

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
12.11.2019

DELIVERED ON
15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.1107 OF 2019

AND

CMP NO.24055 OF 2019

M/s.R. Tech Industries
Rep. By its Proprietor
Mr.R.Rajendra Babu
RM-2, Teleflo Mini Indl. Estate,
No.3/88, Mount Poonamallee Road,
Ramapuram Village, Chennai 89. ...Appellant/Defendant

vs.

1. K.Radhalakshmi
2. K.Ramesh Boopathy ... Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 09.04.2019 made in A.S.No.22/2017, on the file of the III Additional District and Sessions Judge, Poonamallee by confirming the Judgment and Decree dated 18.08.2014 made in O.S.No.242/2008, on the file of the Sub-Court, Poonamallee.

For Appellant : Mrs.Nalini Chidambaram, SC
for Mr.R.Thanjan

For Respondents : Mr.P.Subba Reddy

J U D G E M E N T

The defendant in OS No.242 of 2008, who suffered a decree for ejectment at the hands of the Courts below, has come up with this Second Appeal.

2. The suit was laid by the plaintiffs claiming that the defendant became a tenant under the plaintiffs on 01.02.2002, the monthly rent was fixed at Rs.7,325/- for one composite shed.

The rent was payable at the beginning of the month. Since the defendant failed to pay the rent, the second plaintiff sent a letter on 29.01.2008 informing the defendant to purge itself of the default failing which the tenancy will be terminated. During the month of May 2008, the defendant along with other tenants sent a letter dated 30.05.2008 stating that the rent will be paid only during the first week of the succeeding month instead of paying advance rent. This stand of the defendant, according to the plaintiff is in violation of the terms of the lease agreement between the parties.

3. It is also claimed that there were certain proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, under which the property in question was declared surplus at the hands of the plaintiffs. The proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, finally ended before the Hon'ble Supreme Court, wherein, the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, were upheld. However, claiming that the defendant having entered into a tenancy and having obtained possession under the tenancy agreement cannot deny the title on the hand of landlord namely, the plaintiffs, the plaintiffs terminated the tenancy and filed a suit seeking ejectment.

4. The suit was resisted by the defendant contending that the plaintiffs having lost title to the property, are not entitled to maintain the suit in ejectment. According to the defendant, as per the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the land has been declared as surplus and it does not belong to plaintiffs, therefore the plaintiffs had no right to file a suit for ejectment having lost title to the property. Various proceedings taken under the said Act were also referred to in the written statement filed by the defendant.

5. At trial, the son of the first plaintiff one Bala Boopathy, was examined as P.W.1 and one Yasodharan, was examined as P.W.2. Exhibits A1 to A18 were marked. One Rajendrababu, was examined as D.W.1 and Exhibits D1 to D8 were marked on the side of the defendant.

6. Upon a consideration of evidence on record, the Trial Court came to the conclusion that the Rule of Estoppel under Section 116 of the Transfer of Property Act, would apply to the case on hand and the defendant is thus prevented from denying the title of the landlord. The Trial Court relied upon the judgment of this Court in SA No.43 of 2012 dated 16.08.2012 to

buttress its conclusion that the Rule of Estoppel had applied to a tenant who gets into possession, after the landlord has lost the right over the property.

7. According to the Trial Court, the exemption from Rule of Estoppel propounded under Section 116 of the Transfer of Property Act, could be invoked only in a case where the landlord loses title after the commencement of the tenancy. The Trial Court also pointed out that the judgment of this Court in Second Appeal No.43 of 2012 which emanated from a proceeding initiated by the present plaintiffs against another tenant was confirmed by the Hon'ble Supreme Court on 04.10.2013, vide its order in SLP (Civil) No.37171 of 2012. On the said conclusions, the Trial Court granted a decree for ejectment as prayed for. Aggrieved the defendant preferred an appeal in AS No.22 of 2017.

8. The Lower Appellate Court, upon a reconsideration of evidence agreed with the conclusions of the Trial Court dismissed the appeal. Aggrieved by the said dismissal, the defendant has come up with this Second Appeal.

9. I have heard Mrs.Nalini Chidambaram, learned Senior Counsel appearing for Mr.R.Thanjan, for the appellant and Mr.P.Subba Reddy, learned counsel appearing for the respondents on caveat.

10. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the appellant would vehemently contend that once the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had concluded and the Courts including the Hon'ble Supreme Court had upheld the proceedings resulting the respondents losing title to the property, the suit in ejectment filed by the appellant would not be maintainable. She would also rely upon the order of the Hon'ble Supreme Court dated 01.04.2013 made in SLP (Civil) No.3946 of 2012, confirming the judgment of this Court in Writ Appeal No.554 of 2011 dated 15.11.2011.

