

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 945 OF 2020

SRI RAJ KISHORE THAKUR & ANR.
VS.
SRI RID KARAN SHARMA & ORS.

For the petitioners:

Mr. Kushal Chatterjee.
Mr. Debabrata Roy,
Mr. Abirlal Chakraborty,

For the opposite party nos. 1&3:

Mr. Saptangsu Basu,
Mr. Srijib Chakraborty
Mr. Suvraneel Saha.

Heard on : 29.07.2021

Judgment on : 02.09.2021

Biswajit Basu, J.

1. The instant application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for eviction under Section 13 of the West Bengal Premises Tenancy Act, 1956 and is directed against the order dated February 05, 2019 passed by the 5th Court of learned Civil

Judge (Junior Division) Howrah in the said suit being Title Suit No. 262 of 1993.

2. The defendants in the said suit filed an application under section 17 (2) (2A) (b) of the said Act of 1956 disputing the existence of relationship of landlords and tenants between the parties to the suit and prayed determination thereof. In the said application, the defendants contended, inter alia, that the plaintiffs, the opposite parties herein are claiming right, title and interest over the suit property on the strength of a deed of lease executed by the superior landlord Sri Sri Laxmi Narayan Jew and others in favour of their predecessor-in-interest and being empowered by the clauses of the said deed of lease, the said predecessor-in-interest of the plaintiffs had inducted the predecessor-in-interest of the defendants as sub-tenants in the suit property but during the continuance of the said tenancy the period of said lease since has expired by efflux of time the relationship of landlords and tenants between the plaintiffs and the defendants has ceased to exist and by virtue of the clauses of the said deed of lease the defendants have become direct tenants under the said superior landlord and are paying rent as such to the shebait of the said Debottar Estate 'Dr. Sushanto Chatterjee'. The learned Trial Judge by the order impugned has disposed of the said application holding that such relationship between the parties does exist.

3. Mr. Kushal Chatterjee learned advocate for the petitioners referring to the definition of 'landlord' under Section 2(d) of the said Act of 1956 submits that one has to be the present landlord to exercise the right to collect rent

from the tenant. The plaintiffs after the expiry of the period of said lease are not the present landlords of the defendants, as such, are not entitled to collect rent from them. Mr. Chatterjee to bolster his said argument refers to the decision of the Hon'ble Supreme Court in the case of **PUKHRAJ JAIN vs. PADMA KASHYAP AND ANOTHER** reported in **(1990) 2 Supreme Court cases 431**. He further refers to the decision of the Hon'ble Supreme Court in the case of **D. SATYANARAYANA vs. P. JAGADISH** Reported in **(1987) 4 Supreme Court Cases 424** to contend that since the defendants have attorned to the paramount title-holder, a new jural relationship of landlord and tenant has come into the existence between them, as a consequence thereof, Section 116 of the Evidence Act, 1872 is no fetter to challenge the title of the plaintiffs. He concludes that the learned Trial Judge has absolutely misdirected himself in holding that there exists relationship of landlords and tenants between the plaintiffs and the defendants.

4. Mr. Saptangshu Basu learned senior advocate for the plaintiffs, puts emphasis on the words *'includes any person who, for the time being, is entitled to receive rent'* appearing in the body of the said Section 2(d) of the said Act of 1956 to contend that the said definition is an inclusive definition wide enough to take any person within its fold to receive the rent of any premises, whether or not on his own account, therefore, according to him, any attempt to give strict or narrow meaning of the said definition runs counter to the actual meaning and purport of the said definition. His next submission is that the lessee's title to realise rent from the sub-lessee continues until lessee's actual eviction, till then, sub-lessee is estopped from

disputing lessee's title. He, to fortify his said argument places reliance on the decision of the Hon'ble Division Bench of this Court in the case of ***In Re: Ganesh Trading Co. Pvt. Ltd.*** reported in **AIR 1985 CALCUTTA 37**. He concludes, the learned Trial Judge has rightly held that there exists relationship of landlords and tenants between the plaintiffs and defendants.

