J.J. LAL PVT. LTD. AND ORS. A

v.

M.R. MURALI AND ANR.

FEBRUARY 8, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.] B

Rent Control and Eviction:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 Section 10(2)(vii). C

Eviction-Grounds—Default in payment of rent—Non-payment of rent by the tenant is not enough—It must be shown that default in payment of rent is wilful, intentional, calculated and conscious with full knowledge of legal consequences flowing therefrom—Landlord not properly serving notice of demand of rent or uncertainty as to the title of the property due to rival claim—In such cases non-payment of rent for certain period does not amount to wilful default—Ground of eviction not available to the landlord. D

Denial of little—Plea of denial of title of landlord 'not bonafide'—Operates as ground for eviction. E

Denial of title—Adjudication of—Rent Controller could decide for the limited purpose of finding out as to whether a ground of eviction is made out—But question of title should be left open to be determined by Civil Court as also the Eviction Petition so as to avoid multiplicity of litigation- -Legislative intention. F

Evidence Act, 1872—Section 116—Rule of Estoppel—Tenant is estopped from denying the title of the landlord during the continuance of tenancy.

Landlord-respondents initiated eviction proceedings against the appellant-tenants from the suit premises, before the Rent Controller on the ground of default in making payment of rent by the tenants for certain period. In their written statement tenants submitted that there was a dispute as to the rate of rent and quantum of arrears of rent that they were prepared to pay the rent at the existing rate. Appellant-tenants filed an additional counter affidavit wherein it was submitted that Municipal Corporation of Madras had G H

A earlier granted a long term lease in respect of suit premises in favour of one 'X' who expired and subsequently in favour of landlords; that since the term of the lease had expired, Corporation initiated steps to create a lease directly in favour of the actual occupants, and so the suit for recovery of possession from tenants was not maintainable. Rent Controller dismissed the suits holding that tenants were not defaulters. Landlords preferred appeals. B Appellate Authority framed two issues for decision, *viz.*, (i) wilful default, if any, committed by the tenants and (ii) if tenants were liable to be evicted for their denial of landlord's right over the property being not *bonafide* and concluded that there was no wilful default on the part of the tenants in payment of rent and that denial of title of the landlords was *bonafide*. On these C findings the appeals were dismissed. Landlords preferred revision petition, and High Court reversed the decision of the Rent Controller. Aggrieved, tenants filed the present appeals.

Allowing the appeals, the Court

D HELD: 1. To claim eviction under Section 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it is for the landlord to allege that denial of title or claim was not *bonafide*. Once the landlord has adduced evidence sustaining the ingredients of grounds for eviction, the onus would shift to the tenant to show that either there was no denial or claim attracting E applicability of Clause (vii) or the same was bonafide. But in the instant case, the eviction petition does not contain any averment making out a case of denial of landlord's title by the tenants. [928-F-G-H]

Majati Subbarao v. *P.V.K. Krishna Rao (Deceased) by Lrs.*, [1989] 4 SCC 732 and *Om Prakash Gupta* v. *Ranbir B. Goyal*, [2002] 1 SCR 359, referred to. F

2. A plea taken by the defendant in written statement can itself be made a ground for allowing relief to the plaintiff subject to well known limitations; (i) The plea taken in the written statement should by itself be enough as furnishing a ground for relief to the plaintiff. (ii) The plea taken by the G defendant does not stand in need of any further pleadings being joined by the party; (iii) an issue is framed and put to trial unless the facts of the case show that the parties actually went to trial fully alive to the real issue between them and had opportunity of adducing evidence. [932-F-G]

Nagubai Ammal and Ors. v. *B. Shama Rao and Ors.*, [1956] SCR 451, H relied on.

Firm Sriniwas Ram Kumar v. *Mahabir Prasad and Ors.*, [1951] SCR 277; *Om Prakash Gupta* v. *Ranbir B. Goyal* [2002] 1 SCR 359 and *Majati Subbarao* v. *P.V.K. Krishna Rao (Deceased) by LR.s.* [1989] 4 SCC 732, referred to.

