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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2021

PRONOUNCED ON : 04.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1384 of 2008

and

M.P.No.1 of 2008

1. Hameedha
Wife of Hassan

2. Fathimabi

3. Dilshath

4. Parvin

5. Subbaida

6. Shakirabanu

7. Mohamed John

8. Ammaponnu

All 2 to 8 Daughters of Hassan

9. Allapitchai
S/o, Hassan

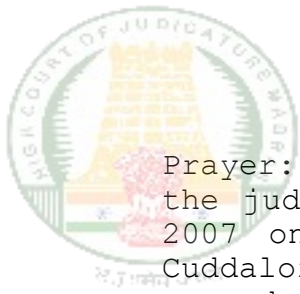
All 1 to 9 at
No.1 Chinnapallivasal Street,
Manjakuppam,
Cuddalore 1.

... Appellants/Respondents/Defendants

Vs.

Dayalan,
S/o, Rajagopal
6 K Red Cross Road,
Cuddalore 1.

... Respondent/Appellant/Plaintiff



Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 10.09.2008 passed in A.S.No.21 of 2007 on the file of the Second Additional Subordinate Judge, Cuddalore reversing the judgment and decree dated 09.01.2007 passed in O.S.No.11 of 2006 on the file of the Principal District Munsif at Cuddalore.

For Appellants : Mr.S.Kingston Jerold

For Respondent : Mrs.R.Meenal

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 10.09.2008 passed in A.S.No.21 of 2007 on the file of the Second Additional Subordinate Court, Cuddalore reversing the judgment and decree dated 09.01.2007 passed in O.S.No.11 of 2006 on the file of the Principal District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court. The defendants in O.S.No.11 of 2006 are the appellants in this Second Appeal.

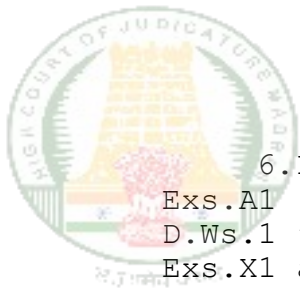
3. Suit for recovery of arrears of rent with interest.

4.The case of the plaintiff in brief is that the suit property was purchased by the plaintiff from one Selvambal and her husband Senthamarai Kanan by way of a sale receipt and took the possession of the property and also purchased the two service connections standing in the name of his vendors and the plaintiff had carried on a hotel business in the suit property. Subsequently, rented out the portion of the property to one Hassan (since deceased). He rented out not only the superstructure but also the business and the articles and it is a composite lease. The said Hassan, who was the tenant, was permitted to use the electricity power and he defaulted to pay the rent and the period of tenancy also expired. Hence the plaintiff filed the suit against him in O.S.No.320 of 1993 on the file of the Subordinate Court, Cuddalore for recovery of possession. The said suit after contest was decreed and while the plaintiff was making arrangement to take the possession of the suit property in the occupation of Hassan, though disconnection was effected, Hassan had been taking/consuming the power illegally and subsequently also attempted to get a separate service connection in the suit property without the consent and knowledge of the plaintiff and the plaintiff also gave objection to the Electricity Board. Still the Electricity Board chose to give a separate service connection in the name of



Dharmakarthi, Arulmigu Bhagavathi Amman Temple. Hence the plaintiff was necessitated to institute the suit in O.S.No.260 of 2002 on the file of the District Munsif Court, Cuddalore and the same is still pending. Hassan has defaulted to pay the rent from 01.12.2002 and he died on 26.05.2004. The first defendant is his wife and the defendants 2 to 9 are his children and the defendants are the legal heirs of the deceased Hassan and they are in the suit property and carrying on the hotel business. Hence the defendants are liable to pay the arrears of rent from 01.12.2002 to 30.11.2005. Hence the suit.

