

(1996) 08 PAT CK 0046
In the Patna High Court
Case No : S.A. No. 167 of 1995

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Mohammad Amber Yunus and Another	RESPONDENT

Date of Decision : 06-08-1996

Acts Referred:

Citation : (1996) 08 PAT CK 0046

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—With the consent of the parties, this appeal is being disposed of at the stage of hearing under Order 41, Rule 11 of the Code of Civil Procedure.

2. The appeal is against the judgment of affirmance. The Plaintiffs Respondents filed a suit for eviction against the Appellant Hindustan Petroleum Corporation Limited from the suit premises. The trial court decreed the suit which was upheld in appeal.

3. The Plaintiffs case is that the owner of the suit premises is Mehira Jehan Begum, and she executed a registered deed of lease on 10.4.71 in favour of her two sons namely Mohammad Amber Yunus and Md. Baber Yunus for a period of 25 years (1.10.1972 to 30.9.1995) with a right to sub-let the same. The Plaintiffs let out the premises to the Defendant Appellant for a period of 10 years from 1st July, 1981 to 30th June, 1991 at a monthly rental of Rs. 1400/- per month. Before the expiry of the lease, a notice u/s 106 of the Transfer of Property Act was issued determining the lease. After the expiry of the terms the Defendant did not vacate the suit premises hence the suit.

4. The Defendants case is that earlier the lease was granted to the erstwhile ESS Standard Vacuum Oil Refinery Company Limited on 15.6.1971 for a period of ten years, for setting up retail out let of Petrol. The period was to commence on 15.6.1971 and was to expire on 30.6.1981. After creation of Hindustan Petroleum Corporation Ltd. by statute the lease hold right stand transferred to it. There was a provision for renewal of the terms of the lease for a further period of

ten years. In terms of the renewal clause a fresh lease was executed for a period of ten years which expired on 30.6.1991. Before the expiry of the lease, the Plaintiffs wanted the rent of the leased premises to be enhanced but the Defendant did not agree. Thereafter the present suit has been filed.

5. Both the courts below found that the lease of the land was for a fixed period of ten years and it came to an end by efflux of time on 30.6.91. The courts also found that the lease was determined by valid notice u/s 106 of the Transfer of Property Act served upon the Respondent and accordingly dismissed the suit.

6. Learned Counsel for the Petitioner submitted that as the lease was granted by Mehir Jehan Begum, for a period of 25 years in favour of the Plaintiffs which expired on 30.11.1995, the Plaintiffs ceased to be the landlord as defined u/s 2(i) (f) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Act) and "accordingly the decree passed in their favour is vitiated in law, and the Defendant cannot be evicted on the basis of the decree.

7. The counsel appearing for the Respondents on the other hand contended that admittedly the Defendant was inducted as a tenant by the Plaintiffs and as such it is estopped from, challenging the title of the Plaintiffs in view of the provisions contained u/s 116 of the Evidence Act.

8. The learned Counsel for the Appellant in support of his submissions relied on a judgment of Privy Council in the case of AIR 1937 251 (Privy Council) I am unable to agree with the aforesaid submissions. In my view, the law laid down in the aforesaid case does not support the submission advanced on behalf of Appellant. In that case it was held that Section 116 of the Evidence Act, does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation. The Section postulates that there is a tenancy still continuing that it had its beginning at a given date from a given landlord. It provides that neither a tenant nor anyone, claiming through a tenant shall be heard to deny that particular landlord had at that date a title to the property. The section applies against the lessee assignee of the terms, any sub lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such case there may be other grounds of estoppel, e.g. by attornment, acceptance of rent etc.

9. The learned Counsel for the Appellant drew my attention to the observation made at Page 255 of the judgment wherein it has been observed that the

principle embodied u/s 116 of the Act does not apply to prevent a tenant from pleading that the title of the original lessor has since come to an end. The aforesaid observation is of no help to the Appellants as in the subsequent paragraph of the judgment it is clearly stated "when a demise of the land is made and acted on, where the tenants proceeds to occupy and enjoy under the grant, gets the shelter of the granter's title and the benefit of his convenience it is difficult to see why during continuance of tenancy" he should be free from this favour of estoppel. The aforesaid case is an authority on the point that the principle embodied u/s 116 cannot apply when a tenant dispute the derivative title.

10. Admittedly Section 116 of the Evidence Act contains the principles of tenants estoppel or estoppel by contract. Once a person is inducted as tenant by a person claiming himself to be the landlord the tenant cannot be permitted in law to challenge the title later on. The submission made on behalf of. the Appellant cannot be answered better than what has been said in the case of *Stringer's Estate Shw v. Jones Ford* LR 6 CH.D 1, wherein the doctrine of the tenant's estoppel has been explained in the following words--

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

11. In the case of *Ram Parischha v. Jagannath* 1976 S.C. 2335 it has been held that in a suit for eviction by the landlord a tenant is estopped from questioning title of the landlord in view of the provisions of Section 116 of the Evidence Act.

12. In this case admittedly the Appellant was inducted as a tenant by the Plaintiffs Respondents even assuming that the lease in favour of the Plaintiff by Defendant has come to an end, their status as a landlord in relation to the Appellant does not come to an end. The Appellant cannot be allowed to challenge the title of the Plaintiffs. The definition of the landlord under the Act is wide enough to include the Respondent in the category of landlord.

13. Thus there is no merit in this appeal and accordingly the same is dismissed.