

CASE NO.:
Appeal (civil) 5467 of 1998

PETITIONER:
VASHU DEO

Vs.

RESPONDENT:
BAL KISHAN

DATE OF JUDGMENT: 11/01/2002

BENCH:
R.C. Lahoti & Brijesh Kumar

JUDGMENT:

WITH
CIVIL APPEAL No.5468 OF 1998

JUDGMENT

R.C. Lahoti, J.

The suit property consists of a shop. It forms part of a building owned by Sarvjanik Sampati Trust (hereinafter, the 'Trust', for short). On 1.1.1973 the shop was taken on rent by Balkishan, the plaintiff - respondent on a monthly rent of Rs.30/-. On 25.12.1975 Balkishan sub-let the shop to Vasudev, the defendant-appellant, on a monthly rent of Rs.150/-. The suit shop is governed by the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter the 'Act', for short).

The appellant fell into arrears of rent for the period 1.1.1981 to 31.12.1982. The respondent served a notice on the appellant and then filed a suit for recovery of arrears of rent as also for eviction on the ground available under clause (a) of sub-section (1) of Section 13 of the Act. On 30.3.1983, the Trust also filed a suit for eviction, against its own tenant- the respondent, on the ground of unlawful sub-letting of the premises by the latter. That suit is still pending. In any case, the result thereof is not known. So far as the case before us is concerned, the defendant-appellant raised a dispute putting in issue the rate of rent at which the respondent could recover rent from the appellant submitting that the agreed rent was in excess of the standard rent and hence was not recoverable. Another plea taken by the defendant-appellant was that subsequent to the institution of suit on 30.3.1983 by the Trust against the respondent, the appellant has on 1.4.1983 directly attorned in favour of the Trust and entered into a direct tenancy agreement and therefore, w.e.f. 1.4.1983, the right of the respondent to recover rent and secure eviction of the appellant had come to an end. On 25.7.1985, the learned Civil Judge, Bhilwara passed an order under Section 13(3) of the Act determining provisionally the rate of rent at which the appellant was required to deposit rent in the Court. This order dated 25.7.1985 was put in issue by the appellant by filing an appeal in the court of Additional District Judge, Bhilwara. Vide order dated 14.5.1992, the learned Additional District Judge allowed the appeal, and set aside the order of the trial court, forming an opinion that in view of the appellant having attorned and entered into direct tenancy with the Trust, the respondent was not

entitled to claim rent and recover possession from the appellant, and therefore, the suit filed by the respondent could not be treated as a suit for eviction; it remained only a suit for recovery of arrears of rent for the period upto 31st March, 1983. The respondent preferred a Civil Revision Petition to the High Court which was resisted by the appellant placing reliance on a Single bench decision of Rajasthan High Court in Kewal Ram v. Mangu Mal, AIR 1974 Raj. 201. When the Revision Petition came up for hearing before the learned Chief Justice of the High Court, he doubted the correctness of the decision in Kewal Ram's case and directed the petition to be placed for hearing before a Division Bench. By order dated 22.8.1996, the Division Bench has overruled the Single Bench decision in Kewal Ram's case and held that the relations, rights and obligations of the parties were governed by Section 13 of the Act and the sub-tenant (appellant herein) inducted by the tenant (respondent herein) could not directly attorn in favour of the Trust by excluding the principal tenant, and therefore, was bound to comply with the order of the trial court under Section 13(3) of the Act. The appellant sought for a review of the order of the Division Bench which has been rejected by order dated 23.3.1998. These appeals have been filed impugning the orders dated 22.8.1996 and 23.3.1998 passed by Division Bench of the High Court.

The issue arising for decision is : whether a sub-tenant inducted by a tenant in the premises governed by the provisions of rent control law can, during the continuance of sub-tenancy and without vacating the premises, attorn in favour of the owner of the premises and thereby refuse to discharge his obligations towards the tenant who admittedly inducted him in the premises? Strong reliance has been placed on behalf of the appellant on a decision of this Court in D. Satyanarayana v. P. Jagdish, AIR 1987 SC 2192 to which we will advert a little later.

