

JASPAL KAUR CHEEMA AND ANR.

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v.

M/S INDUSTRIAL TRADE LINKS AND ORS. ETC.

(Civil Appeal Nos. 8384-8386 of 2017)

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JULY 03, 2017

[J. CHELAMESWAR AND S. ABDUL NAZEER, JJ.]

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East Punjab Urban Rent Restriction Act, 1949 – s.13 – Eviction sought on the ground of personal necessity – After conclusion of evidence of landlord-appellants, respondents led their evidence – At this stage, respondents moved an application seeking amendment of the written statement for adding the plea that appellants were not the owners of the premises – Rent Controller dismissed application – High Court reversed the order of Rent Controller and allowed the amendment – On appeal, held: It is not disputed by the respondents that they were put in possession of the premises as tenants by the appellants – In the circumstances, they cannot dispute the title of the landlord in respect of the said premises – The said plea was not raised by them in the written statement – They cannot be permitted to introduce the said plea by way of amendment, that too, at this belated stage – s.116 of Evidence Act also puts an embargo on a tenant during continuance of his tenancy to deny the title of his landlord – Rent Controller was, therefore, right in rejecting the amendment application – Evidence Act, 1872 – s.116 – Rent control and eviction.

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Code of Civil Procedure, 1908 – Or.8, r.3 – In terms of Or.8 r.3, a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Or.8, r.5 – In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint – The failure to make specific denial amounts to an admission.

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A **Allowing the appeals, the Court**

B **HELD: 1. It is not in dispute that the respondents were put in possession of the premises by the appellants under the lease deed. The appellants in paragraph (1) of the eviction petition averred that they are the owners and landlords of the premises and that the premises was let out to the respondents through a lease deed. In their written statement, the respondents have not raised a specific plea denying or disputing the ownership of the appellants. However, there is a general denial of the averments made in paragraph (1) of the eviction petition. [Para 7] [483-G]**

C **2. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908, a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. [Para 8] [484-A-B]**

E *Badat and Company v. East India Trading Company* [1964] 4 SCR 19; *Sushil Kumar v. Rakesh Kumar* (2003) 8 SCC 673 : [2003] 4 Suppl. SCR 802; *M. Venkataramana Hebbar (dead by LRs) v. M. Rajagopal Hebbar* (2007) 6 SCC 401 : [2007] 4 SCR 941 – relied on.

F **3.1 Section 116 deals with estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of principle that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. [Paras 10, 11] [484-E, G-H ; 485-A]**

G *Mt. Bilas Kunwar v. Desraj Ranjit Singh & Ors.* AIR 1915 Privy Council 96 – relied on.

H **3.2 The principle of estoppel arising from contract of tenancy is based upon the principle of law and justice that a tenant who could not have got possession but for a contract of tenancy admitting the right of the landlord, should not be allowed to put**

his landlord in some inequitable situation taking undue advantage of the position that he got and any probable defect in the title of his landlord. [Para 12] [485-B-C] A

Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97 : [2001] 3 Suppl. SCR 68; *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana & Anr.* (2012) 1 SCC 656 : [2011] 11 SCR 848 – held inapplicable. B

Bansraj Laltaprasad Mishra v. Stanley Parker Jones (2006) 3 SCC 91 : [2006] 2 SCR 334; *S. Thangappan v. P. Padmavathy* (1999) 7 SCC 474 : [1999] 1 Suppl. SCR 715; *Keshar Bai v. Chhunulal* (2014) 11 SCC 438 : [2014] 1 SCR 166 – referred to. C

4. It is not disputed by the respondents that they were put in possession of the premises as tenants thereof by the appellants. In the circumstances, they cannot dispute the title of the landlord in respect of the said premises. The said plea was not raised by them in the written statement. They cannot be permitted to introduce the said plea by way of amendment, that too, at this belated stage. The Rent Controller was, therefore, right in rejecting their application for amendment. The High Court was not justified in allowing the application of the respondent-tenants to amend their written statement. The order of the Rent Controller is restored. [Para 16] [486-G-H; 487-A-B] D E

Case Law Reference

[1964] 4 SCR 19	relied on	Para 8	
[2003] 4 Suppl. SCR 802	relied on	Para 8	F
[2007] 4 SCR 941	relied on	Para 8	
AIR 1915 Privy Council 96	relied on	Para 11	
[2006] 2 SCR 334	referred to	Para 12	
[1999] 1 Suppl. SCR 715	referred to	Para 13	G
[2014] 1 SCR 166	referred to	Para 13	
[2001] 3 Suppl. SCR 68	held inapplicable	Para 14	
[2011] 11 SCR 848	held inapplicable	Para 14	

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A **CIVIL APPELLATE JURISDICTION : Civil Appeal**
Nos. 8384-8386 of 2017.

