

(1985) 06 MAD CK 0015
In the Madras High Court

N. Kannayiram

APPELLANT

Vs

Sri Kallalagar Devasthanam and Others

RESPONDENT

Date of Decision : 22-06-1985

Acts Referred:

Citation : (1986) 99 LW 929 : (1987) 1 MLJ 357

Hon'ble Judges : Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—The first defendant is the appellant in this appeal which arise out of O.S. No. 271 of 1975 on the file of the Sub Court, Madurai. The suit was filed by the first respondent herein for recovery of possession of plaint schedule property and for rent of Rs. 11,200 till 30th April, 1975 and for damages for use and occupation at the rate of Rs. 90 from 1st May, 1975 to 3rd May, 1975 and for future mesne profits.

2. The plaint schedule property which is a vacant site was taken on lease under Ex. A4 for a period of five years by the first defendant. The lease was to commence from 1st December, 1960. In and by the lease deed, the first defendant was authorised to sublet. Accordingly, he sublet the same to S.V.O.C. Limited, dealers in Petroleum Product. After the, expiry of the lease, a fresh lease was executed under Ex. B7, dated 1st December, 1966 for a period of five years. The monthly rent was Rs. 350. Here again, permission was granted for subletting. The purpose of subletting was to run a petrol bunk. During the lease period, the second defendant Corporation became the sub-tenant. There was rivalry between the first and second defendants to obtain the lease. While the matter was pending before the Religious Endowments Board the plaintiff was directed to evict the defendants. From 1st December, 1971 to 31st August, 1974, the arrears of rent had totalled upto Rs. 15,750 out of which Rs. 7,350 was paid leaving a balance of Rs. 8,400. Notice was issued on 9th January, 1974 terminating the tenancy and calling upon the first defendant to deliver possession. A reply was sent by the 1st defendant. Again another notice dated

6th April, 1975 under Ex. A8 was issued terminating the tenancy ending by 30th April. A reply was received under Ex. A9 setting up paramount title in the Government on 14th April, 1975 stating that inasmuch as the Government have issued B memoranda the plaintiff had no title. The third defendant was impleaded because the rights of the S.V.O.C. which later on became Esso and then merged into Hindustan Petroleum Corporation was a necessary party and the Government was impleaded as the 4th defendant and the suit came to be filed for the abovesaid reliefs.

3. In the written statement of the first defendant, it was contended that the lease was true. However, two suits came to be filed by the plaintiff, one against S.V.O.C. and another against the Government. Both the suits were dismissed against which two appeals A.S. No. 162/58 and A.S. No. 142/58 were preferred. A.S. No. 162/58 was allowed but A.S. No. 142/58 was dismissed. A second appeal was preferred to this Court and the title of the plaintiff to 12 cents against the State was upheld. Subsequently, a compromise, was entered into, as a result of which, some more portion was leased to the first defendant for five years from 1st December, 1960 under Ex. P4, the actual date of lease being 30th January, 1961. After the expiry of the lease, Ex. B7 came to be entered into. However, inasmuch as this defendant has been visited with B memoranda, the title of the plaintiff is liable to be questioned. Further, the plaintiff was obliged to attorn to the Government. The second defendant filed a written statement to the effect that he was not aware of the notices and reply. As a matter of fact, no notice was ever issued as far as this defendant is concerned. The second defendant, is entitled to the City Tenants Protection Act as the superstructures are worth about Rs. 75,000. The third defendant adopted the written statement of the second defendant.

4. The 4th defendant, State of Tamil Nadu filed a written statement to the effect that the suit property is classified as Oorani poromboke in Revenue accounts. It was originally leased out for nine years to S.V.O.C.O.S. No. 66/66 was filed by the plaintiff against the Government for declaration and it was dismissed. In appeal, the High Court confirmed the title of the plaintiff and directed the Devasthanam to obtain a formal assignment which assignment having been requested, those proceedings are pending because of the procedural delay and final Orders have not been passed on the assignment proceedings. B Memoranda were issued no doubt to the first defendant. But he is not entitled to rely on the same because of the pendency of the assignment proceedings. The State does not oppose the claim of the plaintiff to the suit property and the suit is liable to be dismissed.

