal No. 10030 of 1988

(V. R. Krishna Iyer, L. M. Sharma JJ)

19.12.1989

JUDGMENT

SHARMA, J. -

1. This appeal is directed against the decree of the Madhya Pradesh High Court for eviction of the appellant from a house after holding him to be the respondent's tenant. The appellant denied the title of the plaintiffs and their case that he has been in possession of the property as their tenant. The trial court accepted the plaintiffs' case and passed a decree in their favour, which was set aside on appeal by the first appellate court. The decision was reversed by the High Court in second appeal by the impugned judgment.

2. Admittedly the house which was in possession of the defendant's father Misri Lal as a tenant belonged to one Smt. Raj Rani who sold the same on August 11, 1952 to the plaintiffs' predecessor-in-interest, Navinchand Dalchand. In 1959 a suit for his eviction was filed by Navinchand, which was resisted on the ground that Smt. Raj Rani had earlier transferred the house to a trust and she, therefore, could not later convey any title to Navinchand. The trial court rejected the defence and passed a decree against which Misri Lal filed an appeal. During the pendency of the appeal the parties resolved their dispute amicably. Misri Lal accepted the title of Navinchand and a deed, Ex. P-20, creating a fresh lease in favour of Misri Lal under Navinchand as lessor, was executed with effect from December 1, 1962. The appeal was disposed of by recording this fact and stating further that the arrears of rent had been paid off. The compromise petition and the decree have been marked in the present suit as Ex. P-21 and Ex. P-22. Misri Lal continued to occupy the house till he died in 1972 leaving behind his son, the present appellant, as his heir and legal representative. Navinchand sold the suit property to the plaintiffs-respondents on January 4, 1973, who sent a notice to the appellant on March 14, 1973. Since the appellant refuses to recognise them as owners of the house, another notice terminating the tenancy was served in January 1974 and the present suit was filed in June of the same year.

3. The appellant resisted the claim in the plaint on the same old plea which his father Misri Lal had unsuccessfully taken in the earlier suit, namely, that Smt. Raj Rani having transferred the disputed house to a trust in 1936 was not competent to re-transfer it to Navinchand Dalchand, the vendor of the plaintiffs-respondents. The trial court disbelieved the defence version holding that although Smt. Raj Rani had executed a trust deed in 1936, but the same was not acted upon and the trust does not appear to have come into existence. On appeal the first appellant court reversed the finding and further held that the defendant could not be estopped from challenging the title of the plaintiffs.

4. It has been the case of the appellant that the consent of Misri Lal to the compromise in the earlier

suit was obtained by force, but the plea was not substantiated by any evidence, and it has been pointed out by the High Court that the appellant admitted in his deposition that to his knowledge no force had been used against Misri Lal. The High Court further rightly rejected the argument that the decree, Ex. P-22, would not bind the parties since it was founded on a compromise and not on an adjudication by the court on the question of title. The court also observed that the statements made in the compromise petition, Ex. P-21, in the earlier suit support the case of the plaintiffs independently of the compromise decree, and further, the defence plea has to be rejected in view of the deed, Ex. P-20, creating a fresh lease. These findings were sufficient from the disposal of the appeal but the High Court proceeded to consider the question whether Smt. Raj Rani had in fact transferred the suit house in favour of a trust, and decided the issue against the appellant.

5. The grievance of Mr. Rohatgi, learned counsel for the appellant, that in view of the limited scope of a second appeal under Section 100 of the Code of Civil Procedure, the High Court was not justified in setting aside the finding of the first appellate court on the question as to whether the property had been alienated in 1936 in favour of the trust or not is well founded. After the court reached a conclusion against the defendant on the basis of the lease deed, Ex. P-20, the compromise petition, Ex. P-21, and the compromise decree, Ex. P-22, it should not have proceeded to decide the dispute relating to title on merits on the basis of the evidence. However, this error cannot help the appellant unless he is able to successfully meet the effect of Ex. P-20, Ex. P-21 and Ex. P-22.

6. It has been strenuously contended by Mr. Rohatgi that the principle that a tenant is estopped from challenging the title of his landlord is not available to the landlord's transferee in absence of atonement by the tenant. Reliance was placed on Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Ltd. (AIR 1937 PC 251 : 64 IA 311 : 1937 ALJ 1389), Mangat Ram v. Sardar Meharban Singh ((1987) 4 SCC 319), D. Satyanarayana v. P. Jagdish ((1987) 4 SCC 424), Tej Bhan Madan v. II Addl. District Judge ((1988) 3 SCC 137), and a passage from Halsbury's Laws of England (4th edn., Vol. 16, paragraph 1628). The learned counsel strenuously contended that the appellant-tenant cannot be estopped from challenging the derivative title of the plaintiffs as he was not inducted into the house by them. He relied upon the comments of Sarkar on Section 116 in his book on the Indian Evidence Act.

