

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 23.09.2015

+ **RFA 629/2015**

SHEO SHANKER PRASAD

....APPELLANT

Versus

DHARAM SINGH AND ANR.

.....RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Mr. Prem Prakash and Ms. Rashmi, Advocates

For the Respondent : Mr. Vishwendra Verma, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

Caveat 1006/2015

1. Since the learned counsel for the respondents has entered appearance, the caveat stands discharged.

CM No.20773/2015 and 20774/2015 (Exemption)

2. Allowed subject to just exceptions.

RFA 629/2015 and CM No.20775/2015 (extension of time for payment of court fee) and CM No.20776/2015 (stay)

3. This is an appeal directed against the judgment and decree dated 31.07.2015 passed by the learned Additional District Judge (ADJ), East, Kakardooma Courts, Delhi.

3.1 The learned ADJ passed the impugned judgment and decree in exercise of his powers under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (in short, CPC).

3.2 The respondents herein, who are, senior citizens filed a suit for possession and mesne profits against the appellant / defendant.

3.3 The principal defence, which was taken by the appellant, before the trial court was that the suit property has been built on government land and therefore, the Government being the owner, the appellant had no right to initiate action for possession and / or mesne profits / damages.

3.4 The trial court has returned findings of fact that the appellant had been, admittedly, inducted into the property pursuant to an unregistered rent agreement dated 17.11.2004. The said agreement had a tenure of 11 months and, the appellant was obliged to pay the rent at the rate of Rs.15,000/- p.m. To be precise, the period of 11 months spanned between 01.11.2004 and 30.09.2005. These findings are based on admission of the appellant and are not disputed.

3.5 Furthermore, the trial court also recorded that after July 2005 the appellant had paid no rent to the respondents which, resulted in issuance of a legal notice dated 02.10.2006 by the appellant.

3.6 A perusal of the record (i.e. the appeal) shows that the appellant had issued a cheque in favour of the respondents in the sum of Rs. 2 Lakhs, ostensibly towards rent, which, bounced and consequently, resulted in initiation of proceedings under Section 138 of the Negotiable Instruments

Act, 1881 (in short the N.I. Act). Furthermore, a summary suit was also filed by the respondents.

3.7 It is the admitted case of the appellant that he was convicted in the criminal proceedings and that, the civil suit was, decreed for a sum of Rs.4 Lakh as the appellant had failed to deposit a sum of Rs.1 Lakh, which was the condition stipulated for grant of leave to defend.

3.8 Qua the criminal proceedings, the appellant has preferred a Criminal Revision Petition 799/2010 in which this court has passed an order dated 16.03.2011. By virtue of this order, the appellant has been called upon to pay a sum of Rs.2,50,000/- to the respondents.

3.9 Evidently, order dated 16.03.2011 was carried in appeal to the Supreme Court. The special leave petition (in short SLP) filed was numbered as : SLP 10353/2013. This SLP was disposed of, according to the appellant, upon payment of Rs.2,75,000/- to the respondents herein.

4. The aforesaid facts, with regard to criminal and civil proceedings, and payments made by the appellant, emerge from the averments, made in paragraph 15 (iii) to (v) of the appeal.

4.1 The appellant claims that in all, he has paid, a sum of Rs.11 Lakhs to the respondents; albeit under the misconception that they are the owners of the suit property, and therefore, they should be directed to return the same.

4.2 As indicated above, this was the main plank of the appellant's defence before the trial court in the suit filed by the respondents. In support of this plea, the appellant sought to place reliance on the exceptions to the provisions of Section 116 of the Indian Evidence Act, 1872 (in short the

Evidence Act) and inter alia, the judgment of the Supreme Court in the case of *Mangat Ram and Ors. Vs. Sardar Mehrban Singh, AIR 1987 SCC 2192*.

4.3 It is important to note that the appellant had filed an application under Order 1 Rule 10 of the CPC to implead the Delhi Development Authority (DDA) and Municipal Corporation of Delhi (MCD). This application was, however, dismissed by the trial court vide a separate order.

5. Before me, Mr. Prem Prakash, who appeared for the appellant assailed the judgment of the trial court on one singular ground, which is, that respondents did not have title to the suit property and therefore, there being no landlord-tenant relationship subsisting between the parties, the trial court could not have passed a decree for possession in the matter.