5. A reply statement was filed by the plaintiff, the details of which are not necessary for our purpose. On the above pleadings, the following issues were framed:

1. Whether the permission to the 1st defendant to sub-lease to S.V.O.C. Limited in the lease deed, dated 8th February, 1961 was conditional upon the 1st

defendant continuing to be a dealer of S.V.O.C. Limited?

2. Whether the paramount title set up by the 1st defendant in the Government is true?
3. Whether the 1st defendant is entitled to set up paramount title in the absence of actual eviction?
4. Whether the 1st defendant having failed to perform the statutory duty to inform the plaintiff of the alleged threat is debarred from denying the title of the landlord (plaintiff)?
5. Whether the suit is bad for want of notice to quit to the 2nd defendant (sub-lessee)?
6. Whether the suit is bad for non-joinder of parties?
7. Whether the suit is bad for mis-joinder of parties?
8. Whether the defendants are entitled to the benefits of the City Tenants Protection Act?
9. To what relief is the plaintiff entitled?

The following two additional issues were framed on 7th January, 1977:

1. Whether the 3rd defendant has become a statutory tenant under the plaintiff as per Central Act IX of 1974 and is entitled to the benefits under that Act?
2. Whether the 3rd defendant is entitled to the benefits of the Tamil Nadu City Tenants Protection Act?

6. The learned Subordinate Judge, on a consideration of oral and documentary evidence, came to the conclusion on issue No. 1 that the lease granted to the first defendant could enure in favour of S.V.O.C. in future, if the first defendant chose to sub-lease the premises. There was no absolute condition that the 1st defendant could sub-lease only in so far as he continued to be a dealer. Issues 2 to 4 were answered thus: The paramount title set up by the first defendant in the Government is not true. Issue No. 3 was found in favour of the first defendant. On issue No. 4, it was found that the first defendant failed to perform the statutory duty cast on him u/s 108(n) of the Transfer of Property Act to enable the plaintiff to ward off the threat and he is debarred from denying the title of the landlord on this ground. Issues Nos. 5, 6 and 7 were answered holding that the suit is bad for want of notice to quit to 2nd defendant as the second defendant is neither a lessee nor a sublessee, but a person in possession as a dealer under the third defendant. There is no room to complain that the suit is bad for non-joinder or mis-joinder of parties. On additional issue No. 1, it was held that the third defendant cannot truly make out as if it commands, better rights after its creation. On issue No. 8 and additional issue No. 2 it was held that there was no substance in the contention that any of the defendants would be entitled to the benefits of the City Tenants Protection Act. Issue No. 8 and

additional issue No. 2 were found against the defendants respectively. Issue No. 9 was answered holding that the State Government which was impleaded as 4th defendant had no objection for the suit being decreed. This statement was made in view of the fact that the matter at issue was already decided by the High Court in S.A. No. 868/59 for all practical purposes against the State though the decision confined itself to 12 cents of land. Having regard to the foregoing issues, the suit was decreed as prayed for with costs against the defendants 1 to 3. Aggrieved by this judgment and decree, the present appeal is preferred by the first defendant as aforesaid.

