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Jayaraman Vs. Jelhama

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Court : Chennai

Decided On : Mar-17-1995

Reported in : (1995)2MLJ240

Appellant : Jayaraman

Respondent : Jelhama

Judgement :
ORDER

S.S. Subramani, J.

1. The revision petitioner is the tenant in R.C.O.P. No. 25 of 1987, on the file of the Rent Controller (Principal District Munsif, Cuddalore).

2. The respondent filed the eviction petition against the present petitioner on the ground that she requires the building for her own occupation, and also on the ground that the tenant has defaulted in paying the rent at the rate of Rs. 80 per mensem, and the arrears of rent upto September, 1987 was Rs. 560. On the grounds of requirement of the buildings for demolition and reconstruction and denial of title also, the respondent (landlady), wanted eviction of the tenant.

3. The material facts alleged in the petition are, the land in which the scheduled premises situated belongs to Arulmigu Rajagopalaswami Temple. The temple executed a lease in respect of the land to one Veerappan Asari, and the lessee

put up a super-structure therein. The lessee bequeathed his leasehold right in favour of his grandson Selvaraju Asari. The petitioner herein was a tenant under Veerappan Asari, and, after his death, the tenancy was attorned in favour of his grandson. It is stated that the rental arrangement is in respect of the built-up portion only and not in respect of the vacant site. Selvaraju Asari executed a sale deed on 26.2.1987 in favour of the respondent, and immediately thereafter, the fact of sale was informed to the petitioner. In spite of the same, the petitioner filed a suit against the respondent as O.S. No. 275 of 1987, on the file of the District Munsif's Court, Cuddalore, for an injunction on the ground that the respondent, is attempting to dispossess him. The respondent, therefore, issued a notice on 11.4.1987 calling upon him to vacate the property. The petitioner sent an evasive reply, questioning the sale deed and also denying the title. After the same the respondent has not received any amount towards rent. It is also said that the respondent is occupying a rented premises for the purpose of her business, and the scheduled premises is bona fide required for her own occupation.

4. In the counter filed by the petitioner, it is admitted that the land belonged to the temple and Veerappan Asari was the lessee of the vacant site. It is also admitted by him that Veerappan Asari constructed a building therein, and even the vacant site and the backyard are in his possession. It is also stated that there was no prohibition for sub-letting. It is further contended that after the death of Veerappan Asari, he was paying rent to Selvaraju and he was paying municipal tax and other taxes. The temple was well aware about the sub-lease in favour of the petitioner and he is entitled to the benefit of the Rent Control Act. It is further contended that the right of Selvaraju was terminated by the temple by notice dated 2.10.1985, and immediately thereafter, the petitioner applied to the temple to permit him to pay the rent and to recognise him as the lessee. The petitioner produced all the records to show his possession. It is further stated that since Selvaraju committed default in paying the rent and since he was not in possession of the property, the sale deed executed by him in favour of the petitioner is also invalid. It is further contended that till the right of the petitioner is recognised, he should continue to pay the rent to Selvaraju and, believing the words of the Executive Officer, the petitioner was paying the rent, and there is no arrears of rent, and the entire amount has been paid to Selvaraju. All of a sudden, Selvaraju pressed the petitioner to vacate the

building and, therefore, he was compelled to file the suit before the District Munsif's Court, Cuddalore, as O.S. No. 275 of 1987. It is further contended that Selvaraju has no right to terminate the lease, particularly, when he is not in actual possession of the property. It is stated that the alleged superstructure over the vacant site, by fiction of law, has become the property of the temple, and as such, the said Selvaraju has no right to sell the superstructure, and consequently, the petitioner cannot claim the superstructure even if there is a sale deed in respect of the same. It is stated that by the conduct of Selvaraju, it must be taken that he has impliedly surrendered the superstructure to the temple. The alleged lease arrangement between the temple and the respondent is also denied. It is further stated that the claim for bona fide use is also not correct. Regarding the arrears of rent, it is contended that he has sent the rent by money order to the Executive Officer, but the same was refused to be accepted by him, and hence there is no arrears of rent. Ultimately he prays that the eviction petition may be dismissed with his costs.

