

D. SATYANARAYANA

v.

P. JAGADISH

SEPTEMBER 15, 1987.

[A.P. SEN AND B.C. RAY, JJ.]

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960: s. 10(2)(i) & (vi)—Sub-tenant—Eviction of by tenant—No finding regarding bona fides of dispute as to title—Sub-tenant attorns to and paying rent to the landlord—Order of eviction—Validity of.

Evidence Act, 1872: s. 116—Rule of estoppel—sub-tenant under threat of eviction by title paramount—Attorns to landlord—Whether estopped from denying tenant's title in eviction proceedings by tenant.

The appellant was a sub-tenant of the tenant-respondent. The landlord served a notice of eviction on him in November, 1980 alleging that there was unlawful subletting by the respondent and that he had decided to terminate the tenancy with the expiry of that month. The appellant thereupon attorned in favour of the landlord agreeing to pay him the rent. After becoming the direct tenant, the appellant stopped paying rent to the respondent.

The respondent asserting to be the lessor commenced proceedings for eviction of the appellant under s. 10(2)(i) and (vi) and s. 10(3)(b)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Act, 1960 on the ground that the appellant was in wilful default in payment of rent, that there was denial of title on appellant's part, and that he required the premises bona fide for his use.

The Rent Controller disallowed the application on the ground that the respondent not being a lessor had no locus standi to initiate the proceedings for eviction. The first appellate court, however, directed eviction of the appellant under s. 10(2)(i) and (vi), holding that in view of the denial of respondent's title as well as non-payment of rent, the appellant was estopped from denying the title. The High Court having upheld this view, the appellant appealed to this Court by special leave.

Allowing the appeal,

HELD: 1. There could be no order of termination in terms of s.

A 10(2)(i) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act unless it could be said that in the facts and circumstances of the case the dispute as to title was not bona fide. In the instant case, there is no such finding by the High Court. Furthermore, the appellant could not be treated to be in arrears of rent since he has been paying rent to the head lessor. Therefore, the order of eviction passed against the appellant under s. 10(2)(i) and (vi) of the Act is not sustainable in law. [151G; 152B]

C 2.1 The rule of estoppel embodied under s. 116 of the Evidence Act is that a tenant who has been let into possession cannot deny his landlord's title at the commencement of the tenancy, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. The words 'during the continuation of the tenancy' occurring in s. 116 of the Evidence Act mean "during the continuance of the possession that was received under the tenancy in question." The rule of estoppel is thus restricted not only in extent but also in time, i.e., restricted to the title of the landlord and during the continuance of the tenancy. [149E-F; C-D]

E 2.2 The general rule of estoppel under s. 116 is, however, subject to certain exceptions, in that, a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. Similarly, such estoppel is restricted to the denial of the title at the commencement of the tenancy, it is open to the tenant even without surrendering possession to show that since the date of 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. [149G-H; 150A-B]

G 2.3 In order to constitute eviction by title paramount it is not necessary that the tenant should be dispossessed or even that there should be a suit of ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant, however, gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title H paramount, no question of estoppel arises under s. 116 of the Evidence

Act. The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them. [150B-D]

In the instant case, having regard to the fact that the appellant was under threat of eviction by the title paramount, it cannot be said that the rule of estoppel under s. 116 of the Evidence Act applied and therefore, he was not entitled to dispute the title of the respondent. Furthermore, the appellant having, after being served with the notice of eviction, attorned to the head lessor, there came into existence a direct tenancy. [151H; 152A-B]

