
(1993) 05 MP CK 0004
In the Madhya Pradesh High Court
Case No : L.P.A. No. 57 of 1989

Amiya Kumar Dutta

APPELLANT

Vs

Krishna Singh and Others

RESPONDENT

Date of Decision : 07-05-1993

Acts Referred:

Forest Act, 1927 — Section 5
Transfer of Property Act, 1882 — Section 106, 111, 116

Citation : (1993) 2 MPJR 92 : (1994) 39 MPLJ 218 : (1994) MPLJ 218

Hon'ble Judges : S.D. Jha, C.J.; P.P. Naolekar, J

Bench : Division Bench

Advocate : S.N. Jha and Indira Nair, for the Appellant; L.S. Baghel, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, J.

This Letters Patent Appeal is filed against the judgment and decree of the Single Bench of this Court whereby the decree passed in Civil Suit No. 12-A of 1986 for possession of the suit property and directing eviction of the respondents from the suit premises was set aside.

The plaintiff /appellant filed a suit for possession of the suit property, i.e. 2.27 acres of land forming part of Khasra No. 242/2 at village Namna Kala, district Surguja. As per the plaint allegations, on 4-10-1974 an agreement of lease was executed of the suit property by the appellant in favour of Shri Sardar Hakim Singh, son of late Shri Sher Singh (Hakim Singh died during the pendency of the proceedings and the present respondents were substituted in his place as L.Rs. on 3-3-1983) for a period of one year, i.e. from 1st day of September 1974 to 30th August, 1975, on payment of Rs. 50/- per month. The period of lease expired on 30th August, 1975 and, therefore, the appellant claimed possession of the property leased out to the respondents. Termination of the tenancy was claimed on the ground of expiration of the lease by efflux of time on 30th

August, 1975. As possession was not delivered, in spite of expiration of the lease period by the respondents, a suit was filed for ejectment. There was no notice given terminating the tenancy u/s 106 of the Transfer of Property Act, 1882. The respondents denied the right of the appellant to claim eviction from the suit premises. It was also contended that in the absence of notice terminating the tenancy, the suit as it is filed, was not maintainable.

The trial Court decreed the suit filed by the appellant. However, the decree of the trial Court was set aside by a Single Bench of this Court in First Appeal No. 16 of 1989. The Single Judge was of the opinion that after the expiry of the period of the lease fixed under the lease deed dated 4-10-1974 (Ex.P-1) on 30th August 1975, the respondents were in possession with the consent of the appellant as the appellant had agreed for charging the amount of Rs. 5/- per day after August 1975. As the respondents were in possession and continued to be so with the consent of the landlord/appellant, the respondents are tenants-holding-over and as such their tenancy cannot be terminated unless and until notice is given u/s 106 of the Transfer of Property Act, 1882. The Single Bench of this Court was also of the view that since the Single Bench has passed the decree for specific performance of the contract of the suit property in First Appeal No. 51 of 1988 in favour of one of the respondents, there is no cause of action survived for ejectment of the respondents from the suit property.

At the outset we may say so that the judgment and decree passed by the Single Bench of this Court for specific performance of the contract in favour of Gurdeep Singh is set aside by us in L.P.A. No. 57 of 1989 by our judgment delivered today. As the decree of the High Court is set aside it will not be an impediment, for the questions which are required to be adjudicated in this appeal.

The learned counsel for the appellant argued that on the true construction of the terms of the lease-deed (Ex.P-1) after the expiry of the lease on 30th August, 1975, the respondents were the tenants-at-sufferance and not the tenants-holding-over and, therefore, the suit as it is filed without service of notice terminating the tenancy of the respondents u/s 106 of the Transfer of Property Act is maintainable and the High Court should not have dismissed the suit on the ground that the notice u/s 106 of the Transfer of Property Act was not served on the respondents. The real controversy which required consideration by this Court is whether on the true construction of the lease-deed it can be said that the respondents were in possession of the property after the expiry of the lease-deed with the consent of the landlord, i.e. the appellant, or without the consent of the landlord.

The act of holding-over possession after the expiry of the terms fixed under the lease does not by itself create a tenancy of any kind. If the tenant remains in possession of the tenanted premises after the expiration of the lease, under the common law, the tenant is a tenant-at-sufferance. A distinction is to be drawn between the tenant continuing in possession of the premises after the termination of the lease with the consent of the landlord and the tenant doing so

without the consent of the landlord. In the former case, he shall be a tenant-holding-over or tenant-at-will and in the latter case he shall be a tenant-at-sufferance. The consent of the landlord to the continuance of possession after determination of the tenancy will create a new tenancy u/s 116 of the Transfer of Property Act. Section 116 of the Transfer of Property Act contemplates bilateral contract between the erstwhile landlord and erstwhile tenant. The assent of the landlord for continuance of possession of the tenant after the determination of the tenancy will create a new tenancy. Tenant offers to continue as a lessee under the new lease, evidenced by lessee remaining in possession of the property after expiry of the terms fixed and on the other side a definite consent to the continuance of possession by the landlord expressed by acceptance of the rent or otherwise only creates new tenancy.

Ex.P-1 dated 4-10-1974 is an agreement of lease of the suit property entered between Amiya Kumar Dutta and Sardar Hakim Singh, predecessor-in-title of the respondents. Clause (3) of the lease reads as under :

"The lease shall commence from 1st day of September 1974 to 30th day of August, 1975 (one year) on a monthly rent of Rs. 50.00. THE TENANT SHALL VACATE LEASE AREAS SHOWN IN THE ATTACHED MAP and deliver the possession of above land to the LANDLORD in its original condition. The TENANT shall be liable to pay Rs. 5.00 per day as damages to the LANDLORD for the unauthorised occupation after the period of lease till it is vacated."