7. It is the contention of Mr. T.R. Mani, Learned Counsel for the appellant that this is a case in which it is still open to the first defendant to set up paramount title in the Government. Section 116 of the Evidence Act will not apply to the case at all because there are several notices u/s 7 of the Land Encroachment Act which are called B Memoranda as well on which penal cess has been given. Exs. B13 to B19 are the B Memoranda while Exs. B20 to B25 are penal assessments for Faslis 1379 to 1386. They are enough to set up paramount title in the Government. In support of this submission, the Learned Counsel relied on a Division Bench judgment of this Court in Alaga Pillai Vs. Ramaswami Thevan and Others, . That was a case in which notice u/s 7 of the Land Encroachment Act was held to be enough to dispel the theory of estoppel u/s 116 of the Indian Evidence Act. Likewise, a learned Judge of this Court in T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, , took the same view. In the decision reported in K.S.M. Guruswami Nadar Vs. N.G. Ranganathan, , it was held that the estoppel is restricted to commencement of tenancy. Again in S. Chokkalingam Pillai and Another Vs. M.S.S.M. Ganesa Shanmugasundaram Pillai, , it has been held that a mere threat of eviction will be enough to enable the tenant to set up paramount title. The next submission by the Learned Counsel for the appellant is that in any event the claim under the Tamil Nadu City Tenants Protection Act set up by the appellant ought to have been considered in view of amending Act 21/80 which applies to all cases of tenancy created before 23rd March, 1980 regarding the superstructure. Therefore, in any event in so far as the Court below has failed to consider the same, it has to be dealt with.

8. Mr. M. Srinivasan, Learned Counsel for the decree-holder supporting the judgment of the Court below would refer to the pleadings and then state that this is not a case in which the plea of estoppel can be raised at all. Whatever be the position prior to 1966, in so far as Ex. B7 dated 1st December, 1966 was entered into, notwithstanding the prior B memoranda under Exs. B13 and B14 which are of the year 1961, these two will be of no use. Likewise, Ex. B17 notice u/s 7 of Land Encroachment Act is dated 29th November, 1964 prior to Ex. B7 lease. The other notice is Ex. B16 which is dated 26th September, 1974. This is after the suit notice and the reply of the appellant. Exs. B18 and B19 cannot be relied on because they bear no date whatever. D.W.I in his evidence does not say that he paid the penal assessment. According to him there are evidences of payment of kist due. Under Ex.A8 notice of eviction was given. Ex.A9 is the reply under

which for the first time, paramount title is claimed. If really the plaintiff decided to set up paramount title, certainly, that could have been so raised in Ex. A3. Therefore, this is a new innovation. In the decision in AIR 1937 251 (Privy Council) , this question has come to be dealt with and that only supports the stand of the first respondent. As regards the second question about the entitlement of the appellant to the benefits of the Tamil Nadu City Tenants Protection Act, there is neither pleading nor evidence about putting up of any superstructure. On the contrary, the appellant conceded that it was S.V.O.C. which has put up a superstructure. Secondly, the appellant is not in possession. Admittedly, it was sub-leased to the second defendant. Hence, such a sub-lessee" cannot claim the benefits of this Act. That is the ruling reported in T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, . Estate of T.P. Ramaswami Pillai Vs. A. Mohd Yousfuf and Others, , and Veeraswamy Naicker and Another Vs. Alamelu Ammal and Others, . Again this Court has taken the view in the decision Boologanathan Vs. P. Govindarajan and Others, , that the tenant denying the title and setting up jus tertii cannot claim the benefit under the City Tenants" Protection Act. For all these reasons, according to Mr. M. Srinivasan, Learned Counsel for the first respondent decree-holder the appeal is liable to be dismissed having regard to the above contentions.

9. Two points arise for determination and they are: (1) Whether the appellant can set up paramount title in the Government; and (2) Whether he is entitled to the benefits of Tamil Nadu City Tenants Protection Act.

10. Point No. 1: As regards the first arguments that where a tenant is under threat of eviction from the paramount title-holder, certainly, it will be open to him to set up title in that paramount title-holder, the cases referred to above are uniform that when a notice u/s 7 of the Land Encroachment Act is given by the Government on the footing that the Government is the true owner, it will be open to the tenant to set up paramount title in the Government and in such a case, the plea of estoppel contained u/s 116 of the Evidence Act has no application. I do not think that one should labour on this question of law to which there can be no demur whatever because it is well settled in the decision in Alaga Pillai Vs. Ramaswami Thevan and Others, , as follows:

It is only so long as the original tenancy is subsisting that a tenant is not allowed to set up the title of a third person. Where, however, the true owner has evicted the tenant, the latter could attorn to such true owner and set up his title in answer to a suit in ejectment by his original landlord. The eviction by the true owner need not be by actual dispossession. Where on a notice being issued u/s 7 of the Madras Land Encroachment Act, the person in possession pays the assessment and accepts patta from the Government, it amounts to eviction and thereafter the tenant does not remain a tenant of the original landlord. In such a case the landlord who let him into possession originally cannot rely on the law of estoppel contained in Section 116 of the Evidence Act as preventing his former tenant from pleading jus tertii.

