

Munisami Naidu

Vs

C. Ranganathan

Civil Appeal No.372 of 1976

(M.M. Punchhi, S.C. Agarwal)

30.10.1990

JUDGMENT

1. This appeal by special leave is against the judgment and decree dated 17-12-75 of the High Court of Madras in Second Appeal No. 1835 of 1974.
2. The suit property is a piece of agricultural land. It fell to be settled on Saradammal under a Compromise Decree dated 24-7-1963 between her and other members of a joint family. Having acquired title thereto, she executed a registered Lease Deed in favour of the appellant on 2-8-1963 conferring on him a tenure of five years. During the course thereof, as it appears, on 14-9-1966 she settled the holding in favour of her brother, the respondent herein, but by a deed which was not registered. On 1-8-1967, Saradammal died. On 4-9-1968, the respondent sent a notice to the appellant asking him to pay the arrears of rent but the notice was not responded to. Finally, on 13-9-69, the respondent filed the present suit seeking arrears of rent and eviction from the suit property.
3. The defence of the appellant was that he was not aware of the settlement deed of Saradammal in favour of the respondent and which he described to have been executed in secrecy. The case further pleaded was that he was not aware as to whom he had to pay rent but he was otherwise ready and willing to pay the arrears of rent at all times. Besides, he pleaded that he was a protected cultivating tenant and had the protection under The Madras Cultivating Tenants (Protection) Act and on that basis the civil court had no jurisdiction to try the suit.
4. A number of issues were framed by the trial court but, significantly, no issue was framed as to whether there was denial of title by the tenant of the landlord which would by itself warrant his eviction. The trial court passed a decree of arrears of rent only but refused eviction of the appellant on the ground that he had the protection of the Madras Cultivating Tenants (Protection) Act.
5. On appeal by the landlord, the Subordinate Judge took the view that in terminating the settlement in favour of the respondent by his sister as secretive and non-response of the notice to pay arrears of rent were in the nature of denial of title and on that basis he ordered eviction of the appellant. It appears that a tenant who denies the title of the landlord ceases to have the protection of the aforesaid Act but if he does so mistakenly, the protection continues. Be that apart, the denial of title was spelled out not from any unequivocal declaration of such denial but by conduct of the appellant alone.
6. On appeal to the High Court, the view of the Subordinate Judge was affirmed. The learned single

Judge dealing with the matter observed that a reading of the entire written statement clearly left him the impression that the defendant (appellant) did deny the title of the plaintiff (respondent). The Regular Second Appeal was accordingly dismissed.

7. Mr. Ramkumar, learned counsel for the appellant, on the strength of *Kundan Mal v. Gurudatta* reported in (1989) 1 SCC 552 maintains that unless any clear unequivocal declaration is attributed to the appellant of his having denied the title of the landlord the principle of disclaimer and forfeiture cannot be invoked, on mere conduct by inferences. He has also read to us in entirety the written statement and in particular paragraphs 4 and 5 thereof. There is not a word so as to expressly deny the title of landlord. The mere statement of the appellant that he was not aware in the particular set of facts as to who was his landlord is not to say that he ever denied title of his landlord. Mere nonresponse of the notice to pay arrears of rent is not to say that it is an expressed declaration of denial of title. It appears to us that the Subordinate Judge and the High Court were in error in summing up disclaimer on inferences drawn from the conduct of the appellant. The provisions of S. 111 (g) of The Transfer of Property Act cannot be lost sight of when determining the case of forfeiture and disclaimer.

8. We are thus of the view that the decree of eviction against the appellant could in no event be passed on the averments made in the written statement and thus we have no hesitation in upsetting the judgment and the decree of the High Court restoring that of the trial court.

9. To be fair to Mr. Choudhary, learned counsel for the respondent, we must notice that his claim that all these are findings of fact not normally open in our jurisdiction under Art. 136 of the Constitution must meet with disapproval from us because the whole approach of the High Court and the Subordinate Judge in fixing liability of the appellant was erroneous in law and facts had to be viewed in the right perspective. Even if the facts be taken to have been settled, they at best lead to an inference that the conduct of the appellant was not of a submissive tenant. We reject this contention.

10. For the reasons recorded, we allow this appeal, set aside the judgment and decree of the Madras High Court and restore that of the trial court, with costs.

Appeal allowed.

</html