3.1. As a general rule the vulnerability of denial of title by the tenant shall be tested by reference to rule of estoppel contained in Section 116 of the Evidence Act which estoppes the tenants from denying the title of the landlord at the commencement of tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenanted premises to the landlord. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord. [933-A-B]

3.2. To operate against the tenant as providing a ground for eviction under Section 10 of the Act a mere denial of the title of the landlord is not enough; such denial has to be 'not bonafide'. To ascertain whether an assertion of denial of landlord's title by the tenant was bonafide or not, all the surrounding circumstances under which the assertion was made shall have to be seen. [933-C-D]

3.3. In the instant case, tenants have stated that the ultimate owner of the property was the Municipal Corporation and they had expressed their willingness to pay rent to the Municipal Corporation under threat of eviction solely for the purpose of protecting their own possession over the premises. They have neither disowned the title of the landlords at the inception of the tenancy nor have set up any title in themselves nor attorned in favour of Municipal Corporation. Therefore, no case of eviction on the ground of tenants' denial of landlord's title "not bonafide" is made out. [934-B-C]

3.4. A decree on the ground of denial of landlord's title by the tenant and such denial being not bonafide could not have been a ground for directing eviction of the tenant, in the instant case. The application for eviction filed by the landlord does not plead such a cause of action setting out material facts and as providing a ground for relief of eviction. The plea taken by the tenants in their additional counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. [934-D-E]

3.5. Before the Rent Controller, none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the

A landlords as ground for eviction. Appellate Authority for the first time formulated a point at issue touching this ground and held in favour of the tenants holding that such denial was *bonafide*. Appellate Authority was not inclined to frame an issue; otherwise it ought to have been tried on the lines laid down in Order 41, Rule 25 of the C.P.C. But High Court shifted the emphasis and treated the denial of title by tenant as primary ground for B eviction and proceeded to decide the same. Thus what was not in issue before the trial Court at all became the core issue on which the High Court has founded its decision. This is not only violative of the established procedure for civil trials but also violative of principles of justice and fair play. Tenants have been certainly prejudiced in their defence and, therefore, availability of C that ground for eviction of tenants cannot be sustained.

[934-G-H; 935-A-B]

3.6. Legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of eviction is made out but the question of title should be left to be determined D by the Civil Court, so as to avoid multiplicity of suits and proceedings.

[935-H; 936-A]

4. Non-payment of rent by the tenant is not enough; there should be a 'wilful default' so as to make out a ground for eviction. In the instant case it is the landlord's own statement that rent was being collected from the tenants E by the landlord, once in two months. Then there is either the absence of notice or a doubt about the service of notice on the tenants from the landlords demanding payment of rent. Additionally, a sister of landlord was pressurising the tenants to make apportionment of rent in her favour and the Municipal Corporation was holding out threat of eviction if arrears as to premises were F not directly paid to it. These two events could have reasonably caused a wavering in the mind of tenants as to whom to pay. In this state of facts non-payment of rent cannot be enough to brand the tenants as wilful defaulters.

[936-E; 937-B-C]

S. Sundaram Pillai etc. etc. v. *V.R. Pattabiraman etc. etc.*, [1985] 1 SCC G 591; *Prem Chand Ranka* v. *A Vasanthraj Khatod and Ors.*, [1992] 1 SCC 369 and *D.C. Oswal* v. *V.K. Subbaiah and Ors.*, [1992] 1 SCC 370, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3429-3432 of 1998.

H From the Judgment and Order dated 24.12.97, 19.3.98 of the Chennai

High Court in C.R.P. No. 2861 and 2876/97, R.P. Nos. 4 and 5 of 1998. A

Govind Das, Sujit Singh, Rajesh Dubey and S.B. Upadhyay for the Appellant.

M.N. Rao, T. Madasamy and T. Raja for the Respondents.

B

R. Mohan, and V.G. Pragasam for the Intervenors.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The landlord-respondents initiated proceedings for eviction of the tenant-appellants from the suit premises described as Door C No.244 and 264, Walltax Road, Chennai on the ground available under clause (i) of sub-section (2) of Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter, 'the Act' for short), by applying to the Controller for a direction in that behalf. It was alleged in the application for eviction filed on 6th April, 1989 that the tenants did not pay the rent of premises Door No.264 for January and February, 1989 at the rate of Rs. D 1,000 per month and for premises Door No.244 for the month of February, 1989 at the rate of Rs. 4,000 per month. The tenants, in their written statement, denied their being defaulters and submitted that there was dispute as to the rate at which the rent was payable and also as to the quantum of arrears, though, they were agreeable and always prepared to pay the rent at which it E was previously paid but for the exaggerated and inflated demand of the landlords.