5. Having heard learned counsel for the parties and on close scrutiny of the materials-on-record, it appears that the point falls for consideration in the present revisional application is, whether in the facts and circumstances of the present case, the defendants are estopped under Section 116 of the Evidence Act, 1872 from challenging the title of the plaintiffs to realise rent from the defendants.

6. Shorn of irrelevancies, the case is that the superior landlord of the suit property Sri Sri Laxmi Narayan Jew and Sri Sri Chandi Thakurani executed a deed of lease in respect of the suit property in favour of the predecessor-in-interest of the plaintiffs on August 30, 1975 for a period of 18 years, with the right to induct sub-tenants therein and in terms thereof on the expiry of the period of lease the said sub-tenants are supposed to be direct tenants under the superior landlord, the defendants are the heirs of one of the said sub-tenants so inducted.

7. Sir George Rankin while discussing the scope of Section 116 of the Evidence Act, 1872 in the case of ***KUMAR KRISHNA PROSAD LAL SINGHA DEO vs. BARABONI COAL CONCERN, LTD. AND OTHERS*** reported in **A.I.R. 1937 (Privy Council) 251**, has observed that "*Section 116, Evidence Act, 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 licensor 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.”

8. In the context of the issue under consideration it is profitable to quote following observations of the Court of appeal in the case of **INDUSTRIAL PROPERTIES (BARTON HILL) LTD AND OTHERS V ASSOCIATED ELECTRIAL INDUSTRIES LTD (WARD & CO (LETTERS) LTD AND OTHERS, THIRD PARTIES; WARD & CO (LETTERS) LTD, FOURTH PARTY)** reported in [1977] ALL. ER 293 :-

“If the landlord, on the tenant’s holding over, sues him for possession or for use and occupation or mesne profits, the tenant cannot defend himself by saying: ‘The property does not belong to you, but to another.’ But if the tenant is disturbed by being evicted by title paramount or the equivalent of it, then he can dispute the landlord’s title.” at page 301 (emphasis supplied by me)

*“Short of eviction by title paramount, or its equivalent, however, the tenant is estopped from denying the title of the landlord. It is no good his saying: ‘The property does not belong to you but to a third person’ unless that third person actually comes forward and successfully makes an adverse claim, by process in the Courts or by the tenant’s attornment; or acknowledgement of it as by the tenant defending on an indemnity. If the third person, for some reason or other, makes no adverse claim or is debarred from making it, the tenant remains estopped from denying the landlord’s title. This is manifestly correct: for, without an adverse claim, it would mean that the tenant would be enabled to keep the property without paying any rent to anybody or performing any covenants. That cannot be right. That was the reasoning adopted by the Court of Queen’s Bench in *Biddle v Bond*, a case of a bailor and bailee, but the Court treated it as the same as landlord and tenant.”*

9. The Hon'ble Supreme Court in the decision reported in **(1987) 4 Supreme Court Cases 424 (supra)** relied on by Mr. Chatterjee held that the rule of estoppel is 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 title paramount from contending that the landlord had no title before the tenancy commenced or that the title of the landlord since has come to an end. In the said decision it has further been held that it will be sufficient if there was a 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.

Paragraphs 3 and relevant excerpts from paragraph 4 of the said decision are reproduced below for ready reference:-

“3. The appeal must be allowed on the sort 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 Section 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. Section 116 of the Evidence Act provides that no tenant of immovable property 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. 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.

4.The estoppel under Section 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 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.

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 Vol. 27 Halsbury's Laws of England, 4th edn., para238 :**

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 the 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.

.....”

10. The decision reported in **AIR 1985 CALCUTTA 37 (supra)** relied on by Mr. Basu is a pointer to the issue under consideration. In the said decision the Hon'ble Division Bench of this Court has held that even an order of eviction against the lessee before its execution cannot constitute eviction by title paramount, disentitling the lessee to realise rent from the sub-lessee. It has further been held in the said decision that sub-lessee under Section 116 of the Evidence Act, 1872 would not be precluded from pleading loss of title of the lessee subsequent to his induction as a result of eviction by title paramount but mere order of eviction against the lessee itself cannot constitute eviction by title paramount until actual dispossession in consequence of the eviction order.

