

(1999) 09 MAD CK 0016
In the Madras High Court

Seshmal Jain and Others

APPELLANT

Vs

Changamlal Umesh Chandu Bavan and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Evidence Act, 1872 — Section 116

Citation : (1999) 3 MLJ 614

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—All these revision petitions are filed by the landlord.

2. Material facts, which necessitated filing of these revision petitions could be summarised thus:

Landlords filed three petitions for fixation of fair rent against three tenants as R.C.O.P. Nos.2461 of 1990, 2462 of 1990 and 2464 of 1990. The subject matter of the petitions are portions of the same building.

3. The property which are subject matter of these revision petitions originally belonged to Amba Shankar Josha Family Trust. The trust was

created for the benefit of family members and for charitable purposes. The trust has found difficulties to carry out the purpose of the Trust for

paucity of funds and they moved before this Court for modification of the terms of Trust so as to empower them to sell the immovable properties

of Trust.

4. By order dated 28.11.1983, this Court granted such power subject to the condition that the sale could be executed only with the permission of

this Court and it should have the concurrence of at least 3/4th of total number of trustees in office.

5. On the basis of the order of this Court, Trustees invited certain offers for purchase of the properties and on the basis of those offers received,

they moved this Court for granting permission to sell the property to the highest offerer. Petitioners herein offered to purchase the property for Rs.

9,00,000 and by resolution of the Trust, the offer of petitioners was accepted and a formal agreement was also executed. A sum of Rs. 1,50,000

was received as earnest money. In this connection, it may also be noted that on the basis of offers made earlier, this Court already granted

permission to sell the property to the highest offerer as per order dated 9.2.1984.

6. After obtaining clearance certificate from the Income Tax department and other authorities, sale deed was also executed in favour of petitioners

on 12.4.1990.

7. On the basis of purchase the Trustees informed the tenants about the sale and asked them to attorn the tenancy in favour of petitioners.

Petitioners also in their turn informed tenants that since they have purchased property from the Trustees, they are entitled to collect the rent and

tenancy must be attorned to them. It is not disputed that all the tenants have attorned the tenancy and have been paying rent.

8. In September, 1990, petitioners filed applications for fixing fair rent in R.C.O.P.Nos.2461, 2462 and 2464 of 1990 against three sets of

tenants.

9. As per order dated 8.9.1993, Rent Controller fixed fair rent. Not satisfied with the order, Landlords preferred R.C.A.Nos.242, 243 and 244

of 1994 on the file of appellate authority. While the appeals were pending, there was some development in regard to the sale deed executed in

favour of the petitioners.

10. Two of the tenants viz., Gowrishankar and Purushothaman, who were in occupation of non-residential portion, moved an application before

this Court to cancel the permission granted to the Trust for selling the property on the ground that they have offered Rs. 14,20,000 and this fact

was not brought to the notice of the court when permission was given to the Trust to sell the property in favour of petitioners. At the time when

they moved this Court to cancel permission they further offered a still higher amount i.e., Rs. 19,40,000 for purchasing the property. In view of this

offer and also due to the fact that the offer already made by them was not

brought to the notice of this Court, a learned Judge of this Court cancelled the permission, already granted.

11. Aggrieved by the order, Trust as well as petitioners preferred appeals before the Division Bench. The Division Bench set aside the order and

directed petitioners to pay a further amount of Rs. 10,40,000 and to have the sale deed executed in their favour.

12. Against the judgment of the Division Bench, Gowrishankar and Purushothaman filed Civil Appeal No. 3694 of 1996. Honourable Supreme

Court set aside the order of the Division Bench and directed the Bench to hold an auction between Gowrishankar, Purushothaman and petitioners

and directed this Court to call for fresh offers from them. Honourable Supreme Court was of the view that the Trustees were duty bound to inform

this Court about the highest offer made by Gowrishankar and Purushothaman and having failed to inform the court, they have played fraud on

court. The judgment of the Honourable Supreme Court is dated 22.2.1996, i.e., after the Judgment of Rent Controller fixing fair rent.

13. On the basis of the direction of Honourable Supreme Court, the matter again came before the Division Bench and the auction was also

conducted as directed. On 17.7.1996, petitioners were declared as highest offerers of Rs. 19,71,000, Gowrishankar and Purushothaman offered

only Rs. 19,70,000 and higher offer made by petitioners was accepted. Since petitioners already paid Rs. 19,40,000 they were directed to pay

balance amount of Rs. 31,000 more on or before 24.9.1996, to the Trustees. On 24.9.1996, the Division Bench again passed an order that since

petitioners have paid the entire consideration including Rs. 31,000 they are the highest bidders and trustees were directed to execute appropriate

documents in their favour.

