

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

C.R.P.Nos.4459, 4500 & 4936 of 2016

Between:

C.R.P.No.4459 of 2016

Smt. Sharada Bai

.....Petitioner

and

Navratan Vyas

.....Respondent

C.R.P.No.4500 of 2016

Smt. Sharada Bai

.....Petitioner

and

Smt. Usha Vyas and another

.....Respondents

C.R.P.No.4936 of 2016

Smt. Sharada Bai

.....Petitioner

and

Rajender Vyas

.....Respondent

Date of Judgment pronounced on : 24-11-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO****+ C.R.P.Nos.4459, 4500 & 4936 of 2016**

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.....Respondent

< **GIST:**> **HEAD NOTE:**

! Counsel for the petitioner : Sri K.V. Subrahmanya Narusu

^ Counsel for the respondents : Sri Murli Narayan Bung

? Cases referred

1. (1987) 4 SCC 424
2. AIR 2002-SC-3294
3. AIR 2006-SC-2403
4. 2006(3)SCC 91
5. AIR 2016 SC 3681
6. AIR 1966 SC 629
7. 1994 4 SCC 250
8. AIR 1937 PC 251
9. AIR 1976 SC 2335

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION Nos.4459, 4500 & 4936 of 2016****COMMON ORDER:**

The 3 revisions are arisen against the dismissal orders of the 3 applications dated 22.06.2016 viz., I.A.No.307 of 2015 in O.S.No.1815 of 2015; I.A.No.308 of 2015 in O.S.No.1816 of 2015 and I.A.No.309 of 2015 in O.S.No.1817 of 2015, passed by the learned VIII Junior Civil Judge, City Civil Court, Hyderabad.

2. The factual matrix necessary in all the three matters common in relation to the 3 mulgies in the 3 suits filed for eviction of the respondents/tenants by the sole plaintiff saying as absolute owner and the defendants are tenants for said premises which are out of the premises bearing Nos.21-2-131/7 to 9 in the ground + 2 floors of Charkaman, Charminar Area, Hyderabad for the registered lease deeds bearing document Nos.197/2010 dated 10.02.2010, 196/2010 dated 10.02.2010 and 372/2010 dated 19.03.2010 with respective rents of Rs.7,500/- per month each with Rs.500/- enhancement every year for 21 years ending by 31.12.2030 with security deposit of Rs.2,00,000/-, Rs.2,00,000/- and Rs.1,00,000/- respectively, from the alleged default in payment of rents by giving notice terminating the respective tenancy and the contest of the defendants in respective written statements opposing the 3 suits is while saying plaintiff represented as owner to the defendants of the premises respectively in possession saying he purchased from Smt. Sharbadi Bhai under registered sale deeds dated 05.12.1980 and 04.06.1981 and offered to lease out, the defendants agreed and accordingly obtained respective registered leases by payment of

refundable security deposit with stipulation of rent and provision for every year increase and are continuing as tenants by paying rents. However the defendants received notice dated 05.02.2015 through the advocate of Anil Kumar S/o. Brijmohan, informing that the plaintiff filed O.S.No.1110/1981 for declaration of title and perpetual injunction on the basis of sale deed executed by Sarbadi Bhai that was decreed and said Anil Kumar filed CCCA.No.1/1992 that was allowed reversing the decree in the suit on 24.06.1986 and against which the plaintiff preferred LPA.No.166/1998 that was ended in dismissal and plaintiff preferred special leave to appeal in SLP.No.16623 of 2014 in the Supreme Court that was also dismissed and the suit No.1110/1981 of plaintiff thereby stands dismissed declaring the sale in favour of the plaintiff herein as null and void and tenancy between plaintiff and defendant thereby becomes null and void since Anil Kumar declared by Court of law as absolute owner and therefrom called upon to pay rent to Anil Kumar, else to face eviction for which they issued reply and plaintiff herein also having issued reply is threatening the defendants to evict for non-payment of rents to him though they committed no breach of lease but for by virtue of the judgments and notice of Anil Kumar.

3. From the above pleadings of the pending suits, the 3 applications covered by the impugned orders were filed for direction to the defendants/respondents respectively to pay Rs.10,000/- per month each towards arrears of rent for the month of March 2015 and continue to pay the same from April 2015 till disposal of the respective three suits invoking Order 15-A CPC for the respective premises.

