
(1966) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Second Appeal No. 533 of 1962

Smt. Sugga Bai and Others

APPELLANT

Vs

Smt. Hiralal and Others

RESPONDENT

Date of Decision : 14-09-1966

Acts Referred:

Evidence Act, 1872 — Section 116

Hindu Minority and Guardianship Act, 1956 — Section 8

Madhya Bharat Accommodation Control Act, 1955 — Section 11

Transfer of Property Act, 1882 — Section 111

Citation : AIR 1969 MP 32 : (1969) JLJ 227 : (1968) 13 MPLJ 840 : (1968) MPLJ 840

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : A.R. Choubey and G.P. Choubey, for the Appellant; J.N. Sinha, for Respondents Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.

This is an appeal by the plaintiff-landlords, against the decree dated 22-9-1962, passed by the IInd Additional District Judge, Jabalpur, in Civil Appeal No. 69-A of 1960, re-numbered as Civil Appeal No. 73-A of 1961, affirming the decree dated 18-10-1960, passed by the Ist Civil Judge IInd Class, Jabalpur, in Civil Suit No. 28-A of 1960.

The appellants purchased the suit house from Shyam Krishna and others. Out of the vendors one Amitabh was a minor. The family of the vendors is indisputably governed by the Dayabhaga School of Hindu Law. The sale deed Ex. F/13 was executed on 30-5-1958, wherein although the minor's father was a party to the sale, the minor was represented through his next friend the mother. After the appellants purchased the house, they served a notice of attornment dated 20-6-1958 (Ex. P/1) on Hiralal, the predecessor of the present respondents, who

was a tenant of the vendors. A similar notice of the same date Ex. P/3 was served by the vendors as well. But in reply to that notice, the tenants as per the communication dated 24-6-1958 (Ex. P/7), asserted that as one of the vendors was a minor, the vendors should prove their title and he refused to recognise the vendees as his landlords. Consequent on that, the appellants exercised their option for forfeiture of the tenancy and gave a notice, dated 8-8-1958 (Ex. P/2), forfeiting the tenancy. In that notice the tenant was required to vacate within 24 hours of the receipt of notice. Therefore, the present suit for eviction and for damages for use and occupation and subsequent damages, was filed on 13-8-1958.

At the time the suit was filed, the C. P. and Berar Letting of Houses and Rent Control Order, 1949 was in force. The Madhya Pradesh Accommodation Control Act, 1955 was applied to this region with effect from 1-1-1959. At the time the suit was filed, it was necessary to obtain the permission of the Rent Controller to determine the tenancy, as required by Clause 13 of the C. P. and Berar Letting of Houses and Rent Control Order, 1949. But the present suit was filed without obtaining any such permission.

" The tenant's defence was that the sale in favour of the plaintiffs was void, as one of the vendors was a minor and the permission of the District Judge had not been obtained. Therefore, according to him, the plaintiffs did not become his landlords and, therefore, they could not sue either for eviction or for claiming arrears of rent.

The learned Judge of the trial court dismissed the suit mainly on the ground that no permission of the Rent Controller had been obtained and, therefore, the suit itself was not tenable. On the other hand, the learned appellate Judge expressed the opinion that Section 8 of the Hindu Minority and Guardianship Act, 1956 was attracted, and for want of permission of the District Judge for the said sale, title did not vest in the plaintiffs and consequently, they could not become landlords of the defendant. In that view the trial Court's decree, dismissing the suit, was upheld.

In the present appeal it is urged by the learned counsel for the appellants that Section 8 of the Hindu Minority and Guardianship Act, 1956 is not at all attracted with reference to the joint interest of a minor in the joint family property. Therefore, no permission of the District Judge was necessary, as the property was not the exclusive property of the minor. So far as this contention is concerned, I am in agreement with the suggestion of the learned counsel for the appellants. Section 8 of the Act does not apply to the joint interest of a minor in a family property which the manager is competent to dispose of under the general provisions of the Hindu Law, namely, for the benefit of the minor or for family need etc. Thus, there can be no doubt that the learned Appellate Judge was wrong in holding that the plaintiffs did not become the landlords for want of permission of the District Judge u/s 8 of the said Act.

