



A.S.No.238 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON: **11.01.2024**

CORAM

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

A.S.(MD)No.238 of 2009

1.Sadik Batcha
2.Noorjahan (Died)
3.Marjohn Beevi
4.Aziyam Mariyam

...Appellants

-Vs.-

Dharmapuram Atheenam Mutt,
represented by its Atheena Kartha,
Srilasri Shanmuga Desika Gnanasambanda
Paramacharia Swamigal,
Dharmapuram, Mailadudurai Town
and Municipality.

...Respondent

PRAYER:- Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 08.07.2009 passed in O.S.No.104 of 2005 on the file of the Additional District Judge (Fast Tract Court No.I), Thanjavur and allow the appeal throughout both costs



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and thus render justice.

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For Appellant : Mr.Sharan
For M/s.Ram Sundar Vijay Raj

For Respondents : Mr.M.Vallinayagam
Senior Counsel
For M/s.D.Nallathambi

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This Appeal Suit challenges judgment dated 08.07.2009 passed by the Additional District and Sessions Judge (Fast Track Court No.1), Thanjavur in O.S.No.104 of 2005. The Suit had been filed by the unsuccessful defendants in the Suit. A2/D2 had passed away pending Suit and is represented by the other appellants/defendants, who are already on record.

2. The prayer in the Suit was for declaration of title in respect of the land admeasuring 70 cents in Old R.S.No.201 Thiruvaidaimarudhur Village and Taluk, Thanjavur District (suit property). The Dharmapuram Atheenam Mutt (in short 'Mutt')/plaintiff had sought title to the suit



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property on the ground of both the entries in the revenue records as well as the fact that the entire extent of the land was in its possession.

3. The land comprising suit property had been under lease to one A.P.Jalaludeen, who was paying a nominal rent for fasli as site rent. The said Jalaludeen passed away on 05.01.1999. Legal notice had been issued by the Mutt on 08.01.2023 calling for surrender of the suit property on the ground that there were substantial arrears of rent from Fasli 1399 onwards when A.P.Jalaludeen had been running the rice mill on the property.

4. Under the legal notice, the legal heirs of Jalaludeen, i.e., the widow, who passed away pending appeal suit, son and daughter-in-law were asked to surrender the vacant possession of the suit property on or before 01.03.2003. A reply was issued denying the averments in the legal notice. Inter alia, the appellants also request the Mutt to sell the site to them which itself would establish their acquiescence to the Mutt's ownership of the land.

5. The appellants claim to hold patta that was issued on 30.09.1993 in respect of R.S.No.201/1, (admeasuring 0.08.0 Ares) in favour of the first appellant, R.S.No.201/24 (admeasuring 0.11.5 ares) in



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favour of A.P.Jalaludeen and R.S.No.201/23 (admeasuring 0.08.5 ares) in favour of the deceased second appellant.

6. Admittedly, rents have not been paid from 1993 onwards. The Suit was defended on the ground of long occupation of the land in excess of 5 decades as well as the pattas that had been issued. In any event, appellants claimed independent right over the super structure that had been put up by them, being the rice mill.

7. They averred that the property was classified as Grama Natham and it is only for this purpose pattas had been issued to them. Protection was sought by the appellants under relevant tenancy laws including the provisions of Tamil Nadu City Tenants Protection Act, 1921 (in short '1921 Act') and specifically Section 106 of the Transfer of Property Act, 1882 (in short 'T.P.Act').

8. In the Suit they had argued that notice issued on 08.01.2023 was not a valid notice to quit envisaged under Section 106 of the T.P.Act. Evidence was let in by both parties and the following documents have been marked as Exhibits:

வாதி தரப்பு சான்றாவணங்கள்:

வா.சா.ஆ.1 23.12.79 ஜலாலுதீன் வாதி ஆதினத்திற்கு எழுதிக்கொடுத்த பகுதிப் பத்திரம்.