5. The Rent Control Court took evidence in the matter. Exs.A-1 to A-11 were produced on behalf of the respondent and Exs.B-1 to B-3 were produced by the petitioner. Two witnesses were examined on behalf of the respondent, and the petitioner herein examined himself as R.W.1.

6. On the basis of the evidence let in the Rent Control Court found that the denial of title by the petitioner herein is not bond fide and the landlord is entitled to get eviction on the ground that the petitioner has committed wilful default in paying the rent, that the building is required for the landlady's own occupation, and that the building is also required for immediate demolition and reconstruction.

7. The petitioner herein filed R.C.A. No. 7 of 1989, on the file of the Appellate Authority (Subordinate Judge, Cuddalore). The, appeal was dismissed, and the, eviction order was confirmed. The said concurrent findings of the authorities below are challenged by the tenant before this Court.

8. After the revision was filed, the petitioner has filed C.M.P. No. 17947 of 1994 to receive additional evidence in the revision. The purpose of filing this petition is to show that the landlord has obtained other accommodation recently and it is

sufficient for her requirement, and hence the need for eviction on the ground of bona fide requirement for own use is not subsisting.

9. The main question that is agitated before this Court by the learned Counsel for site petitioner is that there is a bona fide dispute regarding the title by the landlord, and this is a case where the landlord must be directed to file a suit for getting possession of the property. The reasons for urging such contention are. (i) The temple, which is admittedly the owner of the land, has cancelled the lease arrangement with Selvaraju as evidenced by Ex.B-1; (2) that there has been correspondence by between the petitioner and the temple regarding the recognition of the petitioner as its tenant: and (3) even if the superstructure belonged to the lessee, since he is out of possession, the building also belongs to the temple and the sale deed in favour of the landlord conveying the building, has no legal validity. It is also contended that after the lease was terminated as per Ex.B-1, the landlord claims to have filed appeal before the Board of Revenue. Even though P.W.1 would say that he has obtained stay, the order of stay has not been produced, nor is there evidence to show that any appeal is pending. In such circumstances, the court has to act only on Ex.B-1 i.e., the lease in favour of the landlord's predecessor, has come to an end long before the sale deed, and the sale deed therefore cannot be acted upon.

10. As against that contention, the learned Counsel for the landlord argued that on the admission of the petitioner, himself, the landlord is entitled to get an order of eviction. The argument, is that the building now belongs to the temple, and even if there is a termination of lease, until the landlord ceases to have any interest over it, she may be recognised as the landlady, as defined under the Rent Control Act. It is also stated that the lease in favour of the petitioner is only in respect of the superstructure, and whatever be the dispute between the paramount title-holder and the landlady's predecessor, that cannot have any effect in so fat as the building is concerned.

11. On the basis 6f these rival contentions, we have to decide Whether the denial of title by the petitioner is bona fide. The learned Counsel contended that the tenant has adduced prima facie evidence to show that the denial is bona fide, and

the matter has to be 'relegated to civil court for adjudication.

12. The second proviso to Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, reads thus:

Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy; the Controller shall decide whether the denial of claim is bona fide and if he records a finding to that effect the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in the said sections notwithstanding that the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

13. Merely because a tenant denies the title, the jurisdiction of the Rent Control Court is not taken away, and the Rent Control Court has to decide whether such denial is bona fide.

