

SUPREME COURT OF INDIA

Ambika Savaria & Ors.

Vs.

Sanjay Sharma & Ors.

C.A.No.7360 of 2016

(C.Nagappan and Uday Umesh Lalit, JJ.,)

09.08.2016

JUDGMENT

Uday Umesh Lalit, J.,

SLP(Civil) No.9418 of 2011

1. Leave granted. This appeal challenges correctness of the judgment and order dated 20.10.2010 passed by the High Court of Chhattisgarh at Bilaspur allowing Second Appeal No.242 of 1989 and setting aside concurrent decisions of the Trial Court and Lower Appellate Court granting decree of eviction in favour of the appellants.

2. Civil Suit No.67-A of 1979 was filed by Vasudev Shyamji and Govind Shyamji, the predecessors of the appellants seeking eviction of one Bhanaram Sharma, predecessor of the respondents from suit house which was described in the plaint as the front portion of house No.189/1, Ward No.18, Raigarh. The eviction was sought on grounds including bona fide need. In paragraph 2 of his written statement Bhanaram stated,

“ It is specifically denied that the plaintiffs are owners of house No.189/1 in Ward No.18 of Raigarh Town. This being a suit for eviction of a tenant the question of ownership is not relevant to the suit.”

3. Thus though it was denied that the plaintiffs were owners of the suit house, in the very next sentence defendant Bhanaram asserted that the question of ownership was not relevant in the instant suit. Bhanaram entered the witness box and in his cross-examination admitted that the lease from Nazul Department stood in the name of plaintiffs and that the witness himself had produced the same in some other proceedings. It was further accepted that he had paid rent by money orders sent in the name of Shyamji Gangji, father of the plaintiffs.

4. The aforesaid suit was re-numbered as Civil Suit No.417A of 1986. After considering the evidence on record the Trial Court by its judgment and order dated 21.01.1987 decreed the

suit principally on the ground that the plaintiffs required the suit house for reconstruction and for bona fide need.

5. The matter having been carried in appeal by Bhanaram, the Lower Appellate Court also considered the question regarding ownership of the suit house. While considering the evidence of Bhanaram, it observed, “ This witness has also admitted that lease from nazul of this property was also accepted in the name of plaintiffs and he himself has produced that lease on his behalf in other civil court.” The Lower Appellate Court affirmed the view taken by the Trial Court and dismissed Civil Appeal No.3A/87 vide its judgment and order dated 20.03.1989.

6. The heirs of Bhanaram namely the respondents being aggrieved, filed Second Appeal No.242 of 1989 in the High Court of Chhattisgarh at Bilaspur. This appeal came to be allowed by the High Court vide judgment and order dated 20.10.2010. It was observed by the High Court that for a plaintiff to succeed in seeking eviction of tenant on the ground of bona fide need under Section 12(1)(e) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as the “Act”) it was incumbent to establish that he was owner of the accommodation in question. After considering the evidence on record, particularly that of defendant Bhanaram it was observed:

“Evidence of this witness, pleadings and evidence of defendant Bhanaram Sharma clearly reveal that father of Vasudev Shyamji i.e. Shyamji Gangji was landlord of the suit accommodation, but was not owner of the suit accommodation. In his detailed evidence, Vasudev Shyamji has not stated anything to show that how he became owner of the suit accommodation.”

According to the High Court, the fact that defendant Bhanaram used to pay rent of the suit house to the father of the plaintiffs, was not sufficient to prove ownership over the suit house especially when ownership was under dispute and the plaintiffs had not adduced any evidence to prove the issue of ownership.

7. The aforesaid judgment of the High Court is presently under appeal. We heard Mr. Kamal Mohan Gupta, learned Advocate in support of the quotation and Mr. Ujjal Banerjee, learned Advocate for the respondents. Relying on the decision of this Court in *Anar Devi(Smt) v. Nathu Ram*¹ it was submitted by Mr. Gupta, learned Advocate that the defendant was estopped from questioning the title of the plaintiffs and that the High Court was in error in allowing the second appeal. Mr. Banerjee, learned Advocate supported the view taken by the High Court and submitted that no evidence whatsoever was led to prove ownership of the suit house which was necessary in view of Section 12(1)(e) of the Act.

8. The relevant provision, namely, Section 12(1)(e) of the Act is as under:

“12. Restriction on eviction of tenants - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against

a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

(e) that the accommodation let for residential purpose is required bona fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof, or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned;

9. In Anar Devi' s case the provision which came up for consideration was Section 23-A(b) of M.P. Accommodation Control Act which was as under:-

“23-A. Special provisions for eviction of tenant on ground of bona fide requirement.– Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely–

(a)

Explanation...