5.The defendants resisted the plaintiff's suit contending that they are not aware of the purchase of the suit property by the plaintiff from one Selvambal and the suit levied by him in O.S.No.320 of 1993 on the file of the Subordinate Court, Cuddalore. The site of the suit property belongs to Arulmigu Bagavathi Amman Temple and the plaintiff was only a tenant. The plaintiff sublet the portion of the property to one Hassan but it is not a composite lease. Hassan was in the possession of the property as a tenant of the temple. While so, the temple who is the paramount title holder, issued notice to Hassan on 30.09.2002 and took the possession of the property from Hassan on 31.05.2003 and thereafter Hassan was not in the possession of the suit property. The temple had taken the possession of the property and leased out to one Mohammed Abdul Kathar and it is only Mohammed Abdul Kathar who is in the possession and enjoyment of the suit property and these facts are very well known to the plaintiff and suppressing the same, the plaintiff has laid the suit on false allegations. The defendants are not aware of the obtainment of the service connection as pleaded by the plaintiff and denied that Hassan was occupying the suit property till his demise ie., on 26.05.2004 and subsequent there to, the defendants are in the occupation of the suit property and carrying on the hotel business, the abovesaid allegations are totally false to the knowledge of the plaintiff. The defendants are not in the possession of the suit property or running the hotel business and therefore, they are not liable to pay any rent to the plaintiff. The defendants are not liable to pay any rent since Hassan was evicted by the temple on 31.05.2003. There cannot be a decree for rent after 31.05.2003. The plaintiff has to seek his remedies only against the temple authority and the present tenant namely Mohammed Abdul Kathar. The defendants are not liable to pay the arrears of rent claimed by the plaintiff and the plaintiff has received an advance amount of Rs.25,000/- and if the said amount is adjusted towards the rent, it is only the plaintiff who would be liable to pay the balance to the defendants, since Hassan has been evicted from the suit property on 31.05.2003 itself. Hence the suit is liable to be dismissed.



6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A32 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 to B27 were marked. Further, Exs.X1 and X2 were also marked.

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7. On an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, the trial court was pleased to dismiss the plaintiff's suit. On appeal preferred by the plaintiff, the first appellate court, on a consideration of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court by way of allowing the appeal preferred by the plaintiff, granted the decree in favour of the plaintiff that he is entitled to recover the sum of Rs.39,000/- only after deducting the advance sum of Rs.15,000/- towards the arrears of rent claimed by him and accordingly directed the defendants to pay the sum of Rs.39,000/- with interest at 6% per annum from the date of the suit till the date of realization and accordingly decreed the plaintiff's suit. Impugning the judgment and decree of the first appellate court, the defendants have preferred the present second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

a) Whether the judgment and decree of the Lower Appellate Court is vitiated by its failure to consider the provisions contained in Section 116 of the Indian Evidence Act in its proper perspective?

b) Whether the findings of the Civil Court in the previous proceedings between the same parties for eviction are binding on the respondent and in the present proceedings?

c) Whether the personal decree granted against the appellants is sustainable in the absence of any proof that the late Hassan Maricair left an estate and the same is inherited by the appellants?

9. From the materials placed on record and the submissions put forth by the respective parties, it is found that the site of the suit property belongs to Arulmigu Bhagavathi Amman Temple and the superstructure put up thereon belongs to the plaintiff. It is also seen that the plaintiff has taken the site of the suit property on lease from the Arulmigu Bhagavathi Amman Temple and sublet the suit property ie., the superstructure along with hotel business to one Hassan and thus according to the plaintiff, Hassan is a sub-tenant of the suit property. The



monthly rent for the suit property is stated to be Rs.1,500/-. It is not in dispute that Hassan died on 26.05.2004. The defendants who are the legal representatives of the deceased Hassan, deny that Hassan had not paid the rent in respect of the suit property from 01.12.2002. According to the plaintiff, he has levied suit against him for the recovery of possession and the arrears of rent in O.S.No.320 of 1993 on the file of the Subordinate Court, Cuddalore. From the judgment passed in the abovesaid suit, marked as Exs.A5 and A6, it is noted that the plaintiff has been granted a decree for possession in the abovesaid suit, however the court had declined his claim of arrears of rent. On a reading of the judgment passed in the abovesaid suit marked as Ex.A5, it is seen that the plaintiff has claimed the arrears of rent from Hassan for a sum of Rs.13,500/- and pleaded that he has not paid the rent for nine months ending with June 1993. Further, the plaintiff also in the abovesaid suit had pleaded that he had terminated the tenancy of Hassan ending with 30.04.1993, by sending the termination notice on 07.04.1993. The court in the abovesaid suit had held that the plaintiff is not entitled to seek the arrears of rent claimed by him amounting to Rs.13,500/- and further held that considering the receipts marked as Exs.B7 to B9 in the abovesaid suit, Hassan had paid the rent till the institution of the abovesaid suit. The abovesaid suit was instituted by the plaintiff on 24.06.1993. Thus, it is found that the claim of the recovery of arrears of rent amounting to Rs.13,500/- sought for by the plaintiff in the abovesaid suit was declined. Further in the abovesaid suit, the court also held that inasmuch as, the plaintiff had terminated the tenancy of Hassan and thereafter the parties have not entered into a fresh lease agreement, the plaintiff would be entitled to recover only the possession and not the arrears of rent as claimed by him.