14. On the basis of the said direction to execute appropriate document, Trustees and purchasers entered into an memorandum of understanding

whereby they affirmed the sales already made in favour of petitioners and further declared that petitioners have absolute title.

15. Petitioners also moved C.M.P.No. 14048 of 1996 before this Court to clarify the word "appropriate document" as stated in the order dated

24.6.1996. As per order dated 10.10.1996, the Division Bench held that the earlier order is very clear and it is for the petitioners to get such

document as they consider appropriate. On 6.10.1997, a receipt was also obtained from the Trustees, whereby they declared that the title is

already with petitioners and no additional right to interest is created by virtue of execution of the receipt.

16. I have stated earlier that not satisfied with the quantum of rent fixed by the Rent Controller, landlords have filed three appeals before the appellate authority.

17. While the appeals were pending, tenants moved an application before appellate authority alleging that Honourable Supreme Court set aside the

sale deed in favour of petitioners and consequently petitioners are not entitled even to move application for fixing fair rent and they are also not

entitled to prefer appeal. Those applications are, M.P.No. 125 of 1997 in R.C.A.No. 242 of 1994; M.P.No. 123 of 1997 in R.C.A.No. 243 of

1994; and M.P.No. 124 of 1997 in R.C.A.NO.244 of 1994. Those petitions were filed on 25.11.1996. i.e., after Division Bench declared that

petitioners are the purchasers after the remand by Honourable Supreme Court.

18. Appellate authority by common order declared that since petitioner's sale deed is invalid, they are not competent even to apply for fixation of

fair rent and they are not landlords. It further declared that they are not entitled to prefer appeals. The appeal was dismissed and declared that

Rent Control petitions were also not maintainable. It is against those orders, C.R.P.No. 1712 of 1717 of 1998 are filed.

19. Landlords also filed another application in R.C.O.P.No. 2460 of 1990 against another set of tenants. There also Rent Controller fixed fair rent

and the matter was taken in appeal in R.C.A.No. 241 of 1994. Tenant therein filed M.P.No. 813 of 1997 as was done by other tenants.

Appellate authority took a similar view and dismissed the Rent Control petition as well as appeal and the same are challenged in C.R.P.Nos.3503

and 3504 of 1998.

20. By consent, I heard all the revision petitioners together.

21. Learned Counsel for petitioners submitted that none of these tenants are entitled to challenge the right of petitioners as landlords of the building.

Counsel also brought to my notice the definition of landlord as defined under Rent Control Act. Counsel submitted that u/s 116 of the Evidence

Act, these tenants are estopped from denying the title. The Trust which was the

original owner have entered into agreement with petitioners. After sale, Trust itself wanted the tenancy to be attorned in favour of petitioners and petitioners also made similar request and all these tenants have attorned tenancy and paying rent. It is further submitted by counsel that only persons who challenged the same was Gowrishankar and Purushothaman and they themselves have vacated the building. It is also submitted that even during the pendency of proceedings before Rent Controller and when the matter was pending before Honourable Supreme Court, these tenants were paying rents to petitioners and they cannot deny their right. It is also submitted that there is no rival claim put forward by any other persons as landlord and even the subsequent orders by court only reaffirms their titles. It is further argued that for the purpose of Rent Control Act, ownership means not absolute title, but title superior to the tenants. A further argument was also taken by counsel that all these tenants even in their counter have accepted either petitioners 1 to 3 or petitioners 4 to 6 as their landlords and the question before the Rent Controller was only whether all the petitioners together are landlords and the application is bad for misjoinder of parties. Rent Controller has found that all the six petitioners are members of Hindu undivided family and document is taken for the benefit of the family and family is the landlord and all the six petitioners are landlords. Tenants did not prefer any appeal against that finding and appellate authority should not have ventured to entertain that plea on the basis of applications preferred before it. It is further argued that even at the time when applications were filed, Division Bench has declared these petitioners as landlords and document was also taken from the Trust reaffirming the earlier transactions and Trust has also declared that they have no right over the property and petitioners alone are absolute owners. Appellate authority has not considered either the principle of Section 116 of the Evidence Act or the effect of subsequent orders while passing the impugned order.