5.1 In so far as the first aspect is concerned, which is, as to whether there was a landlord-tenant relationship obtaining between the appellant and respondents herein, as indicated above, the trial court has returned a finding of fact that the appellant was inducted into the suit property under an unregistered rent agreement dated 17.11.2004. That rent agreement had a tenure of 11 months. The appellant had paid till July, 2005 rent at the rate of Rs.15,000/- p.m. These findings are not disputed even before me. The dispute between the parties started thereafter, leading to initiation of civil and criminal proceedings. Payments were made thereafter, by the appellant to the respondents under orders of the court; a fact which the appellant has admitted in the appeal itself.

5.2 In these circumstances, no fault can be found with the findings of the trial court that a landlord-tenant relationship obtained between the parties.

The argument, however, advanced by the learned counsel for the appellant that the trial court erred in coming to the conclusion that the appellant could not challenge the title of the landlord in the given facts and circumstances, in my view, is completely untenable. The trial court, to my mind, appreciated the legal position quite correctly. There is admittedly neither any eviction proceedings filed by the Government authorities i.e. the MCD or the DDA nor is there any threat issued by the said authorities seeking to evict the appellant from the suit property. The appellant admittedly has not attorned to any of the Government authorities i.e. the DDA or the MCD.

5.3 In these circumstances, if, at the commencement of tenancy, the appellant had attorned to the respondents, he is estopped from challenging the title of the respondents to the suit property. The exception to the rule of estoppel as provided under Section 116 are, generally as follows :- (i). Where the tenant openly surrenders his possession; (ii). When the tenant is under a threat of eviction by the paramount title holder; (iii). Where it is shown that the title of the landlord has come to an end or that, he was evicted by the paramount title holder; (iv). Even where there is no actual eviction or dispossession from the tenanted property, the tenant under a threat of eviction had attorned to the paramount title holder. Institution of a suit for ejectment is not necessary, a threat of eviction would suffice if, the tenant, as a result of the threat attorns to the paramount title holder. It should, however, be an attornment under compulsion. Mere voluntary compulsion will not suffice. (See *D. Satnarayan vs P. Jagdish*, AIR 1987 SC 2192 and *Vashu Deo vs Bal Kishan* (2002) 2 SCC 50 at pages 56 to 58/ paragraph 6 to 8].

5.4 Furthermore, the rule of estoppel which is a common law rule that stands codified under Section 116 of the Evidence Act, does cover whole law of estoppel operating between a landlord and tenant (See *Vashu Deo vs Bal Kishan*)

5.5 The facts obtaining in the present case show that the appellant's case does not fall in any of the exceptions to the rule of estoppel envisaged under Section 116 of the Evidence Act. The fact that the appellant had moved an application for impleadment of the DDA and/or the MCD, which was dismissed by the trial court, would also not help his cause as, in the application, as noted by the trial court in the impugned judgment there was no reference to any communication received in the form of threat of eviction or otherwise, which would show, that the ostensible paramount title holder was seeking to press his claim of ownership qua the suit property. I may, in this connection, extract the following observations made by the trial court in this behalf in paragraph 44 to 49 :-

“..44. Perusal of the judgments clearly shows that the said judgments are not applicable to the facts of the present case. It is not the case of the defendant that there was any threat of eviction by paramount title owner or that he had attorned to paramount title holder assuming the case of the defendant that the plaintiff is not the owner of the land. Thus, the defendant has fallen of his own legs.

45. A mere denial of title of the landlord is not enough. Such denial has to be not bonafide.

46. The defendant has filed an application under Order 1 Rule 10 CPC for impleading DDA and MCD as parties to the suit. The crux of the application is that to put the dispute at rest, it is just and proper that the Delhi Development Authority and the

Municipal Corporation of Delhi should be arrayed as parties to the case as defendants.