14. In S. Rathinammal v. Ayyavu 93 L.W. 236, a learned Judge of this Court, has held thus:

In the light of what has been held by the Supreme Court about the approach to be made regarding direction for deposit of rents a simple denial of title of the landlord cannot take away the jurisdiction of the statutory authorities to invoke Section 11 of the Act. Even in a case where the landlord files a petition for eviction on the ground that the tenant had denied his title, the statutory authorities have the jurisdiction to find out whether there is a bona fide denial of title or not and if no case is made out on that aspect, under the Act, eviction can be ordered. Only in cases where the statutory authorities hold that there is a bona fide denial of title, the parties are directed to seek their relief in the civil court. Hence there is necessary power, conferred on those statutory authorities under Act 18 of 1960 to find out whether the denial of title is bona fide or not. Hence for the purpose of Section 11 of the Act, the concerned statutory authority can look into the prima facie material available on record and if it be shown that the relationship of landlord and tenant exists, in spite of the stand taken by the other side that the landlord is not having any title to the property, an order for payment or deposit of

arrears of rent and for continued payment or deposit of the rent can be made.

15. In the same reports namely, Kesava Naicker v. Sivagnana Mudaliar 93 L.W. 484, a learned Judge of this Court has held thus:.In addition, the simple denial of the relationship of landlord and tenant cannot oust the jurisdiction of the Rent Controller under the Act. If a persona in possession of the premises is not the tenant, then the landlord will not be entitled to initiate proceedings for an order of eviction against him. Disputed questions of the relationship of landlord and tenant have also to be decided by the Rent Controller. If the Controller decides that there is no such relationship, then the proceeding has to terminate without deciding the main question of eviction, but if, on the other hand, it is found that the relationship is that of landlord and tenant, the further proceedings have to go on. Therefore, a mere denial of the relationship cannot oust the jurisdiction on the authorities under the Act.

[Italics supplied]

16. The scope of an enquiry when the tenant denies the title of the landlord came up for consideration in 1987 K.L.J. 1455, wherein it was held thus:.'Bona fide' (or good faith)_ is a familiar term in legal parlance. Honesty, of course, is one of the attributes of good faith, but that is not enough. In certain contexts that which is done with due care and attention is said to have been done in good faith. But the word 'bona fide' when used in relation to jurisdictional permutations, has a wider import and a higher degree than the other two attributes. The aspect of bona fides in the context in which it is mentioned in the proviso may be referable to the state of mind of the tenant. But when a court has to come to a finding regarding such state of mind, there must be objective satisfaction for court that the tenant had that state of mind. The court, whose jurisdiction stands ousted on a finding that a certain plea or assertion made by a party is bona fide, must be in a position to hold that the plea is based on a very fair and reasonable supposition. In holding so, the court must have the satisfaction that there are strong or atleast substantial grounds or sufficient materials in support of the plea. The court must be in a position to say that the chances of the plea being upheld by the civil court are fairly on the higher side. Then alone the Rent Control Court is justified in finding that the

denial of landlord's title is 'bona fide'. In White v. Feast L.R. 7 Q.B. 353, Cockburn, C.J. met the problem of deciding about summary jurisdiction of Magistrates under a certain Statutes. When defendant set up a case of bona fide claim of right, His Lordship observed that the defendant is not entitled to call upon such magistrates to hold their hands unless he gives them sufficient evidence to convince them that he acted under a fair and reasonable supposition that he had a right to do the act, although he may have honestly believed that he was justified in doing the act.' (Italics supplied in the reports). Learned Greene, M.R. in Re Welsh Brick Industries Limited (1946) 2 All E.R. 197, did not think that there is any difference between the words 'bona fide disputed and the words disputed on some substantial grounds'. The observation was made in the background of a contention that a petitioning creditor had no locus standi, in winding up proceedings, to present a petition because his alleged debt was the subject of a bona fide dispute, and that the country court Judge should have dismissed the petition on the ground that winding up proceedings are not the appropriate procedure for dealing with disputed debits. The aforesaid observations lend support to the view which I take that there cannot be a finding that tenant's denial of title is bona fide unless the denial is based on a very fair and reasonable supposition of the plea on the strength of strong and substantial materials.

17. In K.A. Aboobacker v. N. Girija (1995) 1 K.L.J. 212, a Division Bench of that court K.T. Thomas and N. Dhinakar, JJ.) approved the earlier decision. The Bench held that the court whose jurisdiction stands ousted must have the satisfaction that there are strong or atleast substantial grounds or sufficient materials in support of the plea of the petitioner and the chances of the plea being upheld by the civil court must be fairly on the higher side.