It appears that the suit premises are owned by the Municipal Corporation of Chennai and are held by the landlords as allottee of the Municipal Corporation. The landlords have further leased out the premises to the tenants F (appellants before us). Thus, there are three persons associated with the suit premises—the Municipal Corporation, their allottees (*i.e.* the respondents), and further lessees inducted by the allottees i.e. the appellants. We are not concerned with any controversy between the Municipal Corporation and its allottees. The Municipal Corporation was never a party to the litigation and G has sought for intervention at the hearing before this Court but the intervention is being denied for the reasons which we would be stating at the end of this judgment. We would, therefore, confine ourselves to the controversy arising for decision between the parties before us and for that purpose, in this judgment, the respondents shall be referred to as 'landlords' and the appellants shall be referred to as 'tenants'. H

A In the written statement, the tenants confined themselves to denying their being defaulters and raising dispute as to the rate of rent and quantum of arrears. However, an anxiety for protecting their possession over the suit premises and zeal for giving a rebuff to the landlords, impelled them to file an additional counter in September 1993, in addition to their counter filed by way of written statement in February 1990. In the additional counter, it was B submitted that the tenants had reliably learnt, on making enquiries from the Municipal Corporation of Madras, that long term lease was granted by the Corporation in favour of late M.B. Ramachandra Naidu, who expired in the month of March 1982. With his death, the lease came to an end. Even the term of lease by Municipal Corporation in favour of the landlords had expired C and the Corporation had taken steps to create a lease directly in favour of the actual occupants and the respondents had agreed to pay the rent to the Municipal Corporation w.e.f. 1.4.1982 and onwards. For these reasons, it was submitted that the proceedings for recovery of possession from the tenants were not maintainable. This additional counter, far from defending the tenants, has proved to be a potent troubleshooter for the tenants and the bone of D contention in this litigation as will be noticed shortly hereinafter. We may hasten to add to the factual statement that sometime after the month of March 1993, one of the partners of the tenants was delivered a notice by the Municipal Corporation which reads as under:-

E "NOTICE

Corporation of Chennai

Land Revenue Department.

F Ref.: 8/1737/93 Date:

In your letter dated 26.03.93 you have confirmed that you are occupying the premises No. 244, Walltax Road, (4110 sq.ft.) belonging to Corporation of Chennai from 1.4.82.

G The lease period has already elapsed. Moreover you have agreed to pay the lease amount by your letter dated 26.3.93.

Since you are enjoying the premises belonging to Corporation of Chennai the following amount is due from you:

H (1.4.82 to 31.3.89) prior to 1989 162.96

1989-90	35962.50
1990-91	95900.00
1991-92	113162.00
	245187.46

Hence you have to pay the amount of Rs. 245187.46 before 15.4.93 to the Corporation Treasury, failing which the above premises belonging to Corporation of Chennai will be auctioned to public.

For Commissioner

To

Surendar Kumar Chouraria,

40, Ormes Road,

Kilpauk, Madras –10.

Though, the landlords had filed two applications for eviction in respect of two premises (i.e. Door Nos. 244 and 264), both the applications were tried together and disposed of by a common judgment dated 15.12.1995 by the Controller. The Controller found, vide para 9 of its order, that the tenants have been remitting the agreed rental amount to the landlords which factum is borne out by the accounts produced by them. It was an admitted position that the taxes due and payable by the landlords were being remitted by the tenants to the Corporation on behalf of the landlords. However, a sister of one of the landlords had filed a suit in the High Court claiming a share in the suit property while the Corporation had issued notice to the tenants demanding payment of rent. Barring the period of two months, there was no occasion for non-payment of rent. Further, it was not properly proved as to whether the landlords had demanded the payment of arrears by issuance of notice to the tenants. The Controller held that there was a doubt that the application for eviction was filed for pressurizing the tenants because of disputes other than default in payment of rent. In the result, the Controller held that the tenants were not defaulters and not liable to be evicted. The applications for eviction were directed to be dismissed.

A The landlords preferred appeals. In its order dated 24.12.1996, the Appellate Authority framed two points for decision, *viz.* (1) whether the respondents committed wilful default, and (2) whether the respondents were liable to be evicted due to their denial of appellants' right over the property being not bona fide. The Appellate Authority, on the question of default in payment of rent, reiterating the circumstances found proved by the Controller, B felt impressed by an admission made by the landlord PW1 in his statement that the tenants used to pay rent once in two months and that the landlord or her father used to go to the tenants' firm to collect the rent. On totality of the facts and circumstances, the Appellate Authority concluded that there was no willful default on the part of the tenants in payment of rent. The Appellate C Authority also entertained a doubt if the tenants had at all received any notice from the landlords demanding payment of rent. As to the second point for decision, the Appellate Authority concluded that the denial of title of the landlords by the tenants was bona fide. On these findings, the Appellate Authority dismissed the appeals and confirmed the judgment of the Controller.