10. It has neither been pleaded or established by the plaintiff that he had the entitlement to sublet the suit property inclusive of the site. When admittedly the site of the suit property belongs to the temple and the plaintiff is only a lessee of the site and when the plaintiff has not placed any material to hold that he had the authority to sublease the site belonging to the Temple to Hassan, according to the temple authority examined as P.W.2, the plaintiff has no authority to sublease the site belonging to the temple. Be that as it may, the plaintiff has subleased the suit property inclusive of the site to Hassan. In the abovesaid background, it is evident that the temple is the paramount title holder and the plaintiff is the lessee of the temple qua the site and the deceased Hassan was the sub-lessee.

11. The defendants have resisted the plaintiff's suit



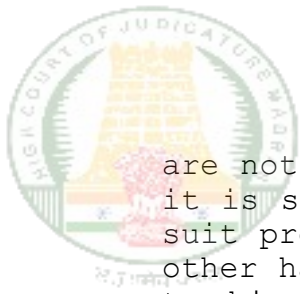
contending that the temple had already taken the delivery of the suit property from Hassan on 31.05.2003 by issuing an eviction notice to Hassan on 30.09.2002. The notice issued by the temple dated 30.09.2002 has been marked as Ex.B2. On a perusal of Ex.B2, it is found that the temple has sent the abovesaid notice to Hassan claiming that he has taken the sublease of the suit property without the permission of the temple, who is the paramount title holder and further also putforth that the plaintiff has subleased the suit property to him without the permission of the temple and also by cheating the temple and therefore set out the case that possession of the sublessee ie., Hassan of the suit property is illegal and the plaintiff is not entitled to sublease the suit property to any one and also in that connection, they had issued a notice to the plaintiff and based on the abovesaid facts called upon the sublessee i.e, Hassan to immediately hand over the possession, failing which he would be evicted directly. Following the abovesaid notice, it is found that Hassan, on the threat of eviction of the paramount title holder ie., the temple, had handed over the possession of the suit property to the temple and the receipt issued by the temple in connection with the same to Hassan has been marked as Ex.B3. On a reading of the contents found in Ex.B3, it is noted that Hassan had handed over the suit property to the temple on 31.05.2003. According to the defendants, the temple has thereafter leased out the suit property to Mohammed Abthul Kathar and the same could also be seen from the agreement entered into between the temple and Mohmmmed Abdul Kathar marked as Ex.B11. Following the same, it is noted that it is only Mohammed Abdul Kathar who has been running the hotel business in the suit property and also paying the rent to the temple and also enjoying the service connection and the same could be gathered from the receipts marked as Ex.B12 to B18 and the electricity bill receipts marked as Exs.B19 to 25.

12. As above pointed out the plaintiff had obtained a decree for recovery of possession in O.S.No.320 of 1993 laid against Hassan. Challenging the same, it is found that Hassan had preferred the appeal. After he had handed over the possession of the suit property to the temple under Ex.B3, it is noted that Hassan had informed the same in the appellate court by way of additional written statement and the same could be gathered from the copy of the additional written statement filed by Hassan in A.S.No.78 of 2003 on the file of the Principal District Court, Cuddalore whereunder he had stated that the temple authorities issued a notice to him on 30.09.1992 and taken the delivery of the property from him on 31.05.2003 and leased out the suit property to third parties and since he is now not in the possession of the suit property, there cannot be any decree against him for the delivery of possession and therefore prayed that the suit laid by the plaintiff is liable to be dismissed on



that ground. Pending the abovesaid appeal, Hassan having died on 26.05.2004, it is noted that the abovesaid appeal preferred by Hassan has been dismissed as abated and the same could be gathered from the judgment passed in the appeal suit No.78 of 2003 dated 15.09.2004 marked as Ex.A9 and the Court in the abovesaid appeal, after recording the memo intimating the death of Hassan, who is the appellant, resultantly dismissed the appeal as abated.