So, this is a case of notice u/s 7 of the Land Encroachment Act.

11. Palaniswamy, J., in the case reported in P. Krishnamurthy and Others Vs. Thambaram Panchayat and Another, , has also dealt with a similar situation and held as follows:

The rule of estoppel laid down u/s 116 of the Evidence Act is not absolute. It is well settled that where the true owner, evicts the tenant let into possession by another, the tenant could attorn to the true owner and set up his title in answer to a suit filed by the landlord who let him in possession. The only limitation is that so long as the tenancy is subsisting the tenant is not entitled to set up jus tertii in a third person. Where the tenant is evicted from possession by the true owner, the tenancy comes to an end and there is nothing in law to prevent the tenant from attorning to the true owner. In such cases it is not necessary that the eviction of the tenant should be by actual dispossession. If the true owner is armed with a legal process for eviction, which cannot be lawfully resisted, even though the tenant is not put physically out of possession, it would in law amount to eviction. The question whether there was a threat of eviction and whether that threat was sufficient in law to make the tenant attorn to the person putting forward the threat has to be decided upon the facts and circumstances of each case.

A notice u/s 7 of the Land Encroachment Act by the Government would be sufficient to entitle them to plead jus tertii, though they might have been let into possession by someone else and though there may not be the relationship of landlord and tenant between them and the Government.

It requires to be noted that the learned Judge relied on the very same decision reported in Alaga Pillai Vs. Ramaswami Thevan and Others, . Two other decisions for the sake of completion can usefully be referred to. In K.S.M. Guruswami Nadar Vs. N.G. Ranganathan, , it is held that the estoppel is restricted to only commencement of the tenancy. In S. Chokkalingam Pillai and Another Vs. M.S.S.M. Ganesa Shanmugasundaram Pillai, , it was held that a threat of eviction is sufficient. But the most important question is whether this proposition of law is applicable to the facts of this case. There are B memoranda which have been issued as against the appellant-first defendant. Firstly Exs. B13 and B14 are the B memoranda issued on 30th November, 1961 and 30th December, 1961 respectively. Then again, the next B memo issued is Ex. B17 and that is dated 29th November, 1964. It requires to be noted in this case that though the original lease was entered into between the parties under Ex. A4, dated 30th June, 1961, it was to commence from 1st December, 1960 for a period of five years. That came to an end by efflux of time and thereafter under Ex. B7, dated 1st December, 1966 it was renewed. Therefore, where after the issue of B memoranda, namely Exs. B13, B14 and B17 a lease comes to be entered into, I do not think that it will be open to the appellant-first defendant to raise the plea of paramount title. However, what Mr. T.R. Mani, Learned Counsel for the appellant argues is that on the date when the compromise was entered into

between the parties the title of the plaintiff-first respondent was not clear and therefore, under Exs. A13 and A14, namely, compromise and the decree, damages were payable in respect of the suit site. The compromise was entered into at a time when the decision in S.A. No. 868/59 had not been rendered because the compromise was after the remand and before delivery of judgment in S.A. No. 868/59. That is, the date of judgment in S.A. No. 868/59 is 3rd November, 1961 while the compromise is dated 4th February, 1961. Therefore, if at that stage, the first defendant ventured to enter into a lease deed, it is a point to be put in his favour. In my considered view, it is not so. Whatever was the position prior to Ex. B17, that will be of no avail because on the date of Ex. B7, the first defendant having accepted the title of the plaintiff, cannot be heard to say that he was visited with B memoranda.