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வா.சா.ஆ.2 22.4.85 ஜலாலுதீன் ஆதினத்திற்கு கொடுத்த மனு.
வா.சா.ஆ.3 12.5.85 ஜலாலுதீன் ஆதினத்திற்கு கொடுத்த மனு.
வா.சா.ஆ.4 8.1.03 வாதி கொடுத்த அறிவிப்பு நகல்.
வா.சா.ஆ.5 11.1.03 1ம் பிரதிவாதியின் கையெழுத்து செய்த அஞ்சல் அட்டை.
வா.சா.ஆ.6 27.2.03 1ம் பிரதிவாதி கொடுத்த பதில் அறிவிப்பு.
வா.சா.ஆ.7 9.4.03 வருவாய் நீதிமன்ற வழக்கு எண்.145/03ன் மேல்முறையீட்டு மனு.
வா.சா.ஆ.8 12.6.75 விடுதலைப் பத்திரம்.
வா.சா.ஆ.9 17.11.05 வருவாய் நீதிமன்ற வழக்கு எண்.145/03ன் எதிருரை.
வா.சா.ஆ.10 -- அ.வ.எண்.10/72ன் வழக்குப் பதிவேட்டின் நகல்.

பிரதிவாதிகள் தர்ப்பு சான்றாவணங்கள்:

பி.சா.ஆ.1 30.9.03 ஜலாலுதீன் பெயரில் உள்ள நத்தம் பட்டா.
பி.சா.ஆ.2 -- சாதிக்பாட்சா பெயரில் வழங்கிய நத்தம் பட்டா.
பி.சா.ஆ.3 -- நூர்ஜஉறான் பெயரில் வழங்கிய நத்தம் பட்டா.
பி.சா.ஆ.4 -- சர்வே ரிஜிஸ்டர் நகல்.

9. The defendants had also entered the box and been examined on their claim to ownership of the land. Judgment came to be passed on 08.07.2009 and the following issues had been framed:

1. வாதிக்கு தாவா சொத்தில் உரிமை இல்லையா?
2. வாதிக்கும், பிரதிவாதிக்கும் உள்ள குத்தகை உறவு நீக்கறவாகிவிட்டதா?
3. நத்தம் பட்டா தாவா சொத்துக்களுக்கு கொடுக்கப்பட்டிருக்கிறதா, அதனால் வாதி உரிமையை இழந்துவிட்டாரா?
4. நத்தம் பட்டா, பிரதிவாதிக்கு கொடுத்ததினால் பிரதிவாதி தனி உரிமையுள்ளவராகிவிட்டாரா?
5. தாவாவிற்கு சரியான சட்டப்படியான சொத்து மாற்றுச் சட்டத்தின்படி அறிவிப்பு கொடுக்கப்படவில்லையா? ஆதனால் வழக்கு நிற்கத்தக்கதில்லையா?



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6. சேர்க்கவேண்டிய தரப்பினார்கள் வழக்கில் சேர்க்கப்படவில்லையா? அதனால் வழக்கு தள்ளுபடி செய்யப்படவேண்டியதா?
7. பிரதிவாதிக்கு வாடகைதாரர் சட்டங்களின் அனுகூலங்கள் கிடைக்கக்கூடியதா? ஆதனால் பாதுகாப்பு பெற்றுள்ளாரா?
8. வழக்குச் சொத்து காலஞ்சென்ற ஏ.பி.ஜலாலதீன் என்பவருக்குப் பாத்தியப்பட்டது என்ற எதிர்வாதிகள் தரப்பு கூற்றில் உண்மையுள்ளதா?
9. வழக்கு அவசிய தரப்பினரை கட்சி சேர்க்காத குறையால் பாதிக்கப்பட்டுள்ளது என்ற எதிர்வாதிகள் தரப்பு ஆட்சேபனை ஏற்கத்தக்கதா?
10. வழக்குச் சொத்து கட்டுமானம் ஜலாலதீனுக்கு பாத்தியப்பட்டதா? வழக்கு சொத்து அடிமனை நத்தமா?
11. சொத்துரிமை மாற்றுச் சட்டம் பிரிவு 106ன்கீழ் செல்லத்தக்க அறிவிப்பு வாதி தரப்பில் அனுப்பப்படவில்லையா?
12. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன?