13. Hassan had surrendered the possession of the suit property to the temple as above pointed out and the same is only based on the notice of eviction sent by the plaintiff's temple dated 30.09.2002 marked as Ex.B2. The abovesaid facts are not disputed by the plaintiff. The plaintiff examined as P.W.1 during the course of cross examination would only state that he does not know whether the temple had given the notice of eviction to Hassan dated 30.02.2002 and further would testify that it is true that Hassan had entrusted the possession of the suit property to the temple on 31.05.2003, however would claim that the handing over of the possession of the suit property by Hassan to the temple is wrong and further would state that the temple has not taken the possession of the suit property physically and would deny that the suit property has been subsequently leased out to Mohammed Abdul Kathar by the temple and would plead ignorance whether Hassan had filed the additional written statement in the appeal informing about the handing over the possession of the suit property to the temple and would also admit that he (the plaintiff) is running the hotel business adjacent to the suit property and also further would admit that Hassan had been running the hotel business in the suit property and therefore the above being the evidence of the plaintiff examined as P.W.1, it is evident that the plaintiff is fully aware of the handing over of the possession of the suit property to the temple by Hassan on 31.05.2003 and when the same had been brought to the notice of the Court by Hassan by filing the additional written statement in the appeal, the claim of the plaintiff is that he is not aware of the eviction notice sent by the temple to Hassan directing his eviction from the suit property is untenable. Therefore it is seen that the plaintiff himself is only a lessee of the site of the suit property under the temple and the plaintiff having not established his entitlement to sub-lease the suit property and on the other hand, the temple has pleaded in Ex.B2 notice that without the authority and legal entitlement, the plaintiff has subleased the suit property to Hassan by cheating the temple and therefore Hassan is liable to be evicted directly, who is only a sublessee, in such view of the matter, as rightly contended by the defendants' counsel, Hassan was forced and compelled to evict the suit property by the temple, the paramount title holder on 31.05.2003 and when the above facts



are not in dispute and established as above pointed out and when it is seen that Hassan has not surrendered the possession of the suit property to the temple voluntarily or on his own and on the other hand, only on the threat of eviction put up by the temple to him and when admittedly, the temple is a paramount title holder, all put together it is evident that the suit property had been entrusted to the temple by Hassan, by fearing threat of eviction and that apart when Hassan's tenancy had already been terminated by the plaintiff ending on 30.04.1993 as mentioned by the plaintiff' in O.S.No.320 of 2003 as above pointed out and when the plaintiff has not placed any material to show that Hassan continued to be the sub-lessee of the suit property based on the lease agreement, cumulatively viewed, it is found that the deceased Hassan, out of fear of eviction by the paramount title holder namely the temple entrusted the possession of the suit property to the temple on 31.05.2003 and thereafter the temple had also leased out the suit property to Mohammed Abdul Kathar as above pointed out. Therefore at present, it is only Mohammed Abdul Kathar, who is in the occupation of the suit property and running the business. Admittedly Hassan had died on 26.05.2004.