11-A. The next B memorandum which requires to be seen is Ex. B16. It is admittedly after Ex. A3 reply because by then, the suit notice of termination had come to be issued and therefore, this cannot very much be relied on. Exs. B18 and B19 do not advance the case of the appellant any further because they are undated. There is nothing to show that pursuant to B Memoranda, penal assessments have been paid. However, what is sought to be pressed into service is Exs. B22 and B25. I have myself perused these exhibits and they bear different assessments which certainly cannot relate to this matter. It is somewhat surprising as admitted by D.W.I himself that neither S.V.O.C. nor Esso were given B memoranda. Whether they relate to suit site itself is doubtful because, it is so admitted by D.W. 1.

12. There is one other important aspect of the matter which is to be noted. In the written statement of the Government it is averred in paragraph 6 as follows:

Finally, after obtaining the necessary proposal from the -Subordinate Revenue Officials, the District Collector had submitted a proposal to assign the suit property in favour of the plaintiff. The proposal had been submitted to the Joint Secretary to Government (Revenue Department), Madras through the Additional Secretary, Board of Revenue (L.R.), Madras. The final Orders are awaited.

But the most important para is para 9 wherein it is clearly conceded by the very paramount title-holder that the suit be decreed in favour of the plaintiff. In the light of these, what paramount title can be availed of by the appellant? However, my attention was drawn to para 10 of the written statement which reads as follows:

The plaintiff has no cause of action nor the defendants 1 to 3 have any cause of action against this defendant.

That is with reference to cause of action as against the defendant, namely, Government of Tamil Nadu. The interpretation placed by the Learned Counsel for the appellant is not correct because even in the concluding para of the written statement, it is alleged:

It is therefore prayed that this Hon''ble Court may be pleased to pass decree in favour of the plaintiff without costs as against the defendant and direct the contesting, defendants to pay this defendant the costs of his action and thus render justice.

Therefore, having arrived at this factual position, let me now refer to the decision reported in AIR 1937 251 (Privy Council) . In that decision, it is held as follows:

The section 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. Whether during the currency of a term the tenant by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term is estopped from disputing the claim which he has once admitted are important questions, but they are instances of cases which are outside Section 116 altogether; and it may well be that as in English law, the estoppel in such cases proceeds upon somewhat different grounds and is not wholly identical in character and in competence with the case covered by the section. 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 that particular landlord had at that date a title to the property.

The reliance placed on this ruling is well founded and therefore, I answer Point No. 1 holding that it is not open to the appellant to raise the plea of paramount title in this case. The Government also have considered the title in this case and therefore, this plea is not of any avail.

13. Coming to the benefit of the Tamil Nadu City Tenants Protection Act, it requires me to refer to the pleadings. In the written statement of the first defendant in para 4, it is stated as follows:

In the site which was the subject-matter of the above proceedings and which was taken on lease by the S.V.O.C. Company, this defendant's father late K. Natarajan Pillai was runhing a Petrol Bunk and service station as the representative of Messrs S.V.O.C. Ltd.

Then again it is stated in para 5 of the written statement of the first defendant that a compromise was entered into and the lease deed was executed with the sole purpose of preserving and continuing the already existing lease of the site with the superstructures thereon put up by the lessee. Having regard to the above statement, it is clear that the first defendant did not ever urge that the superstructure was put up either by him or by "his father. In para 8 it is stated as follows:

The said (Esso) company alone is a lessee under this defendant. Second defendant is in possession of the suit property as the agent and representative of the Esso Company.

If really, therefore, S.V.O.C was the agent and was in actual possession, the question of the appellant putting up the superstructure does not arise. That is made clear in the written statement of the second defendant as follows:

On enquiry this defendant came to know that the suit property was originally taken on lease by M/s. Standard Vacuum Oil Company under a registered agreement of lease in or about the year 1951 from the plaintiff Devasthanam for running a petrol bunk; that the said company put up building equipments etc, at a heavy cost and that the father of the 1st defendant was appointed as a dealer for running the trade in petrol and petroleum products. On the death of his father, the 1st defendant succeeded to all assets inclusive of the rights and benefits under the dealership agreement of his father. The 1st defendant thereupon appears to have taken the lease of the suit property in his favour in the year 1961 with ulterior motives in the guise of negotiating the lease in favour of the said Standard Vacuum Oil Company and however he entered into the sublease agreement with the said company when the latter came to know of the fraud of the 1st defendant.