22. As against the said contention learned Counsel for respondents Mr. Bahety contended that when the original permission granted by the court has been revoked, naturally, petitioners will not be entitled to take the sale deed and that will be sufficient for appellate authority to hold that the application filed by petitioners is not maintainable. It is further submitted that

the original permission was obtained on playing fraud on court and the effect of fraud is that court will not recognise any right following from it. He prayed for dismissal of these revision petitions.

23. After hearing all the counsel, I feel petitioners are entitled to succeed in these cases for the following reasons.

24. Before going into the question of law, it is better to extract that portion of the counter statements, which are relevant for the purpose of the cases.

25. In R.C.O.P.No. 2461 of 1990, in para 3 of the counter-statement, it is said:

The respondent states that the 1st, 2nd and 3rd petitioners are not the landlords of the respondent and as such, this petition is liable to be dismissed for misjoinder of parties.

In R.C.O.P.No. 2462 of 1990, in para 4, it is said thus,

There is no relationship of landlords and tenant between the petitioners and the respondent. The petition is therefore liable to be dismissed on this ground also.

Even though this was the contention raised, this was given a go by and before Rent Controller, the only contention that was raised was that

petitioners 4, 5 and 6 alone are landlords and he is not tenant under petitioners 1, 2 and 3. Rent Controller extracted the argument of tenants in para.5 of the order and the relevant portion reads thus,

In R.C.O.P. No. 2464 of 1990 in para.3 of the counter it is stated thus:

The respondent states that the 4th, 5th and 6th petitioners are not the landlords of the respondent and as such, this petition is liable to be dismissed for misjoinder of parties.

In R.C.O.P. No. 2460 of 1960, in para 3 of the counter, it is stated thus:

The respondent states that the petitioners are not his landlords. The petitioners 1,2 and 3 are neither the owners nor the landlords of the petition premises in occupation of this respondent. Thus, there is no relationship of the landlords and tenant between the petitioners 1, 2 and 3 and this respondent and therefore the petition is liable to be dismissed in limine.

From a reading of these statements it is clear that tenants are admitting landlord-tenancy relationship either with petitioners 1 to 3 or with

petitioners 4 to 6. The dispute before Rent Controller was only whether all the petitioners are landlords and whether their application is bad for

misjoinder of parties. There is no denial of landlord-tenancy relationship as was put forward before the appellate authority.

26. Rent Controller found that even though sale deed was taken in two sets on 12.4.1990, really the sale was in favour of joint family of which

petitioners 1 to 6 are members. This finding was not taken in appeal by any of the tenants. This Court is well aware that in the appeal taken by

landlord, they can also agitate the point which went against them for which no separate appeal is required. Even if they can prefer an appeal,

challenge can only be as to whether petitioners 1 to 3 or 4 to 6 are landlords. They cannot deny the landlord ship of either petitioners 1 to 3 or 4 to

6 since that is an admitted fact in the counter.

27. In this connection I am reminded of the decision reported in Swadesh Ranjan Sinha Vs. Haradeb Banerjee, , wherein their Lordships

considered what is meant by "ownership" and whether tenant can be permitted to deny the title in appeal. In para. 11 of the judgment at page 577

of the reports, their Lord-ships held thus:

...the High Court and the first appellate court were wrong in setting aside the decree of the trial court solely on the question of the appellant's title.

The appellant's title was never an issue at any stage of the trial. There was no plea to that effect and no issue was, therefore, framed on the

question. This being the position, the appellant's claim has to be decided on the basis of the pleadings, i.e., on the basis that he is the owner of the

premises in question.

In the very same judgment, their Lordships considered what is meant by ownership for the purpose of Rent Control Act. Their Lordships put the

definition of "landlord" under West Bengal Premises Tenancy Act, 1956, which is similar to the definition of "Landlord" under our Act. In

paragraphs 7 to 9 of the Judgment, their Lordships held thus:

7. It is submitted on behalf of the respondent that the appellant, although a "landlord" within the meaning of Section 2, is not an owner so as to be

able to seek eviction on the ground specified under Clause (ff) of Sub-section (1) of Section 13. The contention is that the appellant is only a

lessee, and that too in terms of a sub-lease of 99 years granted by a Society

which is itself holding a lease for the same period. Such a lessee is not an owner, for his rights are not absolute. He cannot claim to be an owner for the purpose of seeking eviction by recourse to the provisions of an Act which is intended to protect the tenant and prevent eviction except on specified grounds. The expression owner should be so strictly construed as to exclude any person having less than full ownership right.