14. Though it is put forth by the plaintiff that after the demise of Hassan, the defendants are carrying on the hotel business in the suit property and thereby liable to pay the rent as claimed by him, however absolutely, there is no acceptable and reliable material placed on record by the plaintiff to hold safely that the defendants had been carrying on the hotel business in the suit property following the demise of Hassan. When the paramount title holder had clearly established that it is only Mohammed Abdul Kathar examined as D.W.3 who had been running the hotel business in the suit property as the lessee of the temple, the claim of the plaintiff that the defendants had continued to run the hotel business in the suit property after the demise of Hassan on 26.05.2004 cannot at all be countenanced. However the plaintiff in support of the abovesaid case would only rely upon the marriage invitation card marked as Ex.A11. According to the plaintiff in Ex.A11, the address is shown as the suit property. Ex.A11 is the invitation card given by the relatives of the deceased Hassan. However, the mere mentioning of the address in the marriage invitation card marked as Ex.11 would not go to point out that the hotel business run by Hassan in the suit property is being continued by his legal heirs in a legal manner particularly, when it is noted that it is only D.W.3 Mohammed Abdul Kathar who had been running the hotel business in the suit property pursuant to the lease agreement dated 06.06.2003 marked as Ex.B11. Accordingly, it is found that when the plaintiff endeavored to take the possession of the suit property pursuant to the decree obtained by him in O.S.No.320 of 1993, D.W.3 had objected to the delivery of the



possession to the Court Ameen stating that it is he who is in the occupation of the suit property as a lessee under the temple from 06.06.2003 and that the suit property only belongs to the temple and the decree obtained by the plaintiff would not bind him and the same could be gathered from the objection marked as Ex.B26. In addition to that D.W.3 has also filed an application in the execution proceedings levied by the plaintiff contending that the execution petition made by the plaintiff should be dismissed as he had taken the lease of the suit property from the paramount title holder ie., the temple and the same could be gathered from the copy of the petition preferred by him under Order 21 Rule 97 CPC., r/w 151 CPC marked as Ex.B27.

15. Considering the abovesaid factors in toto, now it has to be seen whether the entrustment of the possession of the suit property by the deceased Hassan to the temple, the paramount title holder is justified legally. According to the first appellate court, inasmuch as the deceased Hassan had taken over the sublease of the suit property only from the plaintiff, he is bound to deliver the possession of the suit property only to the plaintiff and not to the temple and therefore held that the handing over of the possession of the suit property by the deceased Hassan to the temple cannot be legally sustained and he would be estopped from denying the title of the plaintiff qua the suit property as per the provisions of section 116 of the Indian Evidence Act.

16. However, according to the defendants, when there is a threat of eviction from the paramount title holder and when the plaintiff himself is claiming right qua the site of the suit property only under the temple, the paramount title holder and when a threat of eviction is given by the temple and in consequence of the said threat, the sub-lessee ie., Hassan had attributed the tenancy in favour of the temple and also hand over the possession of the suit property to the temple and when he had not handed over the suit property voluntarily, in such view of the matter, it has to be held that the handing over the possession of the suit property by Hassan is real and bona fide and in such view of the matter, the provisions contained in section 116 of the Indian Evidence Act would not operate as an estoppel on the part of Hassan in entrusting the suit property to the temple by denying the title of the plaintiff to the suit property. In this connection, the defendants have placed reliance upon the decision reported in A.I.R(38) 1951 Madras Page No.284 [S.Chokkalingam Pillai and another Vs. M.S.s.M.Ganesa Shanmugasundaram Pillai]. The principles of law had been outlined in the abovesaid decision as follows:

Evidence Act (1872), Section 116 -
Threat of eviction by title paramount - What constitutes. In



order to constitute an eviction by a person claiming under paramount title, it is not necessary that the tenant should be put out of possession or ejection should be brought and that a threat of eviction is sufficient, and if the tenant, in consequence of such threat, attorns to the claimant, he can set this up as an eviction by way of defence to an action for rent, subject to his proving the victor's title, but there is no eviction if the tenant gives up possession voluntarily. If the true owner is armed with a legal process for eviction which cannot be lawfully resisted even though the tenant is not put out of possession, the threat to put him out of possession amounts in law to eviction. The threat by the third party as well as the submission to it by the tenant who attorns to him must be real and bonafide. For a threat of eviction by title paramount to constitute a good defence, the party evicting must have good title and the tenant must have quitted against his will.