10. After considering several decisions, the Suit came to be dismissed and the legal issue in regard to the adequacy of notice issued by the plaintiff was answered in its favour. The learned Judge held that notice dated 08.01.2003 was valid in terms of Section 106 of the T.P. Act and it was not for a tenant to dispute the title of the landlord who had let him into possession.

11. The decisions in *Bankala Vittil Usman Koya and another V.*



Chidriamokkausa Akoth and another¹, N.S.Kuppuswamy Odayar and another v. The Panchayat Narthangudi represented by its President Murugayyan and others², Srinivasan and 6 others V. Sri Madhyarjuneswaraswami Pattavaithalai, Thiruchirapalli Dist.³, D.Sreenivasa Mudaliar Charity V. Dhanasekaran and 8 others⁴ and Majati Subbarao V. P.V.K.Krishna Rao⁵ are cited to bring home this proposition and are discussed below.

12. In *Bankala Vittil Usman Koya* (supra), by way of a short judgment, the Bench reiterated that the ‘ordinary rule of course is that a tenant is stopped from denying the title of the landlord who let him into possession.’ In fact, the defendant there had not attempted to support the judgment of the lower appellate Court on that ground. However, his argument was that the plaintiff’s title to the property was admitted in 1891 but that the title had been determined in 1893.

13. The Court held that the defendant had entered into possession under the lease granted to him by the plaintiff in 1891 and if, during the period of his tenancy over six years nothing had occurred, it

1 (1905) 15 MLJ 368

2 1971 (1) MLJ 190

3 1998 – 2 – L.W. 189

4 2001 (3) CTC 520

5 AIR 1989 SC 2187



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should be treated by the party having title paramount as amounting to ouster of the defendant so as to operate as determination of the lessor's right, as they stood at the date of the lease by the plaintiff to the defendant. The plaintiffs/appellants succeeded with costs.

14. In the case of *N.S.Kuppuswamy Odayar* (supra), one of the issues that arose was in the context of adverse possession of fishery rights and the requirements thereof. The appellants claimed title to the tank and the fishery rights stating that they had exercised the same for more than 100 years. The first respondent however had purported to lease out the fishery rights. The claim of the appellants was direct, and alternatively as having perfected the same by adverse possession. The case of the respondents was that the tank was situated in Natham Poramboke and hence the Panchayat had the authority to auction the fishery rights.

15. The judgment and decree of both the lower Courts had been set aside and the suit remanded for fresh disposal as M.M.Ismail,J was of the view that there had been '*a gross failure on the part of the Courts below to understand the case put forward by the appellants and the wrong approach on their part to the questions raised in the suit.*'



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16. He notes that there were sufficient documentary evidence to show that it was the appellants and before them their predecessors-in-interest who had been leasing out the fishery rights in the tank from 1873 onwards. By way of a partition deed dated 14.07.1900, the tank had been dealt with as family property in the partition. All lease deeds produced had a stipulation to the effect that the tank belonged to the lessors/appellants' family.

17. Relying solely on the Re-settlement Register, the Courts have come to the conclusion that the tank had been situated in Natham Poramboke. However, the Court was of the view that this would not automatically establish the case of the defendants, since the Re-settlement Register was prepared in 1925 and prior records were available to establish that the appellants had been in ownership and possession of the tank. In any event, there had been no admission that the tank had been dug in poramboke land.

18. The Court in *Secretary of State for India in Council V. Debendra Lal Khan*⁶ also involved the case of Panchayat rights and has been relied on in the case of *Kuppuswami Odayar* (supra). The

⁶ ^^ MLJ 134



observations of the Privy Council are that even if the appellants had been trespassers, exercising the right of possession and ownership openly, would be sufficient to constitute adverse possession and there is no obligation on his part to bring to the notice of the real owner that he was exercising such rights of ownership adverse to the real owner.