4. The observations of the Court below under the impugned 3 orders read in almost similar and particularly from Paras 6 & 7 read that, though the petitioner/plaintiff claims the respondents/defendants abruptly stopped payment from March 2015 and their defence thereby is liable to be struck off; the contention of the defendants/respondents is that after disposal of the SLP before the Supreme Court, there is no jural relationship between them and Sharbadi Bhai is his original landlord. The observation further therefrom that there are several disputes between the parties that went up to the Supreme Court and both parties not filed details of the orders passed by the Court. As the main controversy is with regard to jural relationship, it is just to decide the same in the main suit and not at this stage being mixed question of fact and law but for on full dressed trail and without ascertaining that jural relationship is subsisting or not, the respondents are not to be directed to deposit the alleged rents or to struck off their defence therefrom in directing both parties to expedite the trial. The revisions are impugning the same.

5. Heard both sides at length and perused the material on record.

6. Before coming to the legality and correctness of the respective orders of the Court below impugning in the 3 revisions detailed supra, the legal position on the scope of Section 116 Evidence Act and other principles on doctrine of estoppel and its application if any to the facts from landlord tenant relation of the Petitioner and the Respondents and from the decisions placed reliance by both sides is as follows:

7. Section 116 of the Evidence Act reads that, no tenant of immovable property or person claiming right through such tenant during the continuance of tenancy be permitted to deny that the landlord of such tenant had at the time of beginning of tenancy a title to such immovable property **and** no person who came upon any immovable property by the licensee of the person in possession thereof be permitted to deny that such person had a title to such possession when such license was given.

8. The underline policy of Sec.116 of Evidence Act is that where a person has been brought into possession as a tenant by the landlord and if the tenant is permitted to question the title of the landlord at the time of the settlement, then that will give raise to extreme confusion in the matter of relationship of landlord and tenant and so the equitable principle of estoppel has been incorporated by the Legislature in the Section based on a healthy and salutary principle of law and justice that a tenant who could not got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got on any probable defect in the title of his landlord. It is an extension of the principle that no person is allowed to approbate and reprobate at the same time.

9. Coming to the decision placed reliance by both sides of the Apex Court in **D. Satyanarayana Vs. P. Jagadish**¹ the Apex Court held at Paras 3 & 4 as follows:

“The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e. head lessor Krishnamurthy, the appellant was not estopped under S.116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the respondent P. Jagadish as the lessor. S.116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the

¹ (1987) 4 SCC 424

tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.

Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. 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 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.

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 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 Vs. 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 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. In order to constitute eviction by title paramount, it has been established by decisions in England and in India that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount, no question of estoppel arises under S.116 of the Evidence Act. See: **Adyanath Chatak v. Krishna Prasad Singh & Anr., AIR (1949) PC 124**. The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence a new jural relationship of landlord and tenant as between them. The law is stated in 27 Halsbury's Laws of England, 4th edition, para 238:

"238. Eviction under title paramount: In order to constitute an eviction by a person claiming under title paramount, it is not necessary that the tenant should be put out of possession, or that proceedings should be brought. A threat of eviction is sufficient, and if the tenant, in consequence of that threat, attorns to the claimant, he may set this up as an eviction by way of defence to an action for rent, subject to his proving the evictor's title. There is no eviction, however, if the tenant gives up possession voluntarily. "

Quite recently, this Court in **Mangat Ram & Anr. v. Sardar Meharban Singh & ors., [1987] 1 Scale 964**, to which one of us was a party, observed:

"The estoppel contemplated by S.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.

See also: **Fida Hussain v. Fazal Hussain & Ors., AIR (1963) MP 232, K.S.M. Guruswamy Nadar v. N.G. Ranganathan, AIR (1954) Mad. 402, S.A.A. Annamalai Chettiar v. Molaiyan & Ors.,**

**AIR (1970) Mad. 396 and Chidambara Vinayagar Devasthanam
v. Duraiswamy, ILR (1967) 1 Mad. 624.”**

However from the later expressions the interpretation given is different, though referring to the expressions right from that of Privy Council and with roots from the Anglo Saxon law and the expressions mainly relevant in this regard are the following.

The Apex Court in **S.K.Sharma Vs. M.K.Varma**², it was held on the scope of estoppel against a tenant-employee of railways under Sec.116 of Evidence Act at paras-13 to 16 by referring to S.Thangappan's case of 1999(7)CC 474 and Vasudev's case of 2002(2)SCC-50, Currimbhoy & Co. case of AIR 1933-PC-29 and Bilaskumar's case of AIR 1915-PC-96 that from the wording of Sec.116 of Evidence Act, a tenant once inducted by a landlord, later cannot deny his landlord's title however defective it may be and same is also the position of a sub-tenant inducted by a tenant. It was held that the rule of estoppel enacted has three main features of the tenant is estopped from denying the title of his landlord over the tenancy premises at the beginning of tenancy and such estoppel operates and continues so long as tenancy continues until tenant surrendered possession to the landlord and the principle embodied in the Sec.116 of Evidence Act can be extended suitably to the requirement of individual cases and the estoppel continues till tenant surrendered possession to the landlord or has been evicted and the obligation to restore possession to his landlord there from ceases and fulfils or by proving of eviction of the landlord by the paramount title holder from possession.