47. Perusal of the application shows that the defendant has nowhere stated or averred that the defendant has ever received any communication of any nature much less threat of eviction from DDA or MCD to whom the defendant is presumingly considering to be the paramount title holder of the suit property or that he had attorned to them. The court has dismissed the application under Order 1 Rule 10 CPC vide separate detailed order of the same day. What the defendant, it seems that, is trying to put forth that the DDA and MCD are the paramount title holder of the suit property. Assuming for the sake of arguments, same to be correct, how would it help the defendant. Admittedly, in the entire written statement and in all other proceedings between the parties moreover in the application under Order 1 Rule 10 CPC nowhere the defendant has stated that there was a threat of eviction of dispossession by the DDA or MCD or that he has attorned to them. Moreover, the defendant has himself filed an affidavit dated 29.11.2005 before the court on 02.07.2014 wherein the defendant has stated that the suit property does not fall within the DDA land.

48. Thus, the contention of the defendant that this case falls under the exception of Section 116 Evidence Act fails.

49. Though it is not required to give any reasons on the question of the title of the plaintiffs qua the suit property, for the reasons discussed above and also that the suit is based on relationship of landlord and tenant only however, to avoid any ambiguity the court is also referring to the documents placed on record by the plaintiffs before this court...”

6. Before I conclude, I may only indicate that the judgment in ***Mangat Ram***’s case, on which, great emphasis was laid by the learned counsel for the appellant during the course of the arguments, would have no applicability to the instant case. The facts obtaining in ***Mangat Ram***’s case were as follows : the demised premises was an asset belonging to a partnership firm comprising of three partners. The partnership firm was

dissolved by a deed of dissolution executed amongst the partners. On account of the said dissolution, two partners retired from the partnership firm and settled their accounts. While settling their accounts, the demised premises came to the share of one partner. However, the other partner who purported to act as a landlord inducted a tenant. The tenant in a suit brought against him, inter alia, challenged the title of the landlord. It is, in this context, the Supreme Court observed that the courts below had erred in holding that the tenant was estopped from denying title of the landlord by virtue of the provisions of Section 116 of the Evidence Act. The court noted that by virtue of the dissolution deed and subsequent, execution of the rent note, by the tenant with the other partner (not the partner which instituted the suit), there had been a change in circumstances, in as much as, the lessor's title had come to an end and therefore, the tenant was not estopped from denying his title.

6.1 On the other hand, in the case of *Payal Vision Ltd. Vs. Radhika Choudhary, (2012) 11 SCC 405*, the Supreme Court went to the extent of stating that the tenant-respondent could not challenge the title of the appellant-landlord based on a document anterior to the commencement of the tenancy. In that case, the respondent-tenant in its written statement had taken the position that the suit property had vested in the Gram Sabha prior to the commencement of the tenancy. The trial court had decreed the suit for possession and mesne profits in favour of the appellant-landlord, which was reversed by the High Court. The Supreme Court reversed the decision of the High Court and restored the judgment and decree passed by the trial court. The relevant observations of the Supreme Court made in this behalf are set out hereinbelow :-

“...In other words, the challenge to the title of the plaintiff qua the suit property was based on a document anterior to the commencement of the tenancy in question. It also meant that the challenge was in substance a challenge to the landlord’s title on the date of the commencement of the tenancy. Section 116 of the Evidence Act, 1872, however, estops the tenant from doing so. The legal position in this regard is settled by several decisions of this Court and the Privy Council. Reference may in this regard be made to *Mangat Ram v. Sardar Mehartan Singh* (1987) 4 SCC 319 and *Anar Devi (Smt.) v. Nathu Ram* (1994) 4 SSC 251. In the later case this Court observed:

“13. This Court in *Sri Ram Pasricha v. Jagannath*, 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 as tenant under one landlord from denying the title of his subsequent landlord when once he acknowledges him as his landlord by attornment 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.”

18. To the same effect is the decision of Privy Council in Krishna Prasad v. Baraboni Coal Concern Ltd. AIR 1937 PC 251, where Privy Council observed:

“The section postulates that there is a tenancy still continuing, it had its beginning at a given date from a given landlord. It provides that neither a tenant nor any one 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 terms 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...”

7. Having regard to the aforesaid discussion, I find no merit in the appeal. The same is accordingly, dismissed. Resultantly, the pending applications having been rendered infructuous, are also dismissed.

RAJIV SHAKDHER, J.

SEPTEMBER 23, 2015

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