Bilas Kunwar v. Desraj Ranjit Singh, ILR (1915) All. 557 (PC); *Atyam Veerraju & Ors. v. Pechetti Venkanna & Ors.*, [1966] 1 SCR 831; *Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Limited & Ors.*, AIR 1937 PC 251; *Adyanath Ghatak v. Krishna Prasad Singh & Anr.*, AIR (1949) PC 124; 27 *Halsbury's Laws of England*, 4th Edn., para 238; *Mangat Ram & Anr. v. Sardar Meharban Singh & Ors.*, [1987] 1 Scale 964, *Fide Hussain v. Fazal Hussain & Ors.*, AIR (1963) MP 232; *K.S.M. Guruswamy Nadar v. N.G. Ranganathan*, AIR (1954) Mad, 402; *S.A.A. Annamalai Chettiar v. Molaiyan & Ors.*, AIR (1970) Mad. 396 and *Chidambara Vinayagar Devasthanam v. Duraiswamy*, ILR (1967) 1 Mad. 624, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2223 of 1987.

From the Judgment and Order dated 21.8.1986 of the Andhra Pradesh High Court in C.R.P. No. 1518 of 1985.

A.K. Ganguli and A. Mariarputham for the Appellant.

G. Narasimhulu for the Respondent.

The Judgment of the Court was delivered by

SEN, J. This appeal by special leave brought from the judgment and order of the High Court of Andhra Pradesh dated August 21, 1986 raises a question of general importance. The High Court has upheld the judgment of the Chief Judge, City Small Causes Court dated April 29, 1985 directing the eviction of the appellant from the demised premises under s. 10(2)(vi) of the Andhra Pradesh Buildings (Lease, Rent

A & Eviction) Control Act, 1960. The question is whether the appellant was estopped from denying the title of the lessor under s. 116 of the Evidence Act, 1872 despite the fact that there was threat of eviction by the owner of the demised premises one Krishnamurthy i.e. the person having title paramount.

B There is no material point of fact which is now in dispute. The demised premises which is a removable wooden cabin or kiosk located at one corner of a building belonging to one Krishnamurthy was let out on a rent of Rs. 6 per day which later was increased to Rs. 10, by the respondent P. Jagadish, son of the original tenant P.R.N. Upadhyaya on March 9, 1977. Admittedly, the main premises i.e. the building was demised by Krishnamurthy to the said P.R.N. Upadhyaya in the year C 1972 and in course of time he had sublet different portions of the premises to different persons. By a notice dated November 8, 1980 the head lessor Krishnamurthy served a notice of eviction on the appellant and other sub-tenants alleging that there was unlawful subletting by the lessee and that he had decided to terminate the tenancy of the D tenant Upadhyaya with the expiry of that month i.e. by the end of December 1980. Thereupon, the appellant on December 4, 1980 was constrained to attorn in favour of the original lessor Krishnamurthy agreeing to pay him a rent of Rs. 300 per month. Evidently, the appellant had paid rent to the respondent upto March 31, 1980. After becoming a direct tenant under the head lessor Krishnamurthy, the E appellant stopped paying rent to the respondent w.e.f. April 1, 1980. On March 13, 1981 the respondent asserting to be the lessor commenced proceedings for eviction of the appellant from the demised premises under s. 10(2)(i) and (vi) and 10(3)(b)(iii) of the Act i.e. on the ground that the appellant was in wilful default in payment of rent, that there was denial of title on his part and for his bona fide require- F ment. The First Additional Rent Controller, Hyderabad by order dated November 3, 1982 disallowed the application on the ground that the respondent not being the lessor had no locus standi to initiate the proceedings for eviction. On appeal, the Chief Judge, City Small Causes Court, Hyderabad by judgment dated April 29, 1985 reversed the order of the learned Rent Controller and directed the eviction of G the appellant under s. 10(2)(i) and (vi) holding that the premises in question was a building within s. 2(iii) of the Act and that in view of the denial of his title as well as admitted non-payment of rent, the appellant was estopped from denying the title. That decision of his has been upheld by a learned Single Judge of the High Court by the judgment under appeal. The judgment of the High Court mainly rests on H the rule of estoppel.