D The landlords preferred civil revisions in the High Court. The High Court has, by its common order, disposing of the four civil revision petitions, reversed the judgment of the Controller and the Appellate Authority. A perusal of the impugned judgment of the High Court shows that the High Court also dealt with the same two points for determination as were framed by the E Appellate Authority in view of the two submissions made on behalf of the landlord-petitioners before it. However, vide para 19 of its judgment, the High Court observed—"before we consider the ground for default, the other ground of denial of title should be considered". The High Court then embarked upon considering the plea of the landlords that the tenants had indulged into unjustifiably denying the landlords' title which provided a ground for eviction F of the tenants as denial of landlords' title could not be said to be bona fide. This finding of the High Court cast its shadow on its appreciation and reasoning relating to the other issue and led it into concluding that the default in payment of rent was based upon a 'series of attempts' to deprive the landlords of their lawful rights which was malafide and, therefore, there was no hesitation in G holding that the default was willful though it was for a short period only. In the end, the High Court has directed the tenants to be evicted. These appeals have been filed by the tenants by special leave feeling aggrieved by the judgment of the High Court.

We have heard Shri Govind Das, Senior Advocate, for the tenant- H appellants and Shri M.N. Rao, Senior Advocate, for the landlord-respondents.

Having heard them, we are satisfied that the judgment of the High Court cannot be sustained and the appeals have to be allowed, followed by certain directions to the tenants, which, in view of the prolonged litigation between the parties, this court must make so as to dispense substantial justice to the parties and protect their interests.

The decision of the case hinges upon the two questions framed by the Appellate Authority and we propose to deal with them but in the same order in which they were dealt with by the High Court. Indeed the forceful submissions made by the learned senior counsel for the parties have also centred around those two issues highlighting very many aspects touching the said questions.

Before we proceed further, it would be relevant to extract and set out the following provisions of the Act:-

> **10. Eviction of tenants.** (1)A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:
>
> Provided that nothing contained in the said sections, shall apply to a tenant whose landlord is the Government.
>
> Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.
>
> (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

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(vii) 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.

Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not willful, he may, notwithstanding anything contained in section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected."

First, the question—whether the tenants are liable to be evicted on the ground of denial by them of the title of landlords, the denial being not bona fide, within the meaning of clause (vii) of sub-section (2) of Section 10 of the Act?

The scheme of the Act is that an application for eviction of tenant has to be filed before the Controller. One of the objects sought to be achieved by the Act is the prevention of unreasonable eviction of tenants. Needless to say it is for the landlord to allege and prove a ground for eviction entitling him to an order of eviction and disentitling the tenant of his protection enjoyed under the Act. To claim eviction under Section 10(2)(vii), it is for the landlord to allege 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. Once the landlord has adduced evidence substantiating the twin ingredients of the ground for eviction, the onus would shift on the tenant to show that either there was no denial or claim attracting applicability of clause (vii) or the same was bona fide. The application for eviction, in the case before us, does not contain any averment making out a case of denial of landlords' title by the tenants. The learned senior counsel for the landlords candidly admitted that the claim for eviction, as originally filed, was not founded on the plea of tenants' denial of landlords' title in as much as such denial did not precede

the filing of application but the same became available to the landlord on the filing of the additional affidavit in September 1993 by the defendant-tenants during the pendency of the proceedings before the Controller. It was submitted that landlord can justifiably demand eviction of tenant on the plea raised in the written statement as that plea in itself is sufficient to provide availability of a ground for claiming eviction of tenant to the landlord. We are not impressed.

We may straightaway refer to a decision of this Court in *Majati Subbarao* v. *P.V.K. Krishna Rao (Deceased) by LRs.*, [1989] 4 SCC 732, which was a case under Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Eviction petition was filed on the ground of bona fide requirement of the landlord. In the written statement, the tenant denied the title of landlord which was sought to be made a ground for eviction submitting that such denial made out a ground for eviction under Section 10(2)(vi) of Andhra Act. This Court, rejecting the argument that the denial of title must be anterior to the proceedings for eviction, held that even a denial of a landlord's title by the tenant in the written statement in an eviction petition under the Rent Act furnishes a ground for eviction and can be relied upon in the very proceedings in which the written statement containing the denial has been filed. The reasoning which appealed to this Court was that 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 ejectment of the tenant on the ground of forfeiture entailed by the tenant's denial of character as a tenant in the written statement. The submission of the learned counsel for the tenant was that in any event the landlord had failed to apply for amendment of his plaint and incorporate the ground of denial of title therein as he was bound to do in order to get relief on that ground which had arisen after the eviction petition was filed. This Court held:-

> "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

A 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 that 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."