Reference to a few relevant provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950, would be appropriate. 'Landlord' is defined by clause (iii) of Section 3 to mean 'any person who for the time being is receiving or is entitled to receive the rent of any premises as an agent, trustee, guardian or receiver for any other person or who would so receive or be entitled to receive the rent, if the premises were let to a tenant. The definition specifically provides that 'Landlord' includes a tenant in relation to a sub-tenant. Clause (iv) defines 'lease' as including a sub-lease. 'Tenant', according to clause (vii), means inter alia the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be, payable for any premises to his landlord including the person who is continuing in possession of the premises after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act. Section 13 which opens with a non-obstante clause, giving it an overriding effect over any other law or contract, enjoins a court not to pass any decree or make any order in favour of the landlord evicting the tenant unless a case for eviction was made out within the four corners of Section 13. The effect of a combined reading of these several provisions is to spell out two very relevant and significant implications. Firstly, a tenant in relation to a sub-tenant is a landlord and the sub-tenant is a tenant in relation to the tenant who has inducted him on the premises. Secondly, inspite of the tenancy having come to an end under the provisions of the Transfer of Property Act, or by the terms of contract, the tenant does not cease to be a tenant and continues to hold that status unless and until a decree for eviction under the provisions of this Act has been passed against him. Where the tenancy premises are governed by rent control law, merely on termination of tenancy the tenant cannot be evicted; the tenant is entitled to continue in possession enjoying status almost on par with a person whose contractual tenancy still subsists. He cannot be evicted unless a ground for eviction under the relevant

provision of rent control law is made out. He is not a tenant holding over because his tenancy is not continuing by volition or by act of the parties. Such continuance is attributable to the protection conferred by statute and therefore, he is called a statutory tenant and his tenancy a statutory tenancy (See Smt. Gian Devi Anand v. Jeevan Kumar & Ors.: AIR 1985 SC 796 and Damadilal & Ors. v. Parashram & Ors.: AIR 1976 SC 2229). The tenancy would determine only on a decree for eviction being passed against him. In Smt. Chander Kali Bai & Ors. v. Jagdish Singh Thakur and another : AIR 1977 SC 2262, this Court has held that a person continuing in possession of the accommodation after the termination of his contractual tenancy is yet a tenant within the meaning of the relevant rent control legislation and on such termination, his possession does not become wrongful until and unless a decree for eviction is made against him. If he continues to be in possession after the passing of the decree then he is in wrongful occupation of the premises. In spite of the termination of tenancy by contract or under the general law (other than rent control law), the tenant continues to be a tenant liable to pay rent and is not liable to pay any damages as his occupation is not unauthorized or wrongful until the passing of decree for eviction.

In the case at hand it is not disputed that the Rajasthan Premises Act applies to the suit premises. It follows that while working out relations of the parties inter se the provisions of the Rajasthan Premises Act shall have to be kept in view. The respondent-tenant holding the premises from the Trust would remain a tenant until the passing of a decree for eviction on one of the grounds contemplated by Section 13 of the Act in a suit filed by the Trust - the owner of the property, against the tenant-respondent. In spite of a threat for eviction by the Trust against the respondent, the respondent is neither liable to be evicted nor his status as tenant liable to suffer adversely except by a judicial pronouncement and that too on having achieved a finality. In short, so far as the appellant sub-tenant is concerned the title of the respondent tenant would not come to an end till the passing of such decree for eviction against him. Even if the Trust has instituted a suit for eviction the respondent-tenant has a right to contest. The suit may or may not be decreed. If the suit is dismissed how can it be said that the 'threat of eviction' by the Trust had resulted in respondent's eviction by title paramount? We now proceed to examine whether the appellant could have directly attorned to the owner-Trust by-passing the respondent-tenant on 1.4.1983, relying on the event of institution of suit for eviction by the owner Trust against the tenant-respondent on 30.3.1983 and whether the said event enables successfully raising of the plea of tenant-respondent's eviction by paramount title, bringing the obligation of the appellant sub-tenant to deliver possession over the tenancy premises to the respondent and to pay rent to him till that date? Under Section 108 clause (q) of the Transfer of Property Act, in the absence of contract or local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease. Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features : (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; (iii) Section 116 of Evidence Act is not the whole law of estoppel between landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an

immovable property and his tenant would also mutatis mutandis govern a tenant and his sub-tenant in their relationship inter se. As held by the Privy Council in *Currimbhoy & Co.Ltd. v. L.A.Creet & Ors.*: AIR 1933 PC 29 and *Mt. Bilas Kunwar v. Desraj Ranjit Singh and Ors.* : AIR 1915 PC 96, the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by his landlord's eviction by a paramount title holder. Eviction by paramount title holder is a good defence bringing to an end the obligation of the tenant to put the lessor in possession of the property under Section 108 (q) of the Transfer of Property Act. The burden of proving eviction by title paramount lies on the party who sets up such defence.

What is eviction by title paramount? In *Krishna Prasad Singh v. Adyanath Ghatak* : ILR 1943 Patna 513, Meredith, J. speaking for the Division Bench and on a review of judicial opinion stated the law in the following terms:

"To constitute eviction by title paramount no physical dispossession is necessary. 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. If in such circumstances the tenant openly and to the knowledge of his landlord attorns to the true owner the estoppel is gone.