In **Bogadi Kannababu Vs. Uggina Pydamma**³ it was held on the scope of the estoppel against a tenant under A.P. Tenancy Act, at paras-16&17 that in the eviction petition court needs to decide only whether relationship of landlord and tenant exists and not the question of title of landlord and for that conclusion relied upon Bilas Kunwar's case of 1915 privy council holding that a tenant who has been let into possession cannot deny his landlord's title however defective it might be, so long as he hasn't openly restored

² AIR 2002-SC-3294

³ AIR 2006-SC-2403

possession by surrender to his landlord and also referred Atchyam Veerraju's case of AIR 1966 SC 629 which was with the same view and also referred Tej Bhan Madan's case of 1988(3) SCC 137 holding that a tenant was precluded from denying title of landlord on general principle of estoppel between landlord and tenant and the principle in its basic foundation mean no more than that, under certain circumstances law considers it unjust to allow a person to approbate and reprobate.

In **Bansraj L.P Mistra Vs. S.P Jones**⁴, it was held on the scope of estoppel against a tenant at paras-12 to15 by referring to Kumar Krishna's case of AIR 1937-PC-251 that the rule of estoppel embodied by the first limb of Sec.116 of Evidence Act applies to tenancies and the rule of estoppel embodied by the second limb of Sec.116 of Evidence Act applies to licenses.

Even in the recent expression in **Ambika Savaria & Others Vs. Sanjay Sharma & Others**⁵ the Supreme Court held as follows:

"10. The relevant provision in the instant case, namely, Section 12(1)(e) of the Act is pari materia with Section 23-A(b) which was considered in Anar Devi's case. The expression, "if he is the owner thereof" is common and identically placed. Para 18 of the decision in Anar Devi's case discloses that the respondent-tenant had acknowledged the ownership of the accommodation as that of the appellant and had regarded her as the landlord in his counter notice. In the circumstances it was held that the respondent was not entitled to deny the title of the appellant to the accommodation. During the course of its judgment, this Court dealt with "tenant's estoppel" as statutorily recognized in Section 116 of the Evidence Act and observed as under:-

"10. Since the doctrine of "tenant's estoppel" could throw light on the question as to what can make a landlord to succeed in enforcing his right to recover possession of accommodation from a tenant under clause (b) of Section 23-A of the Act, it would be advantageous to refer to its scope and applicability, before taking it up for our consideration.

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

⁴ 2006(3)SCC 91

⁵ AIR 2016 SC 3681

them, is well settled. Jessel, M.R., who adverted to that doctrine in *Stringer's Estate*, *Shaw v. Jones-Ford*[2] 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 a contract to pay rent so long as he held 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. Jagannath**[1976 4 SCC 184], 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.**[AIR 1937 PC 251], 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.

14. The scope and applicability of the doctrine of “tenant's estoppel” being what we have said of it, we shall now proceed to consider the aforesaid question which has arisen with reference to the right of

landlord under Section 23-A(b) of the Act in the matter of recovery of possession of the accommodation from the tenant.”

11. In the instant case though defendant Bhanaram in his written statement had denied ownership of the plaintiffs he went on to add, “This being a suit for eviction of a tenant, the question of ownership is not relevant to the suit”. In his cross-examination he clearly admitted that the lease from Nazul Department stood in the name of the plaintiffs and that the witness himself had produced that document in some other proceedings. He had further admitted that he used to pay rent by money orders in the name of the father of the plaintiffs. On facts, it must be held that defendant Bhanaram had without any doubt regarded the plaintiffs as landlords and owners of the suit house. This matter is thus fully covered by the decision of this Court in Anar Devi’s case and it was not open to defendant Bhanaram to question the ownership of the plaintiffs-landlords.”

10. From the above legal position and so far as the expression in **D.Satyanarayana supra** placed reliance by both parties were laid down therein was that title paramount i.e., head lessor in the case of sub lease, the sub tenant is not estopped from disputing title of the head lessor when title paramount that is the owner maintained the eviction proceedings though otherwise no tenant of immovable property shall during continuance of tenancy be permitted to deny that landlord of such tenant had, at the beginning of tenancy had title to such immovable property. It is not in relation to denial of title by tenant of the landlord under whom he took the premises on lease saying there is another paramount owner that issued notice requiring them to pay rents. The expression no doubt referred the earlier expression of the Apex Court in **Atyam Veerraju Vs. Pechetii Venkanna**⁶ of the general rule of tenant cannot acquire right in derogation to landlords title

⁶ AIR 1966 SC 629

and cannot dispute title of the landlord, is subject to exceptions to say tenant is not precluded from denying the derivative title through the landlord and it is open to tenant even without surrendering possession to show that since the date of tenancy, the title of the landlord come to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession, under threat of eviction he had attorned to the paramount title holder.