B

[emphasis supplied]

Recently in *Om Prakash Gupta* v. *Ranbir B. Goyal,* (Civil Appeal No.5460 of 1999 decided on 18.1.2002), while dealing with power of the Court to take note of subsequent events and then to grant, deny or modify the relief sought for in the plaint, this Court has held:-

C

"..... The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. . . . . .

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E

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Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would

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H

be necessary to do so for the purpose of determining real questions in controversy between the parties." A

In *Firm Sriniwas Ram Kumar* v. *Mahabir Prasad and Ors.*, [1951] SCR 277, this Court held that it was permissible for a plaintiff to rely upon different rights alternatively and there is nothing in the Code of Civil Procedure to prevent a party from making two or more even inconsistent sets of allegations and claim relief thereunder in the alternate. However, the question was whether a relief based on such alternative case could be granted though not set out in the plaint. This Court proceeded to hold that the court cannot grant relief to the plaintiff on a case for which no foundation was laid in the pleadings and which the other side was not called upon or had not an opportunity to meet – is the rule. But when the alternative case, which the plaintiff could have made, was not only adopted by the defendant in his written statement but was expressly put forward in answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand for relief based on alternative case may cause surprise to the defendant but when the defendant himself pleads that case there will be no surprise to him, no question of adducing evidence on those facts and no injustice could possibly result to the defendant. To sum up the gist of holding in *Firm Sriniwas Ram Kumar's* case is: If the facts stated and pleading raised in the written statement, though by way of defence to the case of the plaintiff, are such which could have entitled the plaintiff to a relief in the alternative, the plaintiff may rely on such pleading of the defendant and claim an alternate decree based thereon subject to four conditions being satisfied, *viz.*, (i) the statement of case by defendant in his written statement amounts to an express admission of the facts entitling the plaintiff to an alternative relief, (ii) in granting such relief the defendant is not taken by surprise, (iii) no injustice can possibly result to the defendant, and (iv) though the plaintiff would have been entitled to the same relief in a separate suit the interest of justice demand the plaintiff not being driven to the need of filing another suit. B C D E F

The Court may refuse to take note of a subsequent event though admitted if the admitted facts are essentially required to be contained in the plaint and stand in need of something more being alleged and proved over and above the admitted facts. Then the Court would not go in search for some imaginary facts for founding the relief. In such a situation this Court in *Hasmat Rai and Anr.* v. *Raghunath Prasad,* [1981] 3 SCC 103, held that the Court commits a manifest error apparent on the record by upholding the plaintiff's case on G H

A the ground neither pleaded nor suggested in the pleadings.

Om Prakash and Ors. v. *Ram Kumar and Ors.*, [1991] 1 SCC 441 was a landlord tenant dispute where the plaintiff-landlord claimed relief of a direction to the tenant to put the landlord in possession on the ground of non-payment of rent under Rent Control Law. This Court opined that under the B relevant provisions in the Statute a landlord seeking eviction of the tenant is required to make an application in this behalf. Such application is sustainable on one of the grounds specified in the Act. When a specific allegation is made that the tenant is in arrears, the tenant is given an opportunity to pay or tender the rent within stipulated time and avoid an order of eviction. In the C absence of definite allegation of non-payment of rent the tenant is not expected to meet the case by being called upon to answer the claim. It was held that a party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute. In an action by the landlord the tenant is expected to defend only D the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant, in such action, it is necessary that the landlord seeking to enforce that cause of action in the same proceedings must do so by amendment or may have recourse to separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle E that the court is to mould the relief taking into consideration subsequent events is not applicable in such cases.

A plea taken by the defendant in written statement can itself be made a ground for allowing relief to the plaintiff subject to well known limitations. The plea taken in the written statement should by itself be enough as furnishing F a ground for relief to the plaintiff; the plea taken by the defendant does not stand in need of any further pleadings being joined by the party; an issue is framed and put to trial unless the facts of the case show that the parties actually went to trial fully alive to the real issue between them and had opportunity of adducing evidence, that is, to put it in other words, the parties G know that the plea taken in the written statement too was subject matter of trial and could form basis for relief to the plaintiff. In such case, though the pleadings may be lacking or there may be failure to frame an issue or a specific issue, the applicability of the law laid down by this Court in *Nagubai Ammal and Ors.* v. *B. Shama Rao & Ors.*, [1956] SCR 451 would be attracted.