7. It is true that the doctrine of estoppel ordinarily applies where the tenant has been let into possession by the plaintiff. Where the landlord has not himself inducted the tenant in the disputed property and his rights are founded on a derivative title, for example, as an assignee, donee, vendee, heir, etc., the position is a little different. A tenant already in possession can challenge the plaintiff's claim of derivative title showing that the real owner is somebody else, but this is subject to the rule enunciated by Section 116 of the Evidence Act. The section does not permit the tenant, during the continuance of the tenancy, to deny that his landlord had at the beginning of the tenancy a title to the property. The rule is not confined in its application to cases where the original landlord brings an action for eviction. A transferee from such a landlord also can claim the benefit, but that will be limited to the question of the title of the original landlord at the time when the tenant was let in. So far claim of having derived a good title from the original landlord is concerned, the same does not come under the protection of the doctrine of estoppel, and is vulnerable to a challenge. The tenant is entitled to show that the plaintiff has not as a matter of fact secured a transfer from the original landlord or that the alleged transfer is ineffective for some other valid reason, which renders the transfer to be non-existence in the eye of law. By way of an illustration one may refer to a case where the original landlord had the right of possession and was, therefore, entitled to induct a tenant in the property but did not have any power of disposition. The tenant in such a case can attack the derivative title of the transferee-plaintiff but not on the ground that the transferor-landlord who had

initially inducted him in possession did not have the right to do so. Further since the impediment in the way of a tenant to challenge the right of the landlord is confined to the stage when the tenancy commenced, he is not forbidden to plead that subsequently the landlord lost this right. These exceptions, however, do not relieve the tenant of his duty to respect the title of the original landlord at the time of the beginning of the tenancy.

8. Coming to the facts of the present case, it may be recalled that fresh tenancy had been created in favour of Misri Lal, father of the present appellant, under Navinchand by deed Ex. P-20, and this fact was fully established by the decree, Ex. P-22. The appellant, in the shoes of his father, is as much bound by these documents as Misri Lal was, and he cannot be allowed to deny the relationship of landlord and tenant between Navinchand and himself. It has not been the case of the appellant that Navinchand later lost the title or that he had transferred the same to another person, nor does the appellant say that there has been any defect in the sale deed executed in favour of the present plaintiffs. In other words, the acquisition of title by the plaintiffs from Navinchand, if he be presumed to be the rightful owner, is not impugned, that is, the derivative title of the plaintiffs is not under challenge. What the appellant wants is to deny their title by challenging the title of their vendor Navinchand which he is not entitled to do.

9. None of the decisions relied upon by Mr. Rohatgi assists him. On other hand, the judgments in Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Ltd. (AIR 1937 PC 251 : 641 IA 311 : 1937 ALJ 1389), and Tej Bhan Madan v. II Addl. District Judge ((1988) 3 SCC 137), demonstrate that the plea of estoppel of the plaintiffs is well founded. The Privy Council case arose out of a suit for realisation of royalties due on coal raised by the lessee-defendant company. The original lease was granted by the father of the plaintiff, the Raja of Panchkote, in favour of one Radha Ballav Mukherjee. The defendant was sued as assignee. The original lease contained a clause giving the lessor a charge for royalties upon the collieries and its plant which was sought to be enforced. Since there was some dispute about the ownership of the colliery, the defendant company by way of abundant caution obtained a second assignment from another source, being the Official Assignee. The plaintiff's claim was denied by the company on the grounds that (i) his father the Raja was not the owner of the colliery and the company was in possession of the colliery as a lessee on the strength of the other assignment from the Official Assignee, and (ii) the company, being merely a transferee from the original lessee Radha Ballav Mukherjee and not being itself the original lessee, could not be estopped from challenging the Raja's or his son's title. While rejecting the defendant's stand the Privy Council observed thus : (AIR p. 255)

> "What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g., by attornment, acceptance of rent, etc. In this sense it is true enough that the principle only applies to the title of the landlord who "let the tenant in" as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end."

The expression "derivative title" was referable to the plaintiff, and the Privy Council concluded by observing that the case did not raise any difficulty as there was "no dispute as to the plaintiffs derivative title." While rejecting the argument on the basis that the company was not the original lessee and being merely an assignee was free to challenge the lessor's title, it was said that "the

tenancy under Section 116 does not begin afresh every time the interest of the tenant or of the landlord devolves upon a new individual by succession or assignment." The circumstances in the case before us are similar. The appellant does not contend that Navinchand had subsequently lost his title or that there is any defect in the derivative title of the plaintiffs. His defence is that Navinchand did not own the property at all at any point of time, and this he cannot be allowed to do. He cannot be permitted to question his title at the time of the commencement of the tenancy created by Ex. P-20.