Paragraph 5 and relevant excerpts from paragraph 6 of the said decision are quoted below for ready reference:-

“5. The short point that arises for our consideration, therefore, is as to whether the order for eviction as passed against the lessee by itself determines the lessee's title to realise rent from the sub-lessee and whether such an order even before its execution can constitute eviction by title paramount. On a careful consideration of the point so raised, it appears to us that such a point is no longer res integra. Such a point was specifically raised before a Division Bench of this Court in the case of *National Jewellery Works v. D.P. Works* express terms upheld the claim of rent of a lessee who has suffered a decree for eviction but yet had not been evicted in execution thereof. Mr. Mukherjee has rightly drawn our attention to two other decisions supporting the same view. In the case of *Adya Nath Ghatak v. Krishna Prosad Singh* AIR 1949 PC 124, the Privy Council held that a tenancy between A and C stood determined not by the decree for eviction obtained in

1925 against A, but by execution thereof in 1928. The view taken by the learned Trial Judge is fully supported by a decision of the Madras High Court in the case of Bhagavatula K. Rao v. Mungara Sanyasi ILR 55 Mad 601.”

“6.It appears to us to be settled principle that though under Section 116, Evidence Act, the lessee is precluded from disputing the title of his lessor at the date of the lease, he is not precluded from pleading loss of title of the lessor subsequent to the induction as a result of eviction by title paramount. But in our opinion, a mere decree or order for possession by itself cannot constitute eviction by title paramount. In order to constitute such eviction there must be actual dispossession may be by delivery of symbolical possession in consequence to the decree or order for possession.....”

11. In the present case there is nothing on record to suggest that the defendants have attorned to the title paramount under any threat of dispossession or under any adverse claim or even on the demand of the title paramount. Therefore, without going into the veracity of the rent receipts produced by the defendants to prove that they have paid rent to the superior landlord after expiry of the period of lease, the said payments, being voluntary actions of the defendants cannot come to their advantage to bring their case out of Section 116 of the Evidence Act, 1872. The terms of the lease deed by virtue of which the defendants are claiming to be the direct tenants under the superior landlord cannot override such position of law.

12. The next contention of Mr. Chatterjee that the plaintiffs are not the present landlords of the defendants demands a close scrutiny to the definition of ‘landlord’ under Section 2(d) of the said Act of 1956, as such, reproduced below for ready reference:-

“ 2.(d). “landlord” includes any person who, for the time being, is entitled to receive but for a special contract, would be entitled to receive, the rent of any premises, whether or not on his own account;”

13. The definition of landlord, quoted above, is an inclusive definition, it is rightly submitted by Mr. Basu that any restricted or narrow interpretation of the said definition runs counter to its scope. It is not essential for a person to be owner of the premises in order to be a landlord under the said definition, what is required is his entitlement to receive the rent, obviously such entitlement is required to be adjudged with reference to time, in other words, the entitlement must exist as on the date of claim of rent. The Hon’ble Supreme Court in the case reported in **(1990) 2 Supreme Court cases 431 (supra)** relied on by Mr. Chatterjee while dealing with the definition of ‘landlord’ under Section 2(e) of the Delhi Rent Control Act, which in pari materia with Section 2(d) of the West Bengal Premises Tenancy Act, 1956 has interpreted the expression ‘*for the time being*’ embodied in the section of both Acts holding that the landlord has to be understood *in praesenti*, i.e., anyone entitled to receive rent is the landlord. As discussed above, the rule of estoppel since operates against the defendants in disputing the title of the plaintiffs to receive rent from them, undoubtedly the plaintiffs are the present landlords of the defendants. The said decision of the Hon’ble Supreme Court in the facts and circumstances of the present case, is of no help to the defendants.

Summing up the discussion made above this Court is of the view that the learned Trial Judge has not committed any jurisdictional error in

holding that the relationship of landlords and tenants exists between the plaintiffs and the defendants.

The order impugned, therefore, does not call for any interference.

C.O. 945 of 2020 is dismissed without any order as to costs.

Time for deposit of the arrear rent is extended for a period of six months from date.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)