Now, I refer to Clause (f) of the compromise decree which is as follows:

The structures put up on the suit site by the defendant and Sri N. Kannayiram or his predecessor, belong to them and the defendant do enter into a separate arrangement with Sri N. Kannayiram regarding the structures so put up by the defendant.

This is relied on by the Learned Counsel for the appellant stating that the object of the compromise must be to preserve the superstructures put up by the defendant or his predecessor. I am afraid that this will be of no use because at no point of time this was ever urged and in fact it was so stated in Ex. B.27 as follows:

Since the dealer defaulted in payment of a sum of Rs. 50,647.74 due to the company and committed breach of the dealership agreement, we terminated the dealership in September, 1968.

We filed a suit in O.S. No. 5092 of 1968 in the City Civil Court, Madras seeking permanent injunction preventing the dealer using our site, building and equipment, and the said suit has been duly decreed in our favour. We have also filed suits in C.S. No. 133 of 1968 in the High Court, Madras for recovery of outstandings and in O.C. No. 352 of 1968 in the 1st Additional Sub Judge's Court, Madurai for eviction from the site. In the former suit, our ex-dealer Mr. N. Kannayiram has admitted the monetary liability and in the latter suit, he has admitted that all constructions, Improvements and equipments on the site belong to the company. Both suits are pending in the Courts.

In view of this, I do not think the plea that the appellant put up any superstructure can be accepted. Further, admittedly, the first defendant subleased in favour of the second defendant. The question would be whether being out of possession, he can claim the benefit of the Tamil Nadu City Tenants' Protection Act. In the decision in T.R.P. Raja Sekara Bhoopathy Vs. Navaneethammal and Others, , it has been held as follows:

On a fair reading of Section 2(4)(ii)(b) of the Act, it is clear that such physical and actual possession of the land and building is a sine qua non to project the benefits or statutory entitlement under the Act. If that were not the intendment of this piece of legislation then the very foundation of its objective would be lost, and at the same time it would be travesty to hold that it is only the original tenant of the vacant site, who put up the structure, who would be entitled to the benefits of the Act and that his heirs, though they may be persons who can be described as tenants would not be entitled to such benefits even though they have parted with possession. The primordial requirement for a tenant to claim the benefits under the Act is that he should be in actual physical possession of such land and buildings.

The case reported in Estate of T.P. Ramaswami Pillai Vs. A. Mohd Yousuf and Others, , follows the same line of reasoning. In paragraph 6 what was observed is as follows:

The observation extracted above clearly brings out the importance of the requirement as to possession of the property by the tenant before he can proceed to claim benefits u/s 9 of the Act. To recognise a claim to the benefits of Section 9 of the Act by heirs of tenants (as defined u/s 2(4)(i) and 2(4)(ii)(a)(b) u/s 2(4)(c), of the Act who are not at all in possession would be to violate the very definition of the word "tenant" and also totally defeat the very object with which the provisions of the Act had been enacted. Therefore, the decision referred to above would govern this case.

14. In the decision reported in Boologanathan Vs. P. Govindarajan and Others, , what has been held is that when once there is denial of landlord's title the relationship of landlord and tenant automatically gets severed and the latter cannot take advantage of the statutory benefits under the City Tenants' Protection Act.

15. Having regard to the position of law and factual discussion in that neither the first defendant nor his predecessor put up any superstructure, I hold that the appellant is not entitled to the benefits of City Tenants' Protection Act. I Accordingly, the appeal fails and is hereby dismissed. However, there will be no order as to costs.

16. Now that the appeal has been dismissed whatever interim Orders were passed pending the appeal will not enure from this date to the advantage of the appellant and equally will not affect the first respondent-decree-holder.