[Italics supplied]

18. It is on the basis of the above settled principles of law, this Court has to decide whether the denial of title is bona fide.

19. The contention of the learned Counsel for the petitioner that since he has shown a prima facie case denying the right of the landlord that will be sufficient to refer the matter to the civil court therefore, cannot be accepted.

20. Now, let us take the pleadings and evidence in this case.

21. In the counter, the petitioner has admitted that the building was constructed by Veerappan Asari and subsequently Selvaraju Asari became its owner. It is also admitted by him in his counter that he was paying the rent to Selvaraju the plea of denial of title is taken in paragraph 9 of the counter. The reason for denying the title is that the Temple which is the paramount title-holder has terminated the tenancy in respect of the land. It is, therefore, contended that once the lease of land has come to an end, Selvaraju has no right to sell the superstructure, especially when he was not in actual physical possession of the property. It is further said that from the conduct of Selvaraju, there is an implied surrender of the superstructure to the Temple. The fact that notice terminating the tenancy of the vacant site was issued to the Temple was admitted by P.W.1, who is the husband of the landlady. But, from the admission in paragraph 5 of the counter, it can be seen that even temple recognised the right of Selvaraju over the superstructure in spite of the termination of the lease. The contention in the counter is that 'when the petitioner requested the temple to recognise him as a lessee, the Temple asked him to wait till it is finalized by the Commissioner, and till then, he was asked to pay the rent to Selvaraju, as usual. The contention is that on the basis of the direction given by the Executive Officer of the temple, the petitioner was paying rent to Selvaraju as before. So, it is admitted by the petitioner himself that in spite of Ex.B-1 notice, he continued to pay the rent to Selvaraju. The Temple also is not claiming right over the building when it directs the petitioner to pay the rent to its owner.

22. It is in this connection, we have to see whether Selvaraju can exercise independent right over the building when his right over the land is alleged to have ceased to exist.

23. The principle of the English Law that whatever is annexed to the soil belongs to the owner of the soil has no application in India. In Narayan Das Khettry v. Jatindra Nath Roy Chowdhry and Ors. , its held thus:

The maxim which is found in English Law, viz., 'quiequid platatur solo, solo cedit', has at the most only a limited application in India. There is nothing in the laws or

Customs of India, to show any traces, of the existence of any absolute Rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself.

24. In Dr. K.A. Dhairyawan and Ors. v. J.R. Thaku and Ors. : [1959]1SCR799 , the said principle was accepted by the Supreme Court. Their Lordships held that the ownership over the building or the structure can be claimed by different person from the owner of the land. That was a case arising under the Bombay Rents, Hotel and Lodging House Rates Control Act. There, as per the agreement, the lessee constructed a building in the property belonging to a temple. As per the provisions in the deed, it was stated that while the lessee surrenders the property, the ownership of the building will also vest in the temple. But, in view of some tenancy registration, the ownership over the land became vested in the Government and the temple lost its right. The temple thereafter filed a suit for a declaration that it is entitled to collect the rent from the building on expiry of the term of the lease. It was in such circumstances their Lordships of the Apex Court held that by virtue of the contract, the building is now vested in the temple and during the currency of the lease the ownership was with the lessee. Their Lordships accepted the principle enunciated in the decision reported in Narayan Das Khettry v. Jatindra Nath Roy Chowdhry and Ors. .