The attornment, however, must be under compulsion. The party evicting must have a good and present title, and the tenant must have quitted against his will."

It was further held in *Krishna Prasad Singh's* case (supra) that there is all the difference between mere voluntary attornment and attornment under compulsion; a mere voluntary attornment would not enable the tenant pleading eviction by title paramount nor will the mere institution of a suit against the landlord by the true owner be enough. An unexecuted decree for possession obtained by a third party does not per se operate as an eviction of the tenant by title paramount, liberating him from the estoppel against pleading *jus tertia*. This decision was followed by Bose, J. in *Pusaram Maniklal Izardar v. Deorao Gopalrao Mali (minor) by guardian mother Parwati W/o Gopalrao* : AIR 1947 Nagpur 188. Vide para 20, Bose, J. summed up the facts in the following words:

"If A lets land to B and B enters into possession under the lease, B is bound to return possession to A on the expiry of the lease and he will not be allowed to set up the right or title of a third party C. If A directs B to surrender possession to C that might be a different matter. But here there was no direct communication between A and B. What happened was that A told C that C could enter into possession when the lease expired but before that happened A changed his mind and demanded possession from his lessee."

In these facts it was held that once A demanded possession

from B, then B cannot be heard to say in answer to that demand that C has right against A. A was held entitled to the decree for possession against B.

A decision by Madhya Pradesh High Court in *Radheylal v. Ratansingh* : 1977 MPLJ 335 bears a close resemblance with the facts of the case at hand. The suit premises were owned by the municipality and on 21.11.1960 taken on rent by the plaintiff. They were let out by the plaintiff to the defendant. On 30.1.1963 plaintiff determined the tenancy of the defendant and demanded arrears of rent as also the possession. On defendant's failure, the plaintiff filed a suit. The defendant, while admitting that the suit premises were initially let out to him by the plaintiff, inter alia contended that the rules of the municipality prohibited sub-letting of the premises and as dispute was going on between the plaintiff and the municipality, the defendant had applied to the municipality for grant of lease to him of the suit premises which was agreed to, and since the year 1962 the defendant had become tenant of the municipality. Referring to Section 108 (q) of the Transfer of Property Act, the Madhya Pradesh High Court held that the obligation of the tenant to hand over possession to the landlord on determination of tenancy cannot be escaped by the tenant contending that he has entered into a contract of tenancy with a person who has paramount title over his landlord and by voluntarily entering into contract with a person from whom his lessor was holding the lease. The landlord's tenancy had not come to an end by operation of law, and therefore, in the opinion of the Madhya Pradesh High Court, the sub-tenant's voluntarily becoming the tenant of the municipality and that too without the consent of the plaintiff (that is, his own landlord) could not be set up as a defence for discharging his obligation under section 108 (q) of the Transfer of Property Act. Yet another reason on account of which the defendant was held not entitled to save his possession on the basis of his having allegedly become the tenant of the municipality was that such transaction had taken place during the pendency of the suit between his landlord and himself and therefore, it was hit by the provisions of Section 52 of the Transfer of Property Act. The defendant being in actual physical possession of the premises was held bound to deliver possession to the plaintiff.

In *Gajadhar Lodha v. Khas Mahatadih Colliery Co. & Ors.* : AIR 1959 Patna 562 the following statement of law from Foa's General Law of Landlord and Tenant (Eighth Ed. p.194), has been quoted with approval by the Division Bench "Eviction by title paramount means an eviction due to the fact that the lessor had no title to grant the term, and the paramount title is the title paramount to the lessor which destroys the effect of the grant and with it the corresponding liability for payment of rent, so that mere eviction from, or a deprivation of the use and enjoyment of the demised premises, or part of them, whether such eviction be lawful or unlawful, is insufficient, where the lessor's title is not affected or called in question." To constitute a good defence of eviction by title paramount, three conditions must be fulfilled: (1) The eviction must have been from something actually forming part of the premises demised; (2) the party evicting must have a good title superior to that of the lessor and that of the lessee, and (3) the tenant must have quitted against his will. In *Sain Dar v. Sant Ram* : AIR 1959 Punj 564 it has been held that even if not actually evicted, if a judgment of eviction has been passed against the tenant, he can repudiate the title of his immediate landlord. But the mere fact of an apprehension that a suit for eviction might be brought by the paramount landlord does not justify denial of title of landlord and attornment to paramount landlord. We find ourselves in agreement with the above said judicial opinion and sum up the law as follows:

To constitute eviction by title paramount so as to discharge the

obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied: (i) the party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as a change in law or passing of decree by a competent court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence.