10. In Tej Bhan Madan v. II Addl. District Judge ((1988) 3 SCC 137), the question was whether there was a disclaimer of the landlord's title on the part of the appellant-tenant so as to incur forfeiture of the tenancy. The premises in question originally belonged to one Shambhoolal Jain, who died leaving behind his wife, two sons and a daughter by the name of Mainawati. The property was sold in execution of a money decree and was purchase by Mainawati in 1956. Mainawati conveyed the property to one Gopinath Agarwal and the appellant who was in possession as tenant attorned the tenancy in his favour. Subsequently Gopinath sold the same in favour of the third respondent, Chayya Gupta, and both Gopinath and Chayya Gupta asked the appellant to attorn the tenancy in favour of Chayya Gupta. The appellant declined to do so and challenged not only the title of Chayya Gupta but also the validity of the sale in favour of Gopinath. This led to the filing of the case for his eviction on the ground of disclaimer. It is significant to note that the foundation of the proceeding for ejectment was the appellant's denial of the title of Gopinath in whose favour he had earlier attorned the tenancy, and not the challenge of the derivative title of the third respondent. Overruling the objections of the appellant, a decree for eviction was passed against him and his writ petition before the High Court was dismissed. In this background he came to this Court and an argument similar to the one pressed in the case before us. Rejecting the appellant's point, this Court observed thus : (SCC p. 144, Para 16)

> "The stance of the appellant against the third respondent's title was not on the ground of any infirmity or defect in the flow of title from Gopinath, but on the ground that the latter's vendor - Mainawati herself had no title. The derivative title of the third respondent is not denied on any ground other than the one that the vendor, Gopinath - to whom appellant had attorned - had himself no title, the implication of which is that if appellant could not have denied Gopinath's title by virtue of the inhibitions of the attornment, he could not question third respondent's title either. Appellant did himself no service by this stand."

The case is clearly against the appellant. The above passage as also the last sentence in paragraph 4 of the judgment which is mentioned below also indicates as to what can be termed as a derivative title which a tenant may be free to challenge : (SCC p. 140, Para 4)

> "But appellant-tenant declined to do so and assailed not only the derivative title of the third respondent to the property but also the validity of the sale in favour of Gopinath himself."

11. In D. Satyanarayana v. P. Jagdish ((1987) 4 SCC 424), the court was dealing with one of the exceptions to the rule of estoppel which permitted a subtenant

> "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 though there was no actual eviction or dispossession from the property, under a threat of eviction he had

attorned to the paramount title holder." (SCC HN p. 425)

The facts were that the appellant was a sub-tenant of the tenant-respondent and the landlord served a notice on him terminating the tenancy of the tenant-respondent on the ground of unlawful sub-letting. The appellant thereupon attorned in favour of the paramount title holder and started paying the rent directly to him. The tenant respondent, thereafter, commenced the eviction proceeding and a decree was passed which was challenged before this Court by the appellant-tenant. After enunciating the general rule of estoppel under Section 116 of the Evidence Act the court pointed out the exception where a tenant is evicted by the paramount title holder and is thereafter re-inducted by him under a fresh lease. Extending this exception to the tenant's appeal, it was held that the rule applied where the tenant can show :

> "That even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title holder."

The decision is patently not applicable to the case before us. In Mangat Ram v. Sardar Meharban Singh, the principle decided was stated in the following words : (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 had since come to and end."

The Lahore case is also clearly distinguishable. After the death of the lessor her daughters claimed rent from the tenants. The tenants disputed their derivative title and the court held that though the tenants could not dispute the title of the mother at the commencement of the lease, they were entitled to challenge the derivative title of the plaintiffs and that the daughter had to prove that the property was stridhan of their mother which they inherited under the Hindu law. The principle was correctly enunciated there, but that does not help the appellant at all. To the same effect are the following observations in Halsbury's Laws of England (4th edn., Vol. 16, paragraph 1628) relied upon by Mr. Rohatgi :

> "Thus although an assignee of the lessor is to all intents and purposes in the same situation as the lessor, and takes the benefit of and is bound by a lease by estoppel, the lessee is not estopped from showing that the lessor had no such title as he could pass to the assignee, or that the person claiming to be the assignee is not in fact the true assignee."

The significance of the words which have been underlined above has to be appreciated for correctly understanding the principle enunciated.

12. For the reasons mentioned above, we hold that the appeal has no merit and is accordingly dismissed with costs.

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