H What amounts to denial of title, and whether such denial is bona fide

or not, are the questions to be determined in the facts and circumstances of each case. As a general rule the vulnerability of denial of title by the tenant shall be tested by reference to rule of estoppel contained in Section 116 of the Evidence Act which estoppes the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he estopped from questioning the derivative title of a transferee of his landlord. However, the rule of estoppel contained in Section 116 of the Evidence Act is not exhaustive. To operate against the tenant as providing a ground for eviction under Section 10 of the Act a mere denial of the title of the landlord is not enough; such denial has to be 'not *bona fide*'. 'Not bona fide' would mean absence of good faith or non genuineness of the tenant's plea. If denial of title by the tenant is an outcome of good faith or honesty or sincerity, and is intended only to project the facts without any intention of causing any harm to the landlord it may not be 'not bona fide'. Therefore, to answer the question whether an assertion of denial of landlord's title by the tenant was bona fide or not, all the surrounding circumstances under which the assertion was made shall have to be seen. The counter highlights the factum and contents of notice by the Municipal Corporation served on the tenant, reproduced in the earlier part of this judgment and the reaction of tenants to the threat coupled with temptation held out by Corporation. This notice by Municipal Corporation states the tenants having informed the Municipal Corporation that they were in possession of the premises; that they had agreed to pay to the Corporation the lease amount which was presumably in arrears on account of non-payment by their landlords (i.e. the respondents); that the Municipal Corporation threatened the tenancy premises being subjected to public auction if the arrears were not cleared. This notice is by reference to letter dated 26.3.1993 sent by the tenants to the Municipal Corporation which is not available on record. The landlords on whom lay the burden of proving availability of the ground of eviction took no steps for the production of this letter. The contents of the letter would have provided vital evidence relating to the nature and manner of denial of title by the tenants and the bona fides of denial could have been inferred. The High Court in its judgment has made a reference to "a series of attempts to deprive the landlords of their lawful rights" by tenants. The High Court appears to have taken into consideration some other documents referable to some other litigation between the parties which documents, in our opinion, could not have been taken into consideration unless tendered in evidence and

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A brought on record consistently with procedural law governing trial of civil cases. There is yet another error committed by the High Court. So far as the additional counter and contents of the notice by Municipal Corporation to the tenants are concerned we do not think that a case of denial of title is made out. In any case it cannot be considered to be 'not bona fide'. The tenants have stated that the ultimate owners of the property were the Municipal B Corporation and they had agreed their willingness to pay rent to the Municipal Corporation under threat of eviction solely for the purpose of protecting their own possession over the premises. They have neither disowned the title of their own landlords at the inception of the tenancy nor have set-up any title in themselves nor attorned in favour of the Municipal Corporation by C voluntarily entering into direct tenancy with the Municipal Corporation by-passing their own landlords. We are therefore clearly of the opinion that no case of eviction on the ground of "tenants" denial of landlords' title "not bona fide" is made out.

For several reasons, we are of the opinion that a decree on the ground D of denial of landlord's title by tenant and such denial being not bona fide could not have been a ground for directing eviction of tenant in the present case. Firstly, the application for eviction filed by the landlord does not plead such a cause of action, setting out material facts and as providing a ground for relief of eviction. The plea taken by the defendant-tenants in their additional E counter does not by itself amount to denial of title so as to render them vulnerable to eviction by attracting applicability of Section 10(2)(vii) of the Act. The basic question was whether the landlords themselves treated the plea taken by the tenants in their additional counter as denial of their title and if that be so the landlords should have amended their application for eviction incorporating the averment that the said additional counter amounted to denial F of title of the landlords and such denial was not bona fide. Thereupon the tenants would have had an opportunity of explaining the facts and circumstances in which the additional counter, alongwith the pleas raised therein, came to be filed and if that amounted to denial of landlords' title then how did they propose to justify such denial as bona fide. Such pleas could G have been subject matter of trial and evidence adduced by the parties followed by expression of opinion by the Controller as to whether a ground for eviction was made out or not. Before the Controller none of the parties were alive to the fact that alleged denial of title by tenants could possibly be clicked by the landlords as a ground for eviction. The Appellate Authority for the first time formulated a point at issue touching this ground during the course of its H decision and yet held in favour of the tenants holding that such denial was