19. The maxim referred to by Lord Macmillan is '*when the extremes have been proved, those things which lie between are presumed*'. Justice M.M.Ismail applied that phrase to the facts of *Kuppuswami Odayar's* case to hold that even to hold that whether the title of the appellant had been direct or by adverse possession, it was not for the defendants as lessees, to question that title.

20. In the case of *Srinivasan and 6 others* (supra), a Full Bench of this Court considered the question as to whether an adjudication under Tamil Nadu Act 30 of 1963 resulting in grant of patta would be final and conclusive, among other issues. The Court held that the jurisdiction of the Civil Court to entertain a Suit for declaration of title and injunction would not be barred by reason of the grant of patta under the Patta Passbook Act.

21. They held that the orders passed under the Patta Passbook



Act were summary and even in case where finality had been accorded to such decisions by virtue of having been no challenge to the pattas, the Civil Court is entitled to nullify any or all such decisions and its jurisdiction would not be ousted in toto. Thus, there is little merit in the reliance of the appellants on the patta held by them in light of this decision.

22. The decision in the case of *D.Sreenivasa Mudaliar Charity* (supra), is on point. There a second appeal had been filed by an unsuccessful plaintiff who sought recovery of possession of the suit property and compensation. The Court has noted the decision of the Division Bench of this Court in *Guruswami V. Ranganathan*⁷, which had considered the scope of Section 116 of the Evidence Act 1872, that further supports this position, placing an estoppel on the tenant and of licensee of person in possession from the denying title of his landlord.

23. Section 116 reads thus:

'116. Estoppel of tenant; and of licensee of person in possession – 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

⁷ AIR 1954 Mad, 402



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property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.'

extract.

24. The Judgments of the Apex Court in *Veeraraju V. Venkanna*⁸, *Sri Ram Pasricha V. Jagannath*⁹ and *Joginder Singh V. Jogindero*¹⁰, are to the effect that the tenant in a suit is stopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord is irrelevant as between the lessor and lessee, and if the lessee is in continuous possession on the basis of lease, he cannot dispute the title of the lessor '*however defective it may be*'. The second appeal of the plaintiff was allowed on the basis of the aforesaid decisions. The Hon'ble Supreme Court in the case of *Majati Subbarao* (supra) has also considered this very issue.

25. Section 106 of the T.P. Act reads as follows:

106. Duration of certain leases in absence of written contract or local usage – In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year,

8 AIR 1966 SC 629

9 AIR 1976 SC 2335

10 AIR 1996 SC 1654



terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property'.

26. In *S..Thangappan V. P.Padmavathy*¹¹ the Hon'ble Supreme Court considered the scope and expanse of Section 116 of the Indian Evidence Act, particularly the embargo placed upon a tenant of a movable property. At paragraphs 14 and 15, they state thus:

'14.This section puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are "at the beginning of the tenancy". This is indicative of the sphere of the operation of this section. So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord's title. Thus, this principle of estoppel debars a tenant from denying the title of his landlord from the beginning of his tenancy. Howsoever defective title of such landlord (sic may) be, such tenant cannot deny his title. But subsequent to his induction as tenant if the landlord loses his title under any law or agreement and there is

¹¹ (1999) 7 SCC 474



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threat to such tenant of his eviction by subsequently acquired paramount title holder then any denial of title by such tenant to the landlord who inducted him into the tenancy will not be covered by this principle of estoppel under this Section. In Mangat Ram and Ors. (supra) this Court held:

“The estoppel contemplated by [Section 116](#) is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end.”

(emphasis supplied)

15. Similarly in D.Satyanarayan (supra) also this Court holds in para 4: (SCC p.428)

“4. The rule of estoppel embodied under [Section 116](#) of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlords title, however defective it may be,..... Similarly, the estoppel under [Section 116](#) of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy.”

