TEJ BHAN MADAN

v.

II ADDITIONAL DISTRICT JUDGE AND OTHERS

MAY 9, 1988

[R.S. PATHAK, CJ, S. NATARAJAN AND M.N. VENKATACHALIAH, JJ.]

Indian Evidence Act, 1872: Section 116—Estoppel in relation to tenants—Whether there can be denial of title of landlord without tenant renouncing.

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947: Section 3(1)(f)—Denial of title of the landlord by tenant—Forfeiture of tenancy—When arises.

Mainavati, who had purchased the premises in question at a court-sale, conveyed the same by sale in favour of Gopinath. The appellant who was in occupation attorned his tenancy in favour of Gopinath. Gopinath, in turn, sold the property in favour of Chhaya Gupta, the third respondent. The appellant-tenant on being asked to attorn the tenancy in favour of Chhaya Gupta, declined to do so and assailed not only the derivative title of the third respondent to the property but also the validity of the sale in favour of Gopinath himself on the ground that Mainavati had not acquired the totality of all rights and interests in the property and, as such, her title was defective.

This act of disclaimer of the title of Gopinath to whom the appellant had attorned was the foundation of proceedings in ejectment. The High Court, dismissing the appellant's writ petition, upheld the order of ejectment made by the Courts below.

Before this Court it was contended by the appellant: (1) that the High Court was in error in its view that the stand taken by the appellant amounted in law to a denial of title of the landlord, and (2) that the view of the High Court on the scope of a tenant's estoppel was erroneous.

Dismissing the appeal, it was

HELD: (1) The law as to the estoppel of a tenant under Section 116 of the Evidence Act was a recognition, and statutory assimilation, of the equitable principles underlying the doctrine of estoppel in rela-

A **tion to tenants. The Section was not exhaustive of the law of estoppel. The section *inter-alia*, predicated that no tenant of immovable property during the continuance of the tenancy, would be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, title to such property.** [251B-C]

B **(2) There could be a denial of the title of his landlord without the tenant renouncing his own character as a tenant, where, for instance, he had set up a plea of *Jus tertii*.** [254B]

(3) The derivative title of the third-respondent was not denied on any other ground than the one that the vendor, Gopinath—to whom appellant had attorned—had himself no title, the implication of which C **was that if appellant could not have denied Gopinath's title by virtue of the inhibitions of the attornment, he could not question third-respondent's title either. What appellant did, indeed, amounted to a denial of title which appellant was precluded from doing on the general principles of estoppel between landlord and tenant.** [254C-D]

D

(4) Having regard to the findings of fact recorded by the High Court, it appeared to be a clear case which attracted the grounds for eviction under section 3 (1) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947. [254E-F]

E *Kumar Krishna Prasad Lal Singha Das* **v.** *Baraboni Coal Concern Ltd.*, **AIR 1937 PC 251, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 80 of 1981.

F From the Judgment and Order dated 10.7.80 of the Allahabad High court in Civil Miscellaneous W.P. No. 5661 of 1979.

Manoj Swarup for the Appellant.

S.K. Bagga for the Respondent.

G

The Judgment of the Court was delivered by

VENKATACHALIAH, J. This appeal, by special leave, by the tenant arises out of and is directed against the Judgment dated 10.7.1980 of the Allahabad High Court in Civil Misc. Writ Petition No. 5661 of H 1979 rejecting the appellant's challenge to of the decrees of ejectment

granted in favour of the third respondent-landlord on the ground that there was a denial of the title of the landlord within the meaning, and for purposes, of Section 3(1)(f) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 (Act III of 1947). A

The appeal raises a short question whether, in the circumstances of the case, there was a disclaimer on the part of the appellant of the landlord's title, so as to incur forfeiture of the tenancy. B

2. The necessary and material facts may briefly be stated:

The premises in question, i.e. No. 7/3, Shambhoo Barracks, Allahabad, originally belonged to a certain Shambhoo Lal Jain. Shamboo Lal died in the year 1943 leaving behind him his widow Rajul Devi; his two sons, Dayachand and Dhoomchand; and a daughter Mainavati. Dayachand, it is stated, went away in adoption to the family of one Banvarilal, a brother of Shamboo Lal. Pursuant to and in execution of a money-decree obtained by the said Mainavati against her brother Dhoomchand, she brought the said premises for