From the Judgment and Order dated 21.02.2015 of the High Court of Punjab and Haryana, Chandigarh in Civil Revision Nos. 6638 and 7299 of 2013 and 3684 of 2014.

B Nidhesh Gupta, Sr. Adv., Ms. Tarannum Cheema, Ms. Vriti Gujaral, Ms. Hiral Gupta, Manvendra Singh, Sanjay Jain, Advs. for the Appellants.

C Ms. Nirmata Shergill, Uday Gupta, Mohan Pandey, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J. 1. Leave granted.

D 2. The appellants herein filed eviction petition against the respondents for their eviction from an area of 200 sq. ft. on the ground floor of Industrial Shed No. 93, Industrial Area, Ram Darbar, Phase-II, Chandigarh (hereinafter referred to as 'the premises') under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act'), on the ground of personal necessity. The respondents filed the written statement opposing the eviction petition. After conclusion of the
E evidence of the appellants, the respondents led their evidence. At this stage, respondents moved an application seeking amendment of the written statement for adding the plea that the appellants are not the owners of the premises and that the sole proprietor of the premises was Smt. Raj Nanda and that the eviction is not sought for the bona fide
F necessity of Smt. Raj Nanda. The appellants are mere attorneys and that they have projected their own necessity to get the premises vacated from the respondents.

G 3. The Rent Controller dismissed the application vide order dated 25.07.2013. The respondents challenged the said order by filing Civil Revision Petition Nos. 3684/2014, 6638/2013 and 7299/2013 in the High Court of Punjab and Haryana. The High Court vide common order dated 21.02.2015 set aside the order of the Additional Rent Controller and allowed the amendment application. The appellants have challenged the legality and correctness of the said order of the High Court in these appeals.

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4. Mr. Nidhesh Gupta, learned senior counsel, appearing for the appellants, submits that the appellants are the owners of the premises. They had let out the said premises to the respondents under a deed of lease dated 16.05.2006. The respondents in their written statement have not traversed the petition averment that the appellants are the owners of the premises. After cross-examination of the tenant (RW-1), the respondents filed the application for amendment of the written statement denying the ownership of the appellants in relation to the premises. In the cross-examination of the tenants, they have admitted the ownership of the appellants. They have also admitted the execution of the deed of lease dated 16.05.2006. Therefore, the plea of the appellants that they are the owners of the property must be taken to be admitted. The respondents are estopped from disputing the title of the appellants having regard to Section 116 of the Indian Evidence Act, 1872 (for short 'the Evidence Act'). It was argued that the application for amendment of the written statement was rightly dismissed by the Rent Controller and the High Court was not justified in permitting the respondents to amend the written statement.

5. Ms. Nirmata Shergill, learned advocate, appearing for the respondents, submits that the appellants are not the owners of the premises. The sole proprietor of the premises is Smt. Raj Nanda and that the appellants are the attorney holders of Smt. Raj Nanda. The appellants cannot seek eviction of the respondents on the ground of their personal necessity. Therefore, the High Court was justified in allowing the application of the respondents for amendment of their written statement.

6. We have carefully considered the submissions of the learned counsel for the parties.

7. It is not in dispute that the respondents were put in possession of the premises by the appellants under the lease deed at Annexure P-1 dated 16.05.2006. The appellants in paragraph (1) of the eviction petition averred that they are the owners and landlords of the premises and that the premises was let out to the respondents through a lease deed dated 16.05.2006. In their written statement, the respondents have not raised a specific plea denying or disputing the ownership of the appellants. However, there is a general denial of the averments made in paragraph (1) of the eviction petition.

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A 8. In terms of Order 8 Rule 3 of the Code of Civil Procedure,
 1908 (for short 'the Code'), a defendant is required to deny or dispute
 the statements made in the plaint categorically, as evasive denial would
 amount to an admission of the allegation made in the plaint in terms of
 Order 8 Rule 5 of the Code. In other words, the written statement must
 specifically deal with each of the allegations of fact made in the plaint.
 B The failure to make specific denial amounts to an admission. This position
 is clear from the decisions of this Court in **Badat and Company v. East
 India Trading Company** (1964) 4 SCR 19, **Sushil Kumar v. Rakesh
 Kumar** (2003) 8 SCC 673, and **M. Venkataramana Hebbar (dead by
 LRs) v. M. Rajagopal Hebbar** (2007) 6 SCC 401.