11. Here coming to the facts it is not even the case of the revision respondents/tenants, who have taken the premises of lease by execution of the registered lease deeds and within the contractual obligation of tenancy not terminated, that pursuant to the notice of the so called paramount title holder from the determination of lis between that paramount title holder and the plaintiff in the 3 suits, paying rent to that paramount title holder or attorned by any reply or by any conduct or by any proof to that effect. Here under that guise the tenant during subsistence of lease cannot avoid payment though he need not maintain, apart from cannot be maintain an inter-pleader suit or to compel to interplead with persons other than claiming through the landlord as per Order 25 Rule 5 read with Section 88 CPC but to deposit or payment into Court, if not chosen to pay to the plaintiff for recording part satisfaction for withdrawal as per Order 24 CPC or Order 15-A CPC or even within the power of the Court to keep the amount in deposit pending adjudication of the lis to pay to the ultimate successful person if any in the meantime as ***custodio legis*** by investing at best in Fixed Deposit to get the benefit. It is also because the Apex Court in later expressions including in

Ambika supra though not referred the expression in **D.Satyanarayana supra** (2 JB), referred earlier expressions of the Apex Court in **Anar Devi Vs. Nathu Ram**⁷ among other which considered the earlier expressions including the privy council expression in **Kumar Krishna Prasad Lal Singha Deo Vs. Baraboni Coal Concern Limited**⁸ that was also relied in **D.Satyanarayana Supra** among them including in **Sri Ram Pasricha Vs. Jagannath**⁹ in categorically holding in a suit for eviction by landlord tenant is estopped from questioning the title of landlord because of Section 116 of Evidence Act as held by the Judicial committee of Privy Council in **Kumar Krishna Supra** and thereby Court shall not proceed to consider the question as to the right of the landlord in the matter of eviction of the tenant from the premises let out as **Anardevi supra** considered this scope of law saying for the tenant it is not open to question the ownership of the plaintiff/landlord, once accepted as landlord and entered the lease and from the tenant once acknowledged the ownership of the accommodation as that of the plaintiff as landlord. As the doctrine of tenant's estoppel governs the relationship of landlord and tenant is founded on a contract of tenancy entered into by them, as well settled by Jessel M.R., who adverted to that Doctrine in Stringer's Estate, **Shaw Vs. Jones Ford (LR 6 Ch D 1)** saying where a man having obtained no title and have had times by a man in possession who assumes to give him a title as tenant, he cannot letter his landlord's title, though, of course the real owner can always recover possession against both as it is perfectly intelligible

⁷ 1994 4 SCC 250

⁸ AIR 1937 PC 251

⁹ AIR 1976 SC 2335

doctrine to say he took possession under contract of lease show pay rent so long as he hold possession under special person recognizes as landlord from whom possession taken and to give it effect be at the end of the term of said landlord and having so taken he is not allowed to say that more than whose title he admits and under whose title he took possession has no title being estoppel by contract.

12. It is needless to say, the present plaintiff's non-success in civil lis up to Apex Court level is different from the so called paramount owner's maintaining a civil suit and claim for entitlement to possession by ejectment of the plaintiff landlord and defendants tenants herein and to decide the same on own merits. The expression in **D.Satyanarayana Supra** is inbetween original landlord, his tenant and subtenant and subtenant attorns to main landlord on his filing suit for eviction is different to the facts of the case on hand. In view of the same from the mere giving of notice by so called paramount owner to the tenants or landlord does not absolve the liability of tenants to pay rents to landlord or to vacate by voluntary surrender of possession by terminating the tenancy. Any right of paramount owner to maintain ejectment suit against the owner of the premises and also by showing the tenants as codefendants does not even enable the tenants to avoid payment of rents or damages for use and occupation so long as continuing in possession without surrender, unless evicted by paramount owner or atleast paramount owner files suit and obtain any order for deposit in court.

13. Having regard to the above, the revisions are allowed by setting aside the dismissal orders passed by the lower Court and the tenants are directed to pay or deposit all the arrears of rent, since stated all through from the so called paramount owner issued notice not paid, within 15 days from the date of receipt of this order and in the event of payment to pass receipt by the land lord and in the event of deposit by not willing to pay directly, the Court shall permit the plaintiff to withdraw by furnishing any personnel bond as security else to invest in FD till adjudication of the suit lis. If the tenants failed to deposit within 15 days from the date of receipt of this common order, the defence of defendants in all the 3 suits are liable to struck down by virtue of this order by the trial Court with no other option by invoking Order 15-A and Section 151 CPC.

14. Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.11.2016

Note: L.R. Copy to be marked.

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