

---

**(1998) 11 MP CK 0072**  
**In the Madhya Pradesh High Court**  
**Case No : S.A. No. 340 of 1998**

|                                     |    |            |
|-------------------------------------|----|------------|
| Rajendra Kumar Mahawar              | Vs | APPELLANT  |
| Smt. Shakuntala Makhanlal Kesarwani |    | RESPONDENT |

---

**Date of Decision :** 17-11-1998

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100  
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12(1)(e)

**Citation :** (2000) 1 MPLJ 44

**Hon'ble Judges :** S.C. Pandey, J

**Bench :** Single Bench

**Advocate :** R.P. Tiwari, for the Appellant; Alok Aradhe, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

S.C. Pandey, J.

This is an appeal, u/s 100 of the Code of Civil Procedure, against the judgment and decree dated 12-1-1998, passed by 12th Additional District Judge, Jabalpur in Civil Appeal No. 67-A/96, arising out of the judgment and decree dated 13-2-1996, passed by 10th Civil Judge Class-II, Jabalpur in Civil Suit No. 461-A/94.

The respondent filed Civil Suit No. 461-A/94 against the appellant, claiming that she was the owner and the landlady of the suit house. The suit house was let out at the rate of Rs. 300/- (Rupees Three Hundred) per month for residential purpose. It was stated in the plaint that originally the suit house belonged to Hirabai whose tenant was the appellant. She had made a Will before her death, whereby the suit house was given under the Will in favour of Pannalal Kesarwani, who was her brother. The appellant was given House No. 628/675 which was situate in Lane No. 9, Sadar Bazar, Jabalpur. It was claimed that after the death of Hirabai, the persons, succeeding to her property, made a partition between themselves and the appellant was allotted the suit House numbered as 216

situate in Lane No. 7, Sadar Bazar, Jabalpur. It was stated in the plaint that Pannalal executed a Ikrarnama in favour of the respondent, whereby he agreed to execute a registered exchange-deed in favour of the respondent. Accordingly, the respondent got her name mutated with the Cantonment Board and began to pay taxes of the suit property and received rent from the appellant. The respondent claimed that she required the suit house for the residence of members of her family and she had no alternative accommodation of her own in the city of Jabalpur. Accordingly, a suit u/s 12(1)(e) of the M.P. Accommodation Control Act, 1961, (henceforth "the Act") was filed.

The appellant, on the other hand, denied that the respondent was the owner of the suit house. It was claimed that the owner of the suit house was Pannalal. The appellant stated in his written statement that he was the tenant of Hirabai and paid rent Rs. 300/- per month in respect of the suit house. Hirabai bequeathed the suit house to Pannalal by a registered Will dated 12-1- 1981 and after her death Pannalal stepped in her shoes. Thereafter, at the instance of Pannalal, the appellant paid rent to the respondent but she did not become owner and landlady of the suit house. It was stated further in paragraph 3 of the written statement that the appellant had paid rent to the respondent at the behest of Pannalal and Pannalal had claimed at the time of filing written statement that rent should not be paid to her. Consequently, the respondent was not entitled to receive rent according to instructions of Pannalal. Other allegations, made in the plaint, were denied and this Court is not required to consider them in this appeal.

The trial Court held that the respondent was the landlady of the appellant and she required the suit house bona fide for the residence of members of her family and she had no other alternative accommodation of her own in the city of Jabalpur. Accordingly, the suit was decreed.

In appeal, the main point, that was urged before the lower Appellate Court, was to the effect that there was no relationship of landlady and tenant between the appellant and the respondent and the respondent was not the owner of the suit house. It was urged that the respondent was merely an agent of Pannalal to receive the rent and, therefore, she could not evict the appellant. This was the main point argued before the lower Appellate Court.

The lower Appellate Court confirmed the judgment and decree of the trial Court, holding that the ground u/s 12(1)(e) of "the Act" has been proved. It was also held that it was not necessary to prove the title once the relationship of landlady and tenant was proved. It was held that even without registration, the exchange of the suit House in lieu of House No. 628/671 was proved on the basis of admission of Pannalal in Ex. P/2. It was held that Ex.P/2 may not be admissible for the purpose of proving exchange as the document was not registered but it could be used for collateral purposes.