Further, the view expressed by the learned Judges of the Courts below that the M. P. Accommodation Control Act, 1955, was inapplicable to the present case, is also clearly erroneous, in view of the pronouncement of a Full Bench of this Court in *Shyamlal Lachman Vs. Umacharan Ramdulare Tiwari*, . The M. P. Accommodation Control Act, 1955 was applied to this region with effect from 1-1-1959 and consequently the suit filed without the permission of the Rent Controller could not be considered to be defective. Even before that, it was open to the landlord to file a suit or to determine the tenancy of the tenant without the permission of the Rent Controller. Such determination was not rendered void or suit did not become untenable even under the law in force at that time. But at the most, the landlord rendered himself liable for a prosecution for contravention of Clause 13 of the C. P. and Berar Letting of Houses and Rent Control Order, 1949. That has been the view of the Court expressed in a series of cases. I find it unnecessary to refer to them.

However, during the pendency of the suit, the M. P. Accommodation Control Act, 1955 came into force and consequently any provisions of the Transfer of Property Act, which would come into conflict with the provisions of the new Act, would not be operative. Only such provisions of the Transfer of Property Act as do not come into conflict with the provisions of the new Act, would continue to remain in force. Section 4(f) of the new Act provided for a ground for eviction that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right. Section 111(g) of the Transfer of Property Act provides that a lease of Immovable property determines -

"by forfeiture; that is to say,--(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself".

Therefore, to the extent that the second Clause of Section 111(g) of the Transfer of Property Act comes into conflict with Section 4(f) of the Act, it will stand abrogated and it is only Section 4(f) of the Act, which will be available to the appellants after 1-1-1959, and no decree could be passed by the Courts below unless one of the grounds u/s 4 of the M. P. Accommodation Control Act, 1955, was made out.

This brings us to the question whether a case u/s 4(f) of the Act was at all made out and consequently whether the appellants were entitled to evict the respondent on that ground. In this connection, it is to be noted that by virtue of Section 116 of the Indian Evidence Act, a tenant is estopped from denying the title of his landlord at the time the lease is given. That only provides for a restricted kind of estoppel. There may be other kinds of estoppel which might operate and which have been applied by the Indian Courts on principles of equity, justice and good conscience. This is clear from the pronouncement of their Lordships of the Privy Council in AIR 1937 251 (Privy Council) . It may be pertinent to reproduce the observations of their Lordships to the following effect:

"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 licencer 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 completeness 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. In the ordinary case of a lease intended as a present demise -- which is the case before the Board on this appeal -- the section applies against the lessee, any assignee of the term and 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 cases there may be other grounds of estoppel, e.g. by attornment, acceptance of rent, etc. In this sense it is true enough that the principle only applies to the title of the landlord who let the tenant in" as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end."

Therefore, what a tenant cannot, be permitted to do is to deny the title of the original lessor. Similarly, he cannot be permitted to deny the derivative title of a reversioner if he has attorned to him. However, if he has not attorned to him or if he has not paid any rent to him, he can certainly deny the derivative title of a reversioner. To this extent, their Lordships of the Privy Council have laid down that a tenant can deny the title within these permissible limits. Similarly, he can also contend as against the original lessor that he has ceased to be his landlord because of some subsequent transfer. These, in my opinion, are the permissible limits where the estoppel will not be applied as against the tenant. The question is whether a tenant denying the title of the landlord within the permissible limits, as indicated by their Lordships of the Privy Council should be made to suffer by a forfeiture of his tenancy. There can be no doubt that if a tenant denies the title of his landlord outside the permissible limits, he should forfeit his tenancy, as he cannot be permitted to deny his landlord's title unless he has, delivered back possession to the landlord openly. But can it be said that he should suffer the

penalty of forfeiture even though his denial is within the permissible limits where the principle of estoppel cannot be applied against him?

In this connection, a Division Bench of the Calcutta High Court in *Sheikh Abdulla Vs. Mohammad Muslim*, laid down that the denial of the right of an assignee from the original lessor by the tenant would not work a forfeiture of the tenancy. Of course, the learned Judges did not refer to the previous decisions, but evidently the reasoning of the said Division Bench would, in my opinion, be in consonance with the ratio decidendi of the observations of their Lordships of the Privy Council in AIR 1937 251 (Privy Council) . I fail to see as to why a tenant who denies the title of the assignee or the reversioner within the permissible limits should be made to suffer the penalty of forfeiture. I quite conceive the situation where the tenant denies the title beyond the permissible limits.