(b) that the accommodation let for non-residential purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned:

10. The relevant provision in the instant case, namely, Section 12(1)(e) of the Act is pari materia with Section 23-A(b) which was considered in Anar Devi' s case. The expression, “if he is the owner thereof” is common and identically placed. Para 18 of the decision in Anar Devi' s case discloses that the respondent-tenant had acknowledged the ownership of the accommodation as that of the appellant and had regarded her as the landlord in his counter notice. In the circumstances it was held that the respondent was not entitled to deny the title of the appellant to the accommodation. During the course of its judgment, this Court dealt with “tenant' s estoppel” as statutorily recognized in Section 116 of the Evidence Act and observed as under:-

“10. Since the doctrine of “tenant' s estoppel” could throw light on the question as to what can make a landlord to succeed in enforcing his right to recover possession of accommodation from a tenant under clause (b) of Section 23-A of the Act, it would be advantageous to refer to its scope and applicability, before taking it up for our consideration.

11. “Doctrine of tenant’ s estoppel” which governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them, is well settled. Jessel, M.R., who adverted to that doctrine in *Stringer's Estate, Shaw v. Jones-Ford*² explains it thus:

“Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord’ s title, as, for instance, if he takes for twenty-one years and he finds that the landlord has only five years’ title, he cannot after five years set up against the landlord the jus tertii, though, of course, the real owner can always recover against him. That is a perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract.”

12. Indeed, the said doctrine of tenant’ s estoppel, finds statutory recognition in Section 116 of the Indian Evidence Act, 1872, for short ‘the Evidence Act’ , in that, it states that “no tenant of immovable property, or person claiming through such tenant, 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” .

13. This Court in *Sri Ram Pasricha v. Jagannath*³, has also ruled that in a suit for eviction by landlord, the tenant is estopped from questioning the title of the landlord because of Section 116 of the Act. The Judicial Committee in *Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal Concern Ltd.*⁴, when had occasion to examine the contention based on the words ‘at the beginning of the tenancy’ in Section 116 of the Evidence Act, pronounced that they do not give a ground for a person already in possession of land becoming tenant of another, to contend that there is no estoppel against his denying his subsequent lessor’ s title. Ever since, the accepted position is that Section 116 of the Evidence Act applies and estops even a person already in possession as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter’ s title, even when he is sought to be evicted by the latter on a permitted ground.

14. The scope and applicability of the doctrine of “tenant’ s estoppel” being what we have said of it, we shall now proceed to consider the aforesaid question which has arisen with reference to the right of landlord under Section 23-A(b) of the Act in the matter of recovery of possession of the accommodation from the tenant.”

11. In the instant case though defendant Bhanaram in his written statement had denied ownership of the plaintiffs he went on to add, “This being a suit for eviction of a tenant, the question of ownership is not relevant to the suit” . In his cross-examination he clearly admitted that the lease from Nazul Department stood in the name of the plaintiffs and that the witness himself had produced that document in some other proceedings. He had further admitted that he used to pay rent by money orders in the name of the father of the plaintiffs. On facts, it must be held that defendant Bhanaram had without any doubt regarded the plaintiffs as landlords and owners of the suit house. This matter is thus fully covered by the decision of this Court in Anar Devi’ s case and it was not open to defendant Bhanaram to question the ownership of the plaintiffs-landlords.

12. In the circumstances, the view taken by the High Court while setting aside the concurrent decisions of the Courts below was not correct and justified. We, therefore, allow this appeal. While setting aside the judgment under appeal, we restore the decisions of the Trial Court and the Lower Appellate Court passed in the instant case.

13. Since respondents are in occupation of the suit house for last more than 40 years, we deem it appropriate to grant them time upto 31st August, 2017 to vacate and hand-over peaceful possession of the suit house to the appellants subject to the respondents filing usual undertakings within four weeks from the date of this judgment. In case no such undertakings are filed by each of the respondents within the time so stipulated, the appellants shall be free to execute the decree for eviction of the suit house.

14. The appeal stands allowed in the aforesaid terms without any order as to costs.

¹(1994) 4 SCC 0250

²LR 6 Ch D 1:37 LT 0233

³(1994) 4 SCC 0250

⁴AIR 1937 PC 0251