25. In Chellappan Nadar v. Krishnan Nair I.L.R. (1963) Ker. 111, the same question came up for consideration. While discussing the above question, their Lordships held thus:.No doubt the maxim quicquid inadedifieatur solo solo cedit, has no absolute application in India. In other words the rule of English Law that, whatever is attracted to the soil is part thereof and necessarily belongs to the owner of the land, is not the law in India. In England anything built or growing on land becomes part of the soil and automatically vests in the owner of the land. But, in India, a building or other fixture can be owned separately from the land on which it stands and can be the subject of separate transfer. Therefore, it need not necessarily belongs to the owner of the land although as a matter of fact, in the generality of cases, it does. But, it is not the law in India that a person can build a house on somebody else's land and call it his own, and not being in possession, obtain a decree for possession on the strength of title. The extent to which the

authorities go in applying the rule that in India a building can be owned separately from the land, to a case where a person has unauthorisedly built on a land of another, is that where that person suffers a decree in ejectment, he must, at the option of the owner of the land, be entitled to demolish and take away the materials of the building leaving the land undamaged, or, in the alternative, be paid the value of his building as compensation. The only right which the builder has is that, in the event of his being evicted, he should be allowed to take away the materials or be paid compensation.

26. The sale deed in favour of the respondent is in respect of the superstructure which, admittedly belonged to Selvaraju. On the basis of the decisions cited supra, Selvaraju was competent to alienate the building under the sale deed Ex.A-1.

27. In V.S. Devadoss v. S. Velu and Anr. : AIR1984 Mad150 , a similar question came for consideration, wherein the earned Judge said that even if the person may have no title over the land, if he is competent to claim right over the building that will be sufficient to claim his right as a landlord and evict the occupant under the provisions of the Act. While considering the point, the learned Judge held thus:.Even assuming that Kamalammal was not competent to convey the leasehold right in the site in favour of the petitioner the superstructure undoubtedly passed to the petitioner under the sale deed and the petitioner became entitled to collect the rent from that superstructure admittedly in the occupation of the respondent and the petitioner would, therefore, satisfy the definition of a landlord under the Act....

28. In this connection, it is also worthwhile to take into consideration the definition of 'landlord' under the Rent Control Act.

29. Section 2(6) of the Rent Control Act defines 'landlord' thus:

In this Act, unless the context otherwise requires--

landlord: includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator receiver or

guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.

Explanation: A tenant who sub-lets shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant.

It is clear from the above definition that the landlord need not be owner of the land. If he is person entitled to receive rent of a building, then he becomes a landlord for the purpose of the Act.

30. In this connection, it is also worthwhile to note Section 109 of the Transfer of Properly Act. The section provides the rights of the lessor's transfers. It says:

If the lessor transfers the property leased, or any part thereof, or any part his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects be subject to all the liabilities of the lessor as to the property or part transferred so long as (sic) the owner of it: but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him;

31. In Mrs. S. Nainammal Bibi v. Mrs. Umma Habiba Bibi : (1975)2MLJ29 , a learned Judge of this Court has held (at paragraph 8) thus:

Under Section 109 of the Transfer of Property Act, if the lessor transfers the property leased, or any part thereof or any part of his interest therein the transferee in the absence of a contract to the contrary shall possess all the rights of the transferor. Therefore, even if the plaintiff has not become the owner of the entire property, but she derived title only to a part of the interest of the lessor by virtue of the sale deed, Ex.A-1, she is entitled to all the rights of the lessor. The plaintiff, as the successor-in-interest of the lessor would undoubtedly be entitled to sue for possession of the property. Under such circumstances, it is not open to the first defendant to contend that no relationship of landlord and tenant existed between the plaintiff and herself and that therefore the suit in ejectment should fail.

32. In this case, the revision petitioner admitted that he was regularly paying the rent to Selvaraju recognising his ownership over the building. Even though he has pleaded that the Temple has become the owner of the superstructure after the issuance of Ex.B-1 notice, that is belied by the subsequent statement whereby he admits that he continued to pay the rent on the instructions of the Executive Officer even after Ex.B-1. So, the contention that the temple became owner of the building also cannot be accepted. Then, the only other contention that is taken is, that there must be an implead surrender by Selvaraju. P.W.2 is Selvaraju. He has spoken that he has not surrendered his right to the temple and, there is no other evidence in this case to show that the right of Selvaraju over the building was in any way extinguished.