The lower Appellate Court admitted the application under Order 41 Rule 27 of the CPC and held that it was proved that Pannalal had filed Civil Suit No. 42-A/96

against the respondent, claiming title to the suit property but merely because the suit had been filed, the title of the respondent to evict the appellant cannot be denied. It was also held that the appellant cannot take benefit of weakness of title of the respondent. Therefore, the suit could not be decreed. It appears that the lower Appellate Court was highly impressed by an endorsement made by Pannalal on Ex. P/2 to the effect that the suit house was transferred in favour of the respondent by way of exchange and, therefore, it appears to have relied on it for holding that the respondent was entitled to evict the appellant.

In this appeal, the following substantial question of law was framed by this Court by order dated 9-10-1998:--

"Whether the respondent was entitled to get decree of eviction u/s 12(1)(e) of the M.P. Accommodation Control Act, 1961 despite the fact that she was unable to get the suit property in exchange or partition, in absence of a registered deed."

Learned Counsel for the appellant argued that from the very inception defence of the appellant was that he was not the tenant of the respondent. He was giving rent to the respondent at the instance of the true owner Pannalal, who was given the suit property by virtue of the Will dated 28-11-1981. There was no exchange-deed in favour of the respondent and, therefore, merely by receiving rent on behalf of Pannalal, she could not claim to be the landlady of the suit house and cannot evict the appellant. The other limb of the argument of learned Counsel for the appellant was to the effect that u/s 12(1)(e) of "the Act", the appellant was required to prove ownership and then only a decree u/s 12(1)(e) of "the Act" could be granted for bona fide requirement of residence of members of family of the respondent.

Learned Counsel for the respondent, on the other hand, argued that the principle of estoppel either u/s 116 or u/s 115 of the Evidence Act became operative. The appellant, having paid the rent to the respondent, could not deny her title and, therefore the question of deciding the ownership did not arise. It must be presumed that the respondent was the owner of the suit house on the basis of payment of rent which amounted to acknowledgment of her title. In the alternative, it was argued that even if section 116 of the Evidence Act did not cover the estoppel, the payment of rent or the attornment would estop the appellant from denying the title of the respondent by conduct. Therefore, no question survived for determination by this Court. It was further argued that so far as section 12(1)(f) of "the Act" is concerned, it was not necessary to plead ownership. The argument was to the effect that if the estoppel was operative, then the appellant was prohibited from pleading the question of ownership for the respondent could fall back upon the principle of estoppel. Learned Counsel for the respondent referred to decisions in the case of Tej Bhan Madan Vs. II Additional District Judge and Others, and in the case of Dilbagrai Punjabi Vs. Sharad Chandra, , and also referred to decision of the Supreme Court in the case of Anar Devi (Smt) Vs. Nathu Ram, .

This Court first takes-up question of estoppel. Looking to the pleadings of the appellant and the respondent, it is clear that the respondent is claiming to be the landlady of the appellant on the ground that she derived title from the previous landlord. The estoppel u/s 116 of the Evidence Act would be operative only in those cases where the tenancy continues. This aspect of the matter can be found in the very terms of section 116 of the Evidence Act. The estoppel u/s 116 (ibid) of the Evidence Act is to the effect that a person who is let in by the landlord cannot deny the title of the landlord during the "continuance of the tenancy". The other key words of section 116 of the Evidence Act are that the title that has to be denied at the time of beginning of the tenancy. Obviously, it means that the original tenancy must continue when section 116 of the Evidence Act is being applied. This cannot be a case where a person is claiming to be a landlord by way of derivative title. Secondly, even if a landlord let a person in, his title cannot be denied at the time when the tenant entered into the concerned property. However, if the landlord loses his title subsequent to the date he let in the tenant, the estoppel u/s 116 of the Evidence Act would not be operative. This principle has already been laid down in the case AIR 1937 251 (Privy Council) , which has been followed by a Division Bench of this Court in the case of Raghvendra Singh and others vs. Marhu Basant and another, reported in 1971 MPU 4. In the case of AIR 1937 251 (Privy Council) , it has been pointed out that there can be other kinds of estoppel apart from section 116 of the Evidence Act. The other kind of estoppel referred to in that decision is creation of tenancy by way of attornment, acknowledgement or acceptance of rent etc. Obviously, it follows from the decision of the case of AIR 1937 251 (Privy Council) that it refers to the estoppel created by section 115 of the Evidence Act because so far as India is concerned, the law of Evidence Act governs the entire field of estoppel and section 115 of the Evidence Act has been widely worded being the general section for all kinds of estoppel other than those covered by sections 116 and 117 of that Act. The aforesaid conclusion also follows from the decision of the Supreme Court, relied upon by learned Counsel for the appellant, in the case of Tej Bhan Madan Vs. II Additional District Judge and Others, . The question, therefore, is whether the appellant is estopped within the meaning of section 115 of the Evidence Act from challenging the title of the respondent. It is not disputed by the appellant that he paid rent to the respondent. However, he takes the plea that he had paid rent under the instructions of the true owner Pannalal, who is the brother of the respondent. In other words, the appellant claimed that he never acknowledged the title of the respondent as his landlady. He only paid rent as directed by the true landlord, who had become owner by virtue of the Will Executed by Hirabai on 20-11-1981.