17. The abovesaid position of law has also been enunciated by the Apex Court in the decision reported in 1987 (4) SCC 424 [D.Satyanarayana Vs. P. Jagadish] and the Apex Court in the abovesaid decision has held that as per the exceptions to the rule of estoppel outlined under section 116 of the Indian Evidence Act, when the sub-tenant under a threat of eviction by title paramount attorns to the real owner, he is not estopped in the eviction proceedings commenced by the tenant from denying the tenant's title and it will be sufficient if there was a threat of eviction on the tenant, as a result of such threat, attorns to the real owner and he can set up such eviction by way of defence, either to an action for rent or to a suit for rejection laid against him. The principles of law governing the abovesaid position of law has been outlined by the Apex Court in the abovesaid decision which are extracted below:

Rent Control and Eviction - Subtenant - Eviction proceedings against, by tenant - Rule of estoppel under Section 116 of Evidence Act- Applicability against the subtenant - Exception to the rule - When the subtenant under a threat of eviction by the title paramount attorns to the real owner he is not estopped in eviction proceedings commenced by the tenant from denying the tenant's title - Evidence Act, 1872, Section 116

Rent Control and Eviction - A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10(2)(i) and (vi) - Eviction order cannot be passed under, where there is no finding regarding bona fides of the dispute as to title and where subtenant regularly paying rent to the landlord.

The appellant was a subtenant of the tenant-respondent. The landlord served a notice on the appellant alleging that there



was unlawful subletting by the respondent and that he had decided to terminate tenancy of the respondent with the expiry of one month. The appellant thereupon attorned in favour of the landlord and started to pay him directly the monthly rent. After becoming the direct tenant, the appellant stopped paying rent to the respondent. The respondent asserting to be the lessor commenced proceeding for eviction of the appellant under section 10(3)(b)(iii) of the A.P. Buildings (Lease, Rent and Eviction) Control Act on grounds that there was wilful default in payment of rent, that there was denial of title on his part and that there was bona fide requirement of the premises. The Additional Rent Controller disallowed the application on the ground that the respondent not being the lessor had no locus standi to initiate the proceedings for eviction. But the first appellate court directed the eviction of the appellant under Section 10(2)(i) and (vi) holding inter alia that in view of the denial of his title as well as admitted non-payment of rent, the appellant was estopped under Section 116 of the Evidence Act from denying the title. The High Court upheld this view. Allowing the appeal the Supreme Court.

Held:

There being a threat of eviction by a person claiming title paramount i.e. Head lessor, the appellant was not estopped under Section 116 of the Evidence Act from challenging the title and right to maintain the eviction proceedings of the respondent, as the lessor.

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. The word 'during the continuance of the tenancy' in Section 116 mean during the continuance of the possession that was received under the tenancy in question. 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. An exception to the rule of estoppel under Section 116 is 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 and a new jural relationship of landlord and tenant had come into existence between them. In order to constitute eviction by title



paramount, 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 for ejectment. However, if the tenant 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 section 116 of the Evidence Act.

There could be no order of termination in terms of Section 10(2)(i) unless it could be said that in the facts and circumstances of the case the dispute as to title was not bona fide. The rule of estoppel under Section 116 of the Evidence Act being inapplicable the appellant was entitled to dispute the title of the respondent. Furthermore, after service of the notice of eviction, the appellant having attorned to the head lessor, there came into existence a direct tenancy. The appellant had since then been paying rent to the landlord and was not in arrears. Therefore, the order of eviction under Section 10(2)(i) (vi) passed against the appellant was not sustainable in law.

In the decision reported in 2002(2) SCC 50 [Vashu Deo Vs. Balkishan] it has been held by the Apex Court that the rule of estoppel outlined under section 116 of the Indian Evidence Act holds Mutatis mutandis and govern the inter se relationship between the tenant and sub-tenant and further following the decision of the Apex Court reported in 1987 (4) SCC 424 [D.Satyanarayana Vs. P. Jagadish] held that eviction by paramount title holder is a good defence which brings to an end the obligation of the tenant/lessee to put his lessor landlord in the possession of the property under section 108(q) of the Transfer of Property Act, however the burden of proof regarding eviction by title paramount lies on the party who sets up that the defence.