8. "Ownership denotes the relation between a person and an object forming the subject matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and merely against specific persons." (Salmond of Jurisprudence, 12th edn., Ch.8, P.246 et seq). There are various rights of incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess use and enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a reversionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event.

9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and of ten are in many respect controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis, the person challenging it.

[Italics supplied]

28. Learned Counsel for respondents submitted that this matter cannot be taken in pleading since the order of Honourable Supreme Court was subsequent to filing of counter. At the time when they moved before appellate authority, Division Bench again declared petitioners as purchasers and Division Bench also taken note of payment of Rs. 19,40,000, and petitioners were directed to pay only balance of Rs. 31,000. Memorandum of understanding is dated 1.8.1996 and earlier order of this Court are dated 7.7.1996 and 24.7.1996. Division Bench was also aware when it directed the Trust to execute "appropriate document", about the earlier deed executed by the Trust in favour of petitioners. If the Division Bench

was of the view that the earlier sale deed is of no use, the direction would have been to deposit Rs. 19,71,000 and get the sale deed. But, this

Court took note of payment of Rs. 19,40,000 to the Trustees. Even when clarification was sought for, this Court did not think of changing the

words "appropriate document" On that basis if we construed the memorandum of understanding dated 1.8.1996, it is clear that petitioners are

absolute owners of the property. The document does not say that from the date of memorandum of understanding, they ceased to be the owners.

They only confirmed that on the basis of sale deed executed earlier, petitioners have already become the owners and they have received balance

sale consideration as per the direction of this Court. This document was before the appellate authority at the time when the order was passed. This

fact was also stated in the counter statement to various miscellaneous petitioners. Unfortunately, appellate authority did not take note of this

document, while passing the impugned order. As stated in *Swadesh Ranjan Sinha Vs. Haradeb Banerjee*, . Petitioners only need to prove that they

have better title than tenants. They need not show that they are absolute owners and they have best of all possible titles. They need only prove that

they have superior right or interest vis-a-vis tenants.

29. Immediately after the date of sale, the Trust as well as petitioners informed the tenants that they are entitled to collect rent. All the tenants

accepted the status of the petitioners, whether Petitioners 1 to 3 or petitioners 4 to 6 as Landlords and tenancy was also attorned in their favour.

30. Once having accepted petitioners as landlords, are the tenants entitled to deny their title? The decision of Honourable Supreme Court reported

in *Anar Devi (Smt) Vs. Nathu Ram*, has answered this question. In paragraphs 11 to 13 of the judgment, their Lordships have held thus,

11. ""Doctrine of tenant's estoppel"" which governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them,

is well settled. *Jessel, M.R.*, who adverted to that doctrine in *Stringer's Estate, Shaw v. Jones-Ford* explains it thus:

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 the *jus tertii*, though, of course, the real owner can always recover against him. That is a perfectly intelligible

doctrine. He took 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 a well-established doctrine. That

is estoppel by contract.

12. Indeed, the said doctrine of tenant's estoppel, finds statutory recognition in Section 116 of the Indian Evidence Act, 1872, for short "the

Evidence Act", in that, it states that "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.

13. This Court in *Sri Ram Pasricha v. Jagannatha*, has also ruled that in a suit for eviction by landlord, the tenant is estopped from questioning the

title of the landlord because of Section 116 of the Act. The Judicial Committee in *Kumar Krishna Prasad Lal Singha Deo v. Baraboni Coal*

Concern Ltd., when had occasion to examine the contention based on the words "at the beginning of the tenancy" in Section 116 of the Evidence

Act, pronounced that they do not give a ground for a person already in possession of land becoming tenant of another, to contend that there is no

estoppel against his denying his subsequent lessor's title. Ever since, the accepted position is that Section 116 of the Evidence Act applies and

estops even a person already in possession attornment under one landlord from denying the title of his subsequent landlord when once he

acknowledges him as his landlord by atonement or conduct. Therefore, a tenant of immovable property under landlord who becomes a tenant

under another landlord by accepting him to be the owner who had derived title from the former landlord, cannot be permitted to deny the latter's

title, even when he is sought to be evicted by the latter on a permitted ground.