bona fide. If at all the Appellate Authority was inclined to frame an issue then it ought to have been tried on the lines laid down in Order 41 Rule 25 of the Code of Civil Procedure. The High Court, as already stated, shifted the emphasis and treated the denial of title by tenant as primary ground for eviction and proceeded to decide the same. Thus what was not in issue before the trial Court at all became the core issue on which the High Court has founded its decision. This is not only violative of the established procedure for civil trials but also violative of principles of justice and fair play. The tenants have been certainly prejudiced in their defence and, therefore, availability of that ground for eviction of tenants in the present proceedings cannot be sustained.

Secondly, what has been done by the Appellate Authority and the High Court does not also fit in the scheme of the Act in so far as this ground is concerned. An application for eviction of tenant has to be filed before the Controller for a direction in that behalf. Eviction may be sought by the landlord on the singular ground of the tenant having denied the title of the landlord or coupled with other grounds. In such an application it is the Controller who will decide whether such denial or claim was *bona fide* or not. If the finding of the Controller is that the denial or claim by tenant was not *bona fide*, the Controller shall make an order directing the tenant to put the landlord in possession of the building. However, if the Controller does not find the denial or claim to be not bona fide he shall deny the landlord's claim for eviction by making an order rejecting the application. Such finding and rejection of landlord's application would not debar the landlord from approaching the Civil Court for establishing his title. By having regard to second proviso to sub-section (1) of Section 10 of the Act, the bar on the jurisdiction of Civil Court stands lifted and the landlord becomes entitled to sue for eviction of the tenant in a Civil Court enabling such Civil Court to pass a decree for eviction on any of the grounds on which the Controller could have directed eviction under Sections 10, 14 or 16, notwithstanding the opinion formed by the Civil Court whether the denial of title by the tenant had entailed forfeiture of the lease and notwithstanding the finding of the Civil Court that the claim of permanent tenancy was unfounded. This is how any conflict of jurisdiction between Civil Court and Controller can be avoided by construing Section 10(2)(vii) and Section 10(1) second proviso homogeneously and as part of one scheme. The legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of eviction is made out but the questions of title should be left to be determined by the Civil Court. Once a question of

A title has arisen between a landlord and a tenant and such dispute is bona fide, the doors of Civil Court are let open to the landlord and therein adjudication, on grounds of eviction otherwise within the domain of Controller, is also permitted so as to avoid multiplicity of suits and proceedings. All the disputes between landlord and tenant would be settled in one forum and the need for prosecuting 'two separate proceedings before two fora would be eliminated.
B

On the pleadings and the material placed before us we cannot hold that the tenants had denied the title of their landlords and whatever they had stated in their additional counter was a denial 'not bona fide' so as to render them liable for a direction to deliver possession to the landlords. In any case
C the present one is not a fit case where the landlords could have been allowed relief on this ground without making requisite averments by amendment in the plaint. We make it clear that this finding shall, however, be treated as confined to the facts of this case and would not preclude recourse to such remedy as may be available to the landlords under the law and shall also not inhibit a competent court seized with trial of such an issue to arrive at a
D different finding based on the pleadings and material brought before it.

The next question is whether the tenants by non-payment of rent for one or two months can be said to have committed 'wilful default'. It was not disputed at the hearing that simply non-payment of rent by the tenant is not
E enough; there should be a 'wilful default' so as to make out a ground for eviction under the Act. The expression wilful default as employed in Section 10(2) of the Act came up for the consideration of this Court in *S. Sundaram Pillai etc. etc.* v. *V.R. Pattabiraman etc. etc.*, [1985] 1 SCC 591. After dealing with all the relevant aspects touching the expression and the setting in which the expression has been employed in the Act, this Court held – "Thus, a
F consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful
G cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above." The course of conduct prevailing between the parties for collecting rent is one of the relevant factors. If the landlord has been accepting payments made in lumpsum for quite a long time and in a situation where the landlord had consented to collect rent
H for two to three months at a time, non-payment of rent for some little time

cannot constitute wilful default, is the view taken by this Court in *Premchand Ranka* v. *A. Vasanthraj Khatod and Ors.*, [1992] 1 SCC 369 and *D.C. Oswal* v. *V.K. Subbiah and Ors.*, [1992] 1 SCC 370. In the case before us we have the landlord's own statement that rent was being collected from the tenants by the landlords once in two months. Then there is either the absence of notice or a doubt about the service of notice on the tenant from the landlords demanding payment of rent. Additionally there are the facts that a sister of landlord was pressurizing the tenants to make apportionment of rent in her favour and the Municipal Corporation was holding out threat of eviction if arrears as to premises were not directly paid to it. These two events could have reasonably caused a wavering in the mind of tenants to whom to pay. In this state of the facts non-payment of rent for one month in respect of one of the premises and for two months in respect of the other cannot be enough to brand the tenants as 'wilful defaulters'.