In this connection, I may further refer to another Division Bench case of the Allahabad High Court in *Prag Narain v. Kadir Bakhsh*, (1913) ILR 35 All 145, where the Division Bench was concerned with the question as to the denial of the landlord's title on the part of the tenant. The learned Judges laid down that the denial of his landlord's title by a tenant; in order to work a forfeiture u/s 111(g) of the Transfer of Property Act, must be an unequivocal and unambiguous denial; mere non-payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitute such a denial. According to the learned Judges, the second requirement of the Section is that the landlord should exercise his option in unequivocal terms electing to forfeit the tenancy. In the present case what the respondents did was to cast a doubt on the title of the appellants in view of the fact that one of the vendors of the appellants was a minor and the - respondents felt that permission of the District Judge for effecting the sale was necessary. As such, the respondents never claimed that the title vested in them or they had in unequivocal terms denied the title of the landlord. But what they did say was that the transfer in favour of the landlord may be defective for want of permission from the District Judge under the Hindu Minority and Guardianship Act, 1956.

As such, it is clear that even if it were to be assumed that the appellants might be entitled to forfeit the tenancy on account of the denial of title, the same was not unequivocal, as laid down by the said Division Bench of the Allahabad High Court.

However, the learned counsel for the appellants invited our attention to the observations of Chaturvedi J. in *Ramdas Vs. Shree Ram Lakshman Janki*, . The learned Judge, however, did not accept the view of the Division Bench of the Calcutta High Court in *Sheikh Abdulla Vs. Mohammad Muslim*, for the reason that no authorities had been cited in support of the proposition. Therefore, in the opinion of the learned Judge, this was the only case laying down that proposition. The learned Judge further felt that the two English decisions, namely, *Jones v. Mills*, (1861) 142 ER 664 and *Doe v. Long* (1841) 173 ER 1047 were contrary to the view expressed by the Division Bench of the Allahabad High Court. No doubt

these two English cases lay down the proposition that there can be forfeiture of tenancy if the tenant denies the derivative title of a reversioner. To that extent I am certainly in agreement with the view of Chaturvedi J. But these cases also do not lay down that if the tenant denies the derivative title within the permissible limits, even then his tenancy will be liable to be forfeited. Therefore, with due respect to the learned Judge, I am unable to read the observations in the two English cases in that light. Therefore, I would prefer the view of the Division Bench of the Calcutta High Court in Sheikh Abdulla Vs. Mohammad Muslim, , which is in consonance with the view as expressed in the Privy Council case of AIR 1937 251 (Privy Council) to the effect that to a limited extent only a tenant can challenge the derivative title of a reversioner or an assignee. To that extent which is permissible, the principle of forfeiture of the tenancy cannot be applied on account of such denial. If it were to be applied as was the view expressed by Chaturvedi J., I feel that it would be enlarging the scope of section 111(g) of the Transfer of Property Act unwarrantedly. It is to be noted that it is a penal provision and its operation ought to be restricted to the restricted wording of the Section and not beyond it. For this reason, with due respect to the learned Judge, I would prefer to follow the view of the Division Bench of the Calcutta High Court in Sheikh Abdulla Vs. Mohammad Muslim, . Therefore, if there could be no forfeiture of the respondents' tenancy, even the ground u/s 4 (f) of the M. P. Accommodation Control Act, 1955 was not made out; and consequently the appellants were not entitled to a decree in their favour under that Section. In view of the opinion expressed by me above, it is unnecessary to consider the other questions with reference to the validity of the notice of forfeiture or whether the question that a notice for forfeiture was necessary or whether the quit notice u/s 106 of the Transfer of Property Act was necessary. But there can be no doubt that the tenancy under the circumstances was not liable to be forfeited u/s 4 (f) of the M. P. Accommodation Control Act, 1955. No other ground having been alleged and proved against the plaintiffs, the suit in my opinion was rightly dismissed. Therefore, I uphold that decree, though on different grounds.

As a result, this appeal fails and is accordingly dismissed. But in view of the fact that the matter was not very clear and the new Act came into force during the pendency of the suit, I direct that there shall be no order as to the costs throughout. The decree of the Courts below in the matter of costs, will stand modified to that extent.

Leave for filing Letters Patent Appeal is refused.