18. Applying the above principles of law outlined by the Apex Court in the abovesaid decisions to the case at hand, as above pointed out, when there had been a threat of eviction on the part of the temple to the deceased Hassan by issuing the eviction notice marked as Ex.B2 and when it is noted that the temple had also secured the service connection in the suit property in its own name even during the continuance of the running of the hotel business by Hassan in the suit property, after the service connection in the same had been disconnected and the plaintiff having also admitted that the temple had obtained the service connection in its name in the suit property



and as above pointed out, when the plaintiff has failed to establish that he had the legal entitlement to sub-lease the suit property to Hassan without the consent of the temple and pointing out all these facts, when the temple had issued the notice of eviction causing a threat to Hassan to leave the suit property, left with no other alternative, Hassan had to surrender the suit property to the temple, the paramount title holder and therefore it is seen that the entrustment of the suit property by Hassan to the temple is not voluntarily effected and on the other hand, by force and compulsion, the temple had secured the suit property from Hassan. As above pointed out, the abovesaid facts had also been brought to the notice of the plaintiff by Hassan by filing the additional written statement in the appeal proceedings and further as above noted the plaintiff has also admitted the abovesaid facts in his testimony, in such view of the matter, following the threat of eviction by the paramount title holder and consequent to the same, Hassan having handed over the possession of the suit property to the temple, it is seen that the relationship of landlord and tenant between the plaintiff and Hassan had come to an end and therefore the obligation to Hassan to put the plaintiff in the possession of the property is not required and therefore the determination of the first appellate court that the handing over of the possession of the suit property by Hassan to the temple is not legally sustainable, as such, cannot be countenanced, particularly, in the light of the abovesaid decisions of the Apex Court and the discussions putforth supra.

19. Moreso, when it is found that it is only D.W.3, Mohammed Abdul Kathar who has been running the hotel business in the suit property since 06.06.2003 and the same had been established by the defendants without any pale of doubt, as above pointed out and Hassan also having died on 26.05.2004, if at all the plaintiff is entitled to obtain the rent from Hassan in respect of the suit property, the same could be only for the period from 01.12.2002 to 31.05.2003 and considering the advance amount paid by Hassan to the plaintiff amounting to Rs.15,000/-, if the arrears of rent for the abovesaid period could be adjusted towards the advance amount, it is seen that it is only the plaintiff who would be liable to pay the balance sum to Hassan and after his death, to his legal representatives.

20. In addition to that, as above pointed out, the plaintiff has failed to establish that subsequent to the demise of Hassan on 26.05.2004, the defendants had continued to run the hotel business in the suit property and the document marked by him as Ex.A9 would not serve the said version of the plaintiff in any manner, in such view of the matter, it is found that the defendants would not at all to be liable to pay the arrears of rent claimed by the plaintiff in the suit and therefore the



defendants could not be mulcted with personal liability to pay the arrears of rent claimed by the plaintiff and seen in all aspects, it is found that the plaintiff is not entitled to secure the reliefs prayed for.

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21. In the light of the abovesaid discussions, the first appellate court has failed to consider the applicability and scope of section 116 of the Indian Evidence Act in the proper perspective particularly the exception to the rule of estoppel outlined therein as enunciated by the Apex court in the decisions rendered to supra. The first appellate court has failed to consider that the plaintiff has failed to establish that the defendants are running the hotel business in the suit property after the demise of Hassan and also failed to consider that Hassan is not running the hotel business in the suit property after handing over the suit property to the temple on 31.05.2003. As rightly pointed out by the defendants' counsel, the reasonings and conclusions of the first appellate court in upholding the plaintiff's case are found to be perverse, illogical and irrational and liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendants and against the plaintiff.

22. For the reasons aforesaid, the judgment and decree dated 10.09.2008 passed in A.S.No.21 of 2007 on the file of the Second Additional Subordinate Court, Cuddalore are set aside and the judgment and decree dated 09.01.2007 passed in O.S.No.11 of 2006 on the file of the Principal District Munsif Court, Cuddalore are confirmed. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1.The Second Additional Subordinate Judge,
Cuddalore.

2.The Principal District Munsif,
Cuddalore.



Copy to

The Section Officer,
VR Section,
High Court.

+1cc to M/s. S.Kingston Jerold, Advocate, S.R.No.6428

+1cc to M/s.R.Meenal, Advocate, S.R.No.6108

S.A.No.1384 of 2008
and
M.P.No.1 of 2008

SSI (CO)
PR (08/09/2021)