11. Mr.P.Subba Reddy, learned counsel appearing for the respondent/caveator would submit that it is after the judgment of the Hon'ble Supreme Court in SLP (C) No.3946 of 2012, the Hon'ble Supreme Court had by its judgment in SLP (C) No.37171 of 2012 dated 04.10.2013 upheld the right of the landlord, namely, the plaintiffs herein to seek a decree in ejectment against the tenant, who came into possession after vesting of the property in the Government, pursuant to the proceeding taken under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

12. Mr.P.Subba Reddy, would also draw my attention to the judgment of this Court in SA No.43 of 2012, wherein this Court

had held that the Rule of Estoppel propounded by Section 116 of the Transfer of Property Act, would apply on all fours to the case on hand. He would also point out that the judgment of this Court in SA No.43 of 2012 has been confirmed by the Hon'ble Supreme Court in SLP (C) No.37171 of 2012 dated 04.10.2013. He would also point out that in Rehoboth Garment Process, rep by its Proprietor P.Joseph Rajasekar v. Radha Lakshmi, reported in 2013 (1) CTC 799, this Court had held that the Rule of Estoppel would not apply, if the tenant contends that the title of the landlord had come to an end subsequent to the commencement of the tenancy. This Court in the said judgment has also noted that the appellant/tenant had come into possession after the proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, had ended and therefore, the denial of title by the tenant would clearly result in forfeiture under Section 111(g) of the Transfer of Property Act. While doing so, this Court had held as follows:

12. In this regard, the Courts below have considered the provisions found in Section 111(g) (2) of the Transfer of Property Act and also Section 116 of the Evidence Act and arrived at the conclusion that the appellant/defendant incurred forfeiture because of the denial of title of the landlord and setting up the title in Government and that the appellant/defendant was also estopped from disputing the title of his landlord applying the rule of estoppel enshrined in Section 116 of the Evidence Act. Section 116 of the Evidence Act reads as follows:

"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 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."

13. Though the section does not recite exceptions to the rule, judicial pronouncements have recognized certain exceptions. They are as follows:

The estoppel is restricted to the denial of

the title of the landlord at the commencement of tenancy and it shall be open to the tenant to show that since the date of 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 the tenancy to the paramount title holder. This was held so by the Supreme Court in D.Satyanarayana Vs. P.Jagadish reported in (1987) 4 Supreme Court Cases 424. Of course, it is true that the rule of estoppel is not attracted if the tenant contends that since (subsequent to) the date of commencement of tenancy the title of the landlord has come to an end. The appellant/defendant seems to rely on the said enunciation of principle providing an exception to the rule of estoppel found in Section 116 of the Evidence Act. But the appellant/defendant has not contend that the title of the respondent/plaintiff after the commencement of the tenancy had come to an end and that hence, he is entitled to deny and dispute the title of the landlord. On the other hand the appellant/defendant has contended that even before the inception of the tenancy, the Government took over the property under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

13. Again in S.S.P. Washing rep. by its Proprietor K.Sekar v. Radha Lakshmi, in Second Appeal No.946 of 2012, this Court had reiterated the said principles. In view of the above pronouncements of this Court and the fact that the judgment of this Court in SA No.43 of 2012 which arose out of an ejectment suit filed by the first respondent herein against one of the tenant, I am of the considered opinion that the tenant in the case on hand, the defendant would be prevented by the Rule of Estoppel propounded under Section 116 of the Transfer of Property Act, from denying title of the landlord. Such denial, in my opinion, would amount to forfeiture the lease in terms of Section 111(g) of the Transfer of Property Act. The Courts below have appreciated the position of law and come to the conclusion that the tenant cannot seek an exemption from the applicability of the Rule of Estoppel as per Section 116 of the Transfer of Property Act in the case on hand. I do not find any legal error in the conclusions of the Courts below in

passing a decree against the appellant.

14. I therefore do not find any question of law much less substantial question of law arising for consideration in this Appeal. Hence the Appeal fails and is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv

To

1. The III Additional District and Sessions Judge,
Poonamallee.
2. The Subordinate Judge,
Poonamallee.

Copy To
The Section Officer,
V.R.Section,
High Court of Madras.

+lcc to Mr.R.Thanjan, Advocate, S.R.No.95285
+lcc to Mr.P.Subba Reddy, Advocate, S.R.No.95004

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CS/03/03/2020

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