In the opinion of this Court, the principle of estoppel cannot bar the appellant from taking such a plea within the meaning of section 115 of the Evidence Act. The respondent was not in any way prejudiced by payment of rent if the plea of the appellant could be sustained in the eyes of law. In order to operate as estoppel within the meaning of section 115 of the Evidence Act, there must be a

declaration or act made intentionally with a view to engender the belief in the person claiming to be the landlord that the tenancy is genuine. The tenant is accepting him to be his landlord and not paying the rent on behalf of somebody else. If the tenant is paying rent on behalf of somebody else, then the principle of estoppel would not be operative at all because it does not engender the belief of relationship of landlord and tenant. Therefore, the Court is required to examine the evidence on record from this point of view and decide the case if the appellant has succeeded in proving his case.

It appears that both the Courts below have not addressed themselves to the questions involved in this case from this point of view. The lower Appellate Court has not adequately dealt with the question in accordance with law. Therefore, this Court is required to re-examine the evidence and come to its own conclusion. Now the respondent has relied upon Ex.P/1. It appears to be styled as an acknowledgement of partition marked as Ex.P/1 dated 1-6-1984. The precise question for determination is if this document dated 1-6-1984 is admissible in evidence to prove the partition between the parties mentioned therein or is it a document of partition. If this document is merely an acknowledgement of title as it is styled then this document will be admissible in proving the previous oral partition. If it is a deed of partition then this document will not be admissible in evidence for proving the partition. It may be admissible only for collateral purposes. This document merely talks about an event which is likely to happen in future. It does not say anything about all the things happened already in past and, therefore, this document cannot be said to be an acknowledgment of partition which has already taken place in past. All that this document purports to say is that the parties therein agreed to partition the property in accordance with the terms sometime in future and the registration of the property has to be done in future. Therefore, this document is of no consequence as a document of partition and cannot be used for any purpose. The document Ex. P/1 cannot be used as an acknowledgment of partition. Then reliance has already been placed on Ex.P/2. This document appears to be an agreement between Sushil Kumar and the respondent Smt. Shakuntala Kesarwani. It is styled as an agreement and purports to be a lease agreement. This document by itself is of no consequence except that an endorsement made by Pannalal. In this endorsement, Pannalal states that they are brother and sister and there was an agreement between the respondent and himself that he shall receive the rent of House No. 628/671 and the House No. 261 is being given to Smt. Shakuntala Kesarwani who is the sole owner of the property. The last line of this statement is significant. He has agreed for this exchange he will get the document registered. This endorsement is dated 2-1-1986. It is not in dispute that there was no exchange-deed executed between the parties.