[Italics supplied]

31. In *Maroti v. Tulsiram* (1994) 3 S.C.C. 746, the facts are very peculiar. There also the property belonged to a Trust. Tenant took a sale deed

from the Managing Trustee. When proceedings were initiated against him for eviction, he admitted in cross-examination that he was a tenant.

Before Municipal authorities also he has given a statement that he is a tenant. Thereafter, on the basis of sale deed, he denied the title of landlord.

The question was whether he is entitled to put forward such contention, once he admitted the rental arrangement? In para.6 of the judgment, their

Lordships held thus:

The findings recorded by the High Court and the trial court were that the appellant had entered into the possession as a tenant and he is estopped

to deny the title of the trust by operation of Section 116 of the Indian Evidence Act. Therefore, his only character is whether he was in possession

as a tenant or in his own right as an owner.

His contention that he purchased the property from Anandrao Bujade and thereafter he became the owner cannot be gone into in this appeal for

the reason that he admitted in the cross-objections that he was a tenant....

[Italics supplied]

32. Dadan Bai Vs. Arjundas, , was a case under Madhya Pradesh Accommodation Control Act, 1961 where their Lordships considered the

meaning of the word, "Owner. In a short judgment, their Lordships held thus:

...The eviction petition filed by the landlady-lessor was dismissed by the High Court as she was not the owner since even of her own admission the

premises belonged to the Municipal Corporation. The word "owner" used in Section 23-A(b) of M.P. Accommodation Control Act has in our

opinion been construed narrowly. A lessor whose title cannot be disputed by the lessee undoubtedly is power at whose instance the proceedings

for eviction were maintainable. Therefore, the High Court was not justified in setting aside the decree passed in favour of the landlord on the

ground that since the premises belonged to Municipal Corporation, therefore, the proceedings were not maintainable.

[Italics supplied]

33. All these respondents were inducted by the Trust. Trust has not put forward any claim that it is entitled to collect the rent. They have already

declared that petitioners are landlords. All these tenants also accepted the legal status of the petitioners. On the basis of the orders of the Supreme

Court, the tenant did not put forward a claim that their ownership has been restored and tenants should pay rent to it. Subsequent orders also

reaffirms and ratifies the earlier action. These respondents do not deny their status as tenants. If they are tenants, naturally, there should be a

landlord. The choice is only between the Trust and the petitioners. The registered document executed by the Trust on 12.4.1990, memorandum of

understanding and subsequent receipt show that Trust is not claiming any right. The genuineness of those documents are not disputed. Tenants have

also attorned the tenancy in favour of petitioners. The principle of estoppel therefore squarely applies to the facts of this case.

34. Appellate authority also got confused that respondents herein were also parties to the proceedings before High Court and Honourable

Supreme Court. None of the respondents were parties to the earlier proceedings. Persons who filed petitions before this Court and Honourable

Supreme Court were occupants of non-residential premises. Even they have vacated the premises after recognising the title of the petitioners.

35. Learned Counsel for respondents submitted that appellate authority is justified in taking note of the order of Honourable Supreme Court as

subsequent event. If that is so, what happened after the order of Honourable Supreme Court also should have been taken note of by the appellate

authority.

36. Appellate authority has only considered the maintainability of Rent Control petition and appeal. He has not gone into the merits of the case.

37. In the result, I set aside the judgment of the appellate authority in R.C.A.Nos.241, 242, 243 and 244 of 1994 on the file of VIII Small Causes

Court, Madras. The miscellaneous petitioner filed by tenants in M.P.No. 813 of 1997 in R.C.A.No. 241 of 1994; M.P.No. 125 of 1997 in

R.C.A.No. 242 of 1994; M.P.No. 123 of 1997 in R.C.A.No. 243 of 1994; and M.P.No. 124 of 1997 in R.C.A.No. 244 of 1994 filed by the

respondents are dismissed. Appellate authority is directed to dispose of the appeals on merits taking into consideration the grounds taken in the

memorandum of appeal by the landlords. None of the tenants are entitled to deny the title of petitioners as landlords and it is declared that all these

petitioners are landlords of the building. The only question that is to be considered by the appellate authority is whether the fair rent fixed by the

Rent Controller is correct or not. For the limited purpose the matter is remitted back. Parties are directed to appear before the appellate authority

on 30.9.1999. Being the matter of the year 1994, I direct the appellate authority to dispose of the matter within a period of four months, at any

rate on or before 31.12.1999 and report compliance to this Court, petitioners are entitled to costs in all these revision petitions.

38. All the revision petitions are allowed as above, with costs.