For the foregoing reasons no case for eviction of the tenants is made out either on the ground of denial of title 'not bona fide' or on the ground of tenants having committed wilful default in payment of rent. Petitions for eviction are liable to be dismissed.

However, it has been brought to our notice that there are several litigations pending between the parties. One of them, relevant for our purpose, is proceedings for fixation of fair rent. The rate of rent in the present proceedings have been found by the Appellate Authority and the High Court to be at Rs. 1,000 and 4,000 respectively in respect of the two Doors. The Rent Controller has found the fair rent of the premises to be still higher and the Appellate Authority has further enhanced the rate of rent in proceedings for fixation of fair rent applicable to the premises. The tenants have filed civil revisions in the High Court alleging the fixation of fair rent to be on higher side. To give a quietus to the dispute as to the rate at which the tenants should pay the rent of the premises we deem it proper to direct that the tenants shall remain liable to pay rent at the rate of Rs. 1,000 per month in respect of Door No. 264 and at the rate of Rs. 4,000 per month for Door No. 244 for the period for which contractual rate of rent applies. They shall also remain liable to pay fair rent as determined in the proceedings relating to its fixation as and when they achieve a finality. So long as the proceedings for determination of fair rent do not achieve a finality the tenants must comply with the interim order dated 11.1.1999 whereby this Court directed the tenants deposit rent at the rate of Rs. 13,331 in respect of Door No. 244 and at the rate of 1,000 per month in respect of Door No. 264 with effect from 20.7.1998.

A The tenants, to be entitled to continue in possession of the premises, must clear all the arrears of rent within an appointed time and then pay regularly, month by month, the rent which is legitimately due and payable by them.

For the foregoing reasons the appeals are allowed and the petitions for eviction are directed to be dismissed. In view of the facts relating to the B controversy as to the rate of rent noticed hereinabove, it is directed that the tenants shall within a period of two months from today clear the arrears of rent calculated at the contractual rate for the period commencing January 1989 in respect of Door No. 264 and commencing from February 1989 in respect of Door No. 244 and expiring with 19.7.1998 and for the subsequent C period from 20.7.1998 as per the direction made by this Court on 11.1.1999. Either party may move an application to the Rent Controller for the purpose of deciding if the arrears of rent stand cleared as above and to record a finding in that regard. The tenancy shall continue if the arrears are cleared as directed hereinabove. Once the arrears have been cleared, the tenants shall then continue to pay or tender the rent month by month, as directed by this D Court by its interim order dated 11.1.1999, until determination of fair rent achieves a finality. Once that order becomes final it shall also be complied within a period of two months thereafter. If the tenants commit default thereafter they shall be liable to be evicted by the Rent Controller on an application being made by the landlords in this behalf. The appeals stand E disposed of accordingly. Looking at the nature of the controversy arising for decision we leave the parties to bear their own costs throughout.

I. A. Nos. 33-36 of 2001

Hemlata Mohan, the applicant in these IAs seeks her impleadment in F these proceedings submitting that on the basis of the Will dated 30.1.1935 executed by her grand-father she is one of the landlords entitled to apportionment of rent. A suit for establishment of her title and share in the property is pending in Madras High Court registered as Civil Suit No. 452 of 1988.

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I.A. Nos. 41 to 44 of 2001

These applications are filed by Municipal Corporation of Chennai seeking its impleadment in the proceedings alleging that the two premises, Door Nos. 244 and 264, subject-matter of litigation in these proceedings are H owned by it and therefore it needs to be impleaded as party in these appeals.

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Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord-tenant suit. The relationship of Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor their presence is necessary to enable the court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties. Any decision in these proceedings would govern and bind the parties herein. Each of the two applicants is free to establish its own claims and title whatever it may be in any independent proceedings before a competent forum. The applications for impleadment are dismissed.

S.K.S. Appeals allowed.