(emphasis supplied)

27. Yet another distinction has been noted by the Apex Court in the case of D.Satyanarayana V. P.Jagadish¹². In that case, the demised premises had belonged to one Krishnamurthy, which had been

¹² AIR 1987 SC 2192



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let out to one P.R.N.Upadhyaya and sub-let out by the latter's son P.Jagadish and thereafter to different persons.

28. The original owner/head lessor Krishnamurthy served notice of eviction on the tenants of Jagadish on the ground that there had been unlawful sub-letting by the lessee and thus Krishnamurthy decided to terminate tenancy of Upadhyaya. As a consequence, the tenant had attorned in favour of the original lessor Krishnamurthy and had also been paying rents to him thereafter.

29. The factual situation in that matter was that the tenant became a direct tenant/lessee under Krishnamurthy and in such circumstances, stopped paying rent to Jagadish, who was himself only a lessee of Krishnamurthy. Jagadish, however, commenced proceedings for eviction of the tenant on the ground that he was a willful defaulter of rent and the tenant put up a defence denying the title of Jagadish.

30. The I Additional Rent Controller, Hyderabad disallowed the application on the ground that Jagadish has no locus standi to initiate eviction proceedings. His order was reversed by the Chief Judge, City Small Causes Court, Hyderabad and that decision was upheld by the High Court relying on the rule of estoppel.



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31. The tenant had filed a Civil Appeal before the Hon'ble Supreme Court, which came to be allowed on the ground that there being a threat of eviction by a person claiming title paramount, i.e., by Krishnamurthy, the bar under Section 116 of the Indian Evidence Act would not apply in such a case. Thus, the tenant would not be stopped from challenging the title of Jagadish and has right to maintain eviction proceedings.

32. Section 116 provides that no tenant shall during the continuance of tenancy be permitted to deny the title that the landlord had at the beginning of the tenancy possessed. Possession and permission being established, estoppel would bind the tenant during the continuance of tenancy till he surrenders his possession.

33. At paragraphs 3 and 4, the Hon'ble Supreme Court states thus:

3.....The words "during the continuance of the tenancy" have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restricted not only in extent but also in time i.e. restricted to



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the title of the landlord and during the continuance of the tenancy; and by necessary implication, it follows that a tenant is not estopped, when he is under threat of eviction by the title paramount, from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

*4. The rule of estoppel embodied under [s. 116](#) of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See: *Bilas Kumar v. Desraj Ranjit Singh* ILR (1915) 37 All 557 (PC) and *Atyam Veerraju & Ors. v. Pechetti Venkanna & ors.*, [1966] 1 SCR 83 1. The general rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. See: *Kumar Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Limited & ors.*, AIR (1937) PC 251. Similarly, the estoppel under s. 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a A paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title- holder.....'*

34. None of the above exceptions would arise in the present case. The appellants have, admittedly, been in possession and occupation of the land under lease granted by the respondent. There is no other



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party that has claimed title to the property in question and the issue of any other title holder paramount does not arise in this case. The title holder paramount is the Mutt and the only rival claim that is put up by the appellants and that too is on an allegedly defective title of the respondent.

35. The discussion above categorically settles the position that it does not lie for a lessee to question the title of the lessor for the reason that the very occupation by the former in the suit property was on the strength of the permission granted by the lessor.

36. The notice issued does serve as a notice to quit under the provisions of Section 106 of the T.P. Act and there is no merit in the contentions put forth by the appellants. The Trial Court has considered the matter in proper perspective and has cited appropriate decisions to support its conclusion that the notice issued on 08.01.2003 was a notice in terms of Section 106 of the T.P. Act, and valid.

37. This Appeal Suit stands dismissed with no order as to costs.

**[A.S.M.J.,] & [R.V.J.,]
11.01.2024**

NCC :Yes/No
Index :Yes/No



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To

The Additional District Judge (Fast Track Court No.I), Thanjavur.

DR.ANITA SUMANTH, J.
AND
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