The appellant has on 25.12.1975, obtained the premises on rent from the respondent and was inducted into possession by the respondent. The title of the respondent to lease out the suit premises and to induct the appellant cannot be denied or disputed by the appellant so long as his sub-tenancy continues and he is in possession thereunder. On 30.3.1983, the Trust instituted a suit for eviction against the respondent and soon on 1.4.1983 the appellant voluntarily attorned in favour of the Trust without the consent of the respondent and without any compulsion.

We have already stated that the respondent's tenancy in the suit premises will not come to an end unless and until a decree for eviction on one of the grounds available under the Rajasthan Act has been passed against him and termination of his tenancy upheld by a judicial verdict. Till then he would remain a tenant of the Trust. Mere institution of a suit for eviction by the Trust, the owner of the property, against the respondent does not bring the tenancy of the respondent to an end. The respondent cannot be said to have been evicted by title paramount. It cannot be said that the respondent-tenant does not have any defence nor can he lawfully resist the suit filed by the owner Trust. The plain and simple legal position which flows is that the appellant must discharge his statutory obligation to put his landlord, that is, the respondent in possession of the premises in view of the latter's entitlement to hold the tenancy premises until his own right comes to an end and the respondent must discharge his statutory obligation to put his own landlord, that is, the Trust, in possession of the tenancy premises on his entitlement to hold the tenancy premises coming to an end.

We may now deal with D. Satyanarayana's case (supra) relied on by the learned counsel for the appellant. A suit for eviction from the demised premises was decreed under Section 10(2) (vi) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which provides for eviction of a tenant if the tenant has denied the title of the landlord or claimed a right of permanent tenancy and such denial or claim was not bona fide. The limited question arising for decision before this Court was whether the appellant was estopped from denying the title of the lessor under Section 116 of the Evidence Act, 1872 despite the fact that there was threat of eviction by the owner of the demised premises by a person having title paramount so as to examine whether such denial could be said to be bona fide or not. There was no dispute on facts. The statement of facts as set out in the judgment of this Court shows that the appellant was 'constrained to attorn in favour of the original lessor'. The High Court had upheld the decree of eviction passed by the Trial Court resting its judgment on the rule of estoppel. This Court stated the rule of estoppel and set out the well-settled exceptions to which the general rule of estoppel between landlord and tenant is subject : firstly, a tenant is not precluded from denying the derivative title of

the persons claiming through the landlord; secondly, the estoppel is restricted to the denial of the title at the commencement of the tenancy, that is, 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. That there was threat of eviction and as a result of such threat the tenant attorned to the real owner was opined to be sufficient to constitute eviction by title paramount, however, this Court has emphatically stated that if the tenant gives up possession voluntarily to the title holder, he cannot claim the benefit of this rule. The judgment of this Court in D. Satyanarayana's case has to be read as laying down that in the facts of that case the plea of the tenant that his landlord's title had come to an end did not amount to a denial or claim which was not bona fide so as to attract applicability of clause (vi) of sub-section (2) of Section 10 of the A.P. Buildings Control Act. The common law rule of estoppel, as codified in Section 116 of Evidence Act and its exceptions have been dealt with for determining the core issue whether the tenant denying title of landlord could be said to have done so bona fide or not. In D. Satyanarayana's case nowhere this Court has examined whether the relationship between the alleged paramount title holder and the landlord was governed by rent control law or not, nor the question of obligation of tenant to hand over possession to his landlord under Section 108 (q) of Transfer of Property Act came up for consideration. These are the features which distinguish D. Satyanarayana's case from the case before us. In the case before us the plea of eviction by paramount title is not available to the appellant for three reasons : firstly, it cannot be said that the Trust is armed with a legal process for eviction which cannot be lawfully resisted by the tenant-respondent or to which he has no defence; secondly, the attornment by the appellant in favour of the Trust is voluntary and not under any compulsion; and thirdly, it cannot be said that the Trust has such good and present title against the tenant-respondent so as to hold the appellant liable to be evicted against his will. As already stated, and even at the risk of repetition, it has to be emphasised that, in view of the tenant-respondent's relationship with the Trust being one governed by the provisions of the rent control law, his title as tenant (and hence as landlord as against the sub-tenant appellant) will not come to an end unless and until the suit for eviction filed by the Trust against the respondent is decreed and the decree has achieved finality.

For the foregoing reasons, the appeals are dismissed with costs.

.J.
(R.C. Lahoti)

.J.
(Brijesh Kumar)

January 11, 2002