C 9. Apart from the above, the tenant in his cross-examination
 admitted as under:

D *"I have seen lease agreement dated 16.05.2006
 executed between petitioner and me which bears my
 signatures.... It is correct to state that I have not
 disputed the ownership of petitioner of Plot No. 93,
 Industrial Area, Phase II, Chandigarh in my written
 statement. It is correct to suggest that petitioners are
 the owners of industrial plot in question."*

E 10. Now, the question is whether it is permissible for the
 respondent-tenant to deny his landlord's title having regard to Section
 116 of the Evidence Act. Section 116 of the Evidence Act reads as
 under:

F *"116 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; and no person who came
 upon any immovable property by the license of the person
 in possession thereof, shall be permitted to deny that such
 person had a title to such possession at the time when
 such license was given."*

G 11. This Section deals with estoppel of a tenant founded upon
 contract between the tenant and his landlord. It enumerates the principle
 of estoppel which is merely an extension of principle that no person is
 allowed to approbate and reprobate at the same time. The tenant who
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has been let into possession cannot deny his landlord's title. In **Mt. A**
Bilas Kunwar v. Desraj Ranjit Singh & Ors. AIR 1915 Privy Council
96, it was held 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.

12. The principle of estoppel arising from contract of tenancy is B
based upon the principle of law and justice that a tenant who could not
have got possession but for a contract of tenancy admitting the right of
the landlord, should not be allowed to put his landlord in some inequitable
situation taking undue advantage of the position that he got and any
probable defect in the title of his landlord. This Court in **Bansraj C**
Laltaprasad Mishra v. Stanley Parker Jones (2006) 3 SCC 91 has
enumerated the policy underlying Section 116 as follows:

*"The underlying policy of Section 116 is that where a
person has been brought into possession as a tenant by
the landlord and if that tenant is permitted to question the D
title of the landlord at the time of the settlement then that
will give rise to extreme confusion in the matter of
relationship of the landlord and tenant and so the equitable
principle of estoppel has been incorporated by the
legislature in the said section. The principle of estoppel E
arising from the contract of tenancy is based upon a
healthy and salutary principle of law and justice that a
tenant who could not have got possession but for his
contract of tenancy admitting the right of the landlord
should not be allowed to launch his landlord in some
inequitable situation taking undue advantage of the F
possession that he got and any probable defect in the title
of his landlord. It is on account of such a contract of
tenancy and as a result of the tenant's entry into possession
on the admission of the landlord's title that the principle of
estoppel is attracted. Section 116 enumerates the principle G
of estoppel which is merely an extension of the principle
that no person is allowed to approbate and reprobate at
the same time."*

13. In **S. Thangappan v. P. Padmavathy** (1999) 7 SCC 474,
this Court has held that Section 116 puts an embargo on a tenant of an
immovable property, during the continuance of his tenancy to deny the H

A title of his landlord at the beginning of his tenancy, however defective the title of such landlord could be. In **Keshar Bai v. Chhunulal** (2014) 11 SCC 438, this Court has held that a tenant is precluded from denying the title of the landlady on the general principle of estoppel between the landlord and the tenant and this principle in its basic foundation, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. It was further held that even if a landlady was not entitled to inherit the properties in question, she could still maintain an application for eviction.

C 14. Learned counsel for the respondents submits that the appellants are the power of attorney holders of Smt. Raj Nanda in relation to the premises. Therefore, they cannot maintain an eviction petition for self occupation. In this connection, she has relied on the decisions of this Court in **Estralla Rubber v. Dass Estate (P) Ltd.** (2001) 8 SCC 97 and **Suraj Lamp & Industries (P) Ltd.(2) v. State of Haryana & Anr.** (2012) 1 SCC 656.

D 15. In **Estralla Rubber** (supra), it was held that amendment ought to be allowed where the purpose of amendment is to elaborate the defence and take additional pleas in support of the case. In the instant case, the proposed plea is not for the elaboration of the existing plea. Further, in **Estralla Rubber** (supra), this Court was not considering the application of Section 116 of the Evidence Act. In **Suraj Lamp** (supra), this Court has held that immovable property can be legally transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or conveyances as they neither convey title nor create any interest in an immovable property. This decision also does not deal with the effect of Section 116 of the Evidence Act. Therefore, these decisions have no application to the facts of the present case.

G 16. In the instant case, it is not disputed by the respondents that they were put in possession of the premises as tenants thereof by the appellants. In the circumstances, they cannot dispute the title of the landlord in respect of the said premises. The said plea was not raised by them in the written statement. They cannot be permitted to introduce

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the said plea by way of amendment, that too, at this belated stage. The Rent Controller was, therefore, right in rejecting their application for amendment. In our view, the High Court was not justified in allowing the application of the respondent-tenants to amend their written statement. Hence, these appeals are allowed and the order of the High Court dated 21.02.2015 in CR Nos.3684/2014, 6638/2013 and 7299/2013 is set aside and the order of the Rent Controller dated 25.07.2013 is restored. There will, however be no order as to costs.

Devika Gujral

Appeals allowed.