As per this clause, the leased premises of the suit property was given to the respondents from the 1st day of September, 1974 to 30th August, 1975, on a monthly rent of Rs. 50/- per month. Thus, the lease of the suit property was for a fixed period, i.e. from 1st day of September, 1974 to 30th August, 1975. The clause further provided that the tenant shall vacate the leased area and deliver possession to the landlord on the expiry of the lease. It is further said that the tenant shall be liable to pay Rs. 5/- per day as damages to the landlord for unauthorised occupation after the period of lease till it is vacated. It would be pertinent to note that for the occupation of the suit property after the expiration of the period of lease, the respondents would require to pay damages and not the rent to the appellant. The clause also uses the words "unauthorised occupation", i.e. to say, the occupation would be without lawful right after the expiration of the terms of the lease. For attracting the provisions of Section 116 of the Transfer of Property Act, mere continuation of possession is not sufficient. The continuation of possession with the consent of the landlord is a necessary corollary for conferral of a right on a person who is occupying the premises, as a tenant-holding-over. The consent should be for occupation of the premises as tenant; there should be an animus by a tenant in tendering the amount as rent, if the amount is required to be paid in the form of damages for illegal occupation of the premises, it will not be payment of rent, to constitute one of the necessary conditions to create a tenancy by holding-over.

There is a different and definite connotation attached to the words "Rent" and

"Damages". "Rent" means a payment made by the tenant to the landlord for use and occupation of the land; whereas "damages" is a sum of money which the law awards or imposes as pecuniary compensation or satisfaction for an injury done or a wrong sustained, as consequence, either of a breach of contractual obligation or tortuous act. In legal connotation "damage" also means the harm or loss suffered or presumed to be suffered by a person as a result of some wrongful act and a sum of money given to compensate the damage is called "damages".

In paragraph 3 of the lease deed it has been specifically mentioned that the occupation of the tenant after August, 1975 shall be unauthorised occupation and for that he shall be liable to pay damages @ Rs. 5/- per day. A reading of paragraph 3 of the lease deed as a whole does not leave any manner of doubt that there is no consent given by the landlord for occupation of the respondents after the expiry of the lease in the month of August, 1975. Had it been the intention of the landlord to give the consent to continue as a tenant, the words would have been for the payment of rent after the expiration of period of lease and not "as damages for the unauthorised occupation". After reading the lease-deed as a whole (Ex.P-1), we are of the opinion that clause (3) of the lease-deed cannot be read as to attribute the consent of the landlord for the occupation of the premises by the respondents after the expiration of the period of lease. As the occupation of the respondents was without the consent of the landlord, they have not become tenants-by-holding-over as provided u/s 116 of the Transfer of Property Act. Period of lease of the suit property was fixed from September, 1974 to 30th day of August, 1975, and has come to end by efflux of time as per Section 111 of the Transfer of Property Act. The appellant was not required to terminate the tenancy of the respondents by service of notice u/s 116 of the Transfer of Property Act. For this reason the suit as it was filed by the landlord appellant for ejectment of the tenant without service of notice u/s 116 of the Transfer of Property Act was in accordance with law and the appellant is entitled for a decree of possession.

The case can be looked into from another angle also. The respondents in their written statement have alleged that during the pendency of the suit the defendants came to know that the suit lands as well as the entire area of 243/2 khasra number is part of the reserve forest. Therefore, late A. K. Dutta (father of the plaintiff) had not acquired any title as Section 5 of the Indian Forest Act bars accrual of the right in the forest land, and the lease-deed is void as the prior sanction of the State Government was not taken which is necessary u/s 24 of the Indian Forest Act, 1927, the suit lands being part of the reserved forest. It is further said in paragraph 1-D of the written statement that late A. K. Dutta and after his demise plaintiff had leased out the suit land for several years continuously to the defendants and his father in his life-time which was unauthorised lease in terms of Section 169 of the M. P. Land Revenue Code, and therefore, the defendants acquired Bhumiswami rights u/s 190 of the M. P. Land Revenue Code and they are entitled to retain possession of the suit lands as

Bhumiswamis.

Thus, the defendants, by amendment dated 26-8-1987, have incorporated the plea of setting up the title of the suit lands in themselves and denying the title of the plaintiff. In Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs., the Supreme Court has taken a view that the denial of the title in the written statement of the landlord can be relied on as a ground for forfeiture of the lease between the parties. u/s 111(g) of the Transfer of Property Act a lease of immovable property determines in case the lessee renounces his character as such by setting up a title in himself. The denial of the title of the landlord by the tenant operates as a forfeiture of the lease. The tenant who denies the title of the landlord renders a lease liable to forfeiture. This is an application of the general principle of law that a man cannot blow hot and cold i.e. approbate and reprobate. The defendants/respondents having denied the title of their landlord/appellant and having set up title in themselves, claiming them to be a Bhumiswamis of the suit land, have forfeited the lease u/s 111(g) of the Transfer of Property Act. There being forfeiture of the lease, there was no necessity for termination of the tenancy by giving notice u/s 106 of the Transfer of Property Act. .

Admittedly, respondents/defendants were holding possession of the property under the lease (Ex.P-1) which has come to an end by efflux of time on 30th August, 1975, and after the expiry of that period the landlord/appellant is entitled to possession of the suit lands.

For the reasons aforesaid the appeal is allowed. The judgment and decree of the Single Judge passed in First Appeal No. 16 of 1989, dated 24-7-1989 is set aside and that passed by the trial Court in Civil Suit No. 42-A of 1986 is restored. In the circumstances, the parties shall bear their own costs.

S.D. Jha, C.J.

I agree.