The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e. head lessor Krishnamurthy, the appellant was not estopped under s. 116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the respondent P. Jagadish as the lessor. S. 116 of the Evidence Act provides that no tenant of immovable property 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. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words "during the continuance of the tenancy" have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restricted not only in extent but also in time i.e. restricted to the title of the landlord and during the continuance of the tenancy; and by necessary implication, it follows that a tenant is not estopped, when he is under threat of eviction by the title paramount, from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

The rule of estoppel embodied under s. 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See: *Bilas Kumar v. Desraj Ranjit Singh* ILR (1915) 37 All 557 (PC) and *Atyam Veerraju & Ors. v. Pechetti Venkanna & Ors.*, [1966] 1 SCR 831. The general rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. See: *Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Limited & Ors.*, AIR (1937) PC 251. Similarly, the estoppel under s. 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the

- A 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. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be
- B dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount, no question of
- C estoppel arises under s. 116 of the Evidence Act. See: *Adyanath Ghatak v. Krishna Prasad Singh & Anr.*, AIR (1949) PC 124. The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them.
- D The law is stated in 27 Halsbury's Laws of England, 4th edn., para 238:

"238. Eviction under title paramount. In order to constitute an eviction by a person claiming under title paramount, it is not necessary that the tenant should be put out of possession, or that proceedings should be brought. A threat of eviction is sufficient, and if the tenant, in consequence of that threat, attorns to the claimant, he may set this up as an eviction by way of defence to an action for rent, subject to his proving the evictor's title. There is no eviction, however, if the tenant gives up possession voluntarily."

- F Quite recently, this Court in *Mangat Ram & Anr. v. Sardar Meharban Singh & Ors.*, [1987] 1 Scale 964, to which one of us was a party, observed:

- G "The estoppel contemplated by s. 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 has since come to an end."

- See also: *Fida Hussain v. Fazal Hussain & Ors.*, AIR (1963) MP 232.
 H *K.S.M. Guruswamy Nadar v. N.G. Ranganathan*, AIR (1954) Mad.

402, S.A.A. *Annamalai Chettiar v. Molaiyan & Ors.*, AIR (1970) Mad. 396 and *Chidambara Vinayagar Devasthanam v. Duraiswamy*, ILR (1967) 1 Mad. 624.

In the premises, the High Court as well as the learned Chief Judge of the City Small Causes Court were clearly in error in allowing the proceedings brought by the respondent under s. 10(2)(i) and (vi) of the Act by relying on the rule of estoppel embodied in s. 116 of the Evidence Act. The judgment of the High Court cannot be sustained for the reason that there is no finding that the dispute as to title was not bona fide in terms of s. 10(2)(i) and further inasmuch as the appellant could not be treated to be in arrears of rent since he has been paying rent to the head lessor Krishnamurthy after the attornment of the tenancy to him. The terms of s. 10(2)(i) and (vi) of the Act are set out below:

“10. Eviction of tenant—(2) A landlord who seeks to evict his tenant 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—

(i) that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable, or

(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.”

The High Court failed to appreciate that there could be no order of termination in terms of s. 10(2)(i) unless it could be said that in the facts and circumstances of the case the dispute as to title was not bona fide. It cannot be said having regard to the fact that the appellant was under threat of eviction by the title paramount, that the rule of estop-

A pel under s. 116 of the Evidence Act applied and therefore he was not entitled to dispute the title of the respondent. Furthermore, the appellant having on December 4, 1980 after being served with the notice of eviction attorned to the head lessor, there came into existence a direct tenancy. It has been brought to our notice that the appellant has since that date been paying rent to his present lessor Krishnamurthy and is not in arrears of rent. The order of eviction passed by the learned Chief Judge as well as the High Court against the appellant under s. 10(2)(i) and (vi) of the Act is not sustainable in law.

C In the result, the appeal succeeds and is allowed. The proceedings for eviction of the appellant from the demised premises under s. 10(2)(i) and (vi) and 10(3)(b)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 are quashed. No costs.

P.S.S.

Appeal allowed.