33. Once it is held that Selvaraju was competent to convey the building to the landlady, and that he was realising the rent, that itself is sufficient to hold that the denial of title by the tenant is not bona fide. Apart from the above admission, the petitioner is also barred under Section 116 of the Indian Evidence Act from putting forward such a contention. The title that is denied in the pleading is, the right of Selvaraju to convey his title to the landlady. Under Section 116 of the Evidence, Act, no tenant of the immovable property can, during the continuance of the tenancy deny that the landlord had at the beginning of the tenancy title to such immovable property. The said Section also came for interpretation by the Apex Court. In Tel Bhan Madan v. II Additional District Judge : AIR 1988 SC1413 , it was held thus:

In regard to the effect of attornment Spencer Bovver and Turner on Estoppel says.

Where a tenant, with full knowledge of the facts, either expressly in writing or impliedly by acts, such as the payment of rent, attorns tenant to a person other than his original landlord or one who is claiming the estate or interest of such original landlord by assignment, succession, or otherwise, he is ordinarily estopped from questioning the title of the person to whom he has so attorned. But, here too, it is open to the party sought to be estopped to explain away the attornment, and so escape the estoppel to which he would otherwise be subject, by proof that, when he so attorned, he was labouring under mistake or ignorance

as to material facts affecting the title of the person to whom he attorned particularly if such error or ignorance was due to the fraud of that person.

[Italics supplied]

34. The said decision was followed in the decision reported in Pal Singh v. Sunder Singh : [1989]1SCR67 of the judgment at page 450) is relevant for the purpose of this case. It reads thus:

In Tej Bhan Madan v. II Additional District Judge : AIR 1988 SC1413 , this Court reiterated that there can be a denial of the title by the tenant of his landlord without the tenant renouncing his character as such where, for instance, he sets up a plea of jus tertii. But the implication of the ground on which the denial of the title was made was that if the tenant appellant could not have denied the vendor's title by virtue of the inhibitions of the attornment, he could not question the vendee's title either. The tenant did himself no service by this stand. This Court reiterated that the principle that the tenant cannot deny the title of the landlord in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. The law is that the estoppel of a tenant under Section 116 of the Evidence Act was a recognition and statutory assimilation of the equitable principles underlying the estoppel in relation to tenants. In this case the rent had all along been collected by the respondent.

35. In the decision reported in Subhash Chandra v. Mohammed Sherif and Ors. : AIR 1990 SC636 , their Lordships held that even though the tenant is entitled to challenge a derivative title, he cannot deny the title of the vendor who was the original lessor. While considering the point, their Lordships held thus:

The appellant, instead of challenging the derivative title of the respondents from 'N' if he be presumed to be the rightful owner, sought to deny the title of the respondents by challenging the title of their vendor 'N' which he is not entitled to do.

36. If the tenant is barred under the principle of estoppel from denying the title, any denial can only be without bona fide.

37. The authorities below were, therefore, right in holding that the denial of title by the petitioner is not bona fide.

38. It is admitted that after the sale in favour of the respondent, the petitioner has not paid any rent to her. The intention of the petitioner is clear, taken along with his conduct in denying the title. He, therefore, can only be treated as a wilful defaulter liable to be evicted on that ground.

39. In the decision reported in Majati Subbarao v. P.V.K. Krishnan Rao (deceased) by L.Rs. : AIR 1989 SC2187 , their Lordships held that if a tenant denies the landlord's title that itself is sufficient to pass an order of eviction. It need not be in a separate proceeding. In view of the finding that the denial is lacking in good faith, following the decision of the Apex Court, I hold that the tenant is liable to be evicted.

40. The question whether the landlord required the building for his own occupation or whether the building requires demolition and reconstruction is not necessary to be considered in view of the said findings.

41. As stated earlier, the tenant has filed C.M.P. No. 16627 of 1989 to receive additional documents by way additional evidence.

42. The landlord has filed a counter affidavit to the said C.M.P.

43. In view of the fact that the tenant is liable to be evicted on other grounds, the C.M.P. is dismissed as unnecessary.

44. In the result, the decisions of the authorities below are confirmed. The civil revision petition is dismissed with costs.

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