The position that emerges that in absence of exchange-deed the title of the suit house was never transferred in favour of the respondent. All that it proved is that respondent was receiving the rent from the appellant. The respondent has filed the rent receipts showing that the appellant was paying the rent and in the

receipts Ex.P/3(A), P/4(A), P/5(A) and P/6(A). The respondent is shown to be the landlady of the appellant. The payment of rent has not been disputed by the appellant on the basis of these receipts. Therefore, it can be fairly concluded that these receipts were passed by the respondent showing herself to be the landlady of the suit property. The question is merely because the appellant was paying rent and the respondent was passing the receipts showing herself to be the landlady, it can be said that there was a relationship of landlady and tenant between the appellant and the respondent. In this connection, the evidence of DW/1, Rajendra Kumar is of some consequence. In para 4 of the cross-examination, the appellant did not deny that he had paid rent and the respondent passed receipts showing herself to be the landlady of the suit house, but he asserts in the same in paragraph 8 that he never paid the rent to the respondent in the capacity of tenant but in the capacity of the agent of the landlord. He stated that he had told the fact to Pannalal that the respondent is passing the receipts as a landlady, but he did not object. He stated in so many words in examination-in-chief and also in cross-examination that he had paid rent to the respondent at the instance of Pannalal. DW/2, Pannalal also entered the witness box. He stated in paragraph 2 of his deposition that he was the owner of the suit house and the respondent was not the owner of the suit house. He claimed that he was taking rent from the tenants after the death of Hirabai and he had required the appellant to pay rent to the respondent because of her poor economic condition. She had taken rent in respect of suit house from the appellant and had promised to pay half of the rent to him. He also stated that there was a talk about exchange, but it did not take place. There was no partition between the parties as agreed upon by Ex.P/1 and, therefore he remained the owner of the suit house and the respondent was taking rent on his behalf. It appears that this witness had not filed any title suit in respect of the suit house at the time of his deposition. However, during the pendency of appeal, the lower Appellate Court admitted evidence under Order 41 Rule 27 of the CPC to the effect that this witness had filed a civil suit claiming title to the suit property. It is also not in dispute that this witness had required the appellant not to pay rent to the respondent. It is clear from Ex.D/1 dated 1-5-1992 and Ex.D/2 dated 9-5-1992.

From the evidence on record, it is clear that the appellant did not get the suit property by virtue of the Will executed by Hirabai. She could not become landlady in respect of the suit property if there was no exchange between her and Pannalal, who got the suit property by virtue of the Will. In absence of a registered exchange-deed, the appellant did not step in the shoes of the previous landlord Pannalal, who became landlord by operation of law as per section 109 of the Transfer of Property Act. Therefore the appellant cannot succeed on the basis of her claim that she became landlady of the suit house by operation of law. The only way she could have succeeded by way of estoppel or attornment. There is sufficient evidence on record as already discussed that the appellant from the very beginning sued that he had never paid rent to her in the capacity of his

landlady. From the very inception, it was his plea that he was paying rent to the respondent as directed by Pannalal. Therefore, under the facts and circumstances of the case, the principle of estoppel u/s 115 of the Evidence Act would not enure to the benefit of the appellant. Mere payment of rent to a particular person does not create relationship of landlord and tenant. The landlord can also direct any other person to receive rent on his behalf and in this case the evidence is on record to the effect that Pannalal was the true owner. It is just possible that because of purported partition, he required the appellant to pay rent to the respondent, but subsequently there was no exchange of the property between the parties because the parties fell out and there was no partition at all. The respondent cannot be said to become landlady merely because rent was being paid. The appellant has explained the circumstances, in which he paid the rent to the respondent. Learned Counsel for the appellant has relied on the decision of the Supreme Court in the case of Dilbagrai Punjabi Vs. Sharad Chandra, .The decision is confined to section 12(1)(f) of "the Act" as such does not deal with the relationship of landlord and tenant. It appears to be an authority for the proposition that in what circumstances, the High Court can interfere with the finding of the trial Court u/s 100 of the Code of Civil Procedure.

The result of the aforesaid discussion is that this appeal succeeds and is allowed on the finding that the respondent did not become the landlady of the appellant by virtue of any partition or any exchange-deed. It is not proved that the appellant was paying rent to the respondent in the capacity of his landlady. The appellant has sufficiently explained in what circumstances he was paying rent to the respondent and he has also proved that he has not accepted her as the landlady of the suit house. The judgment and decree of the Courts below are hereby set aside and the suit filed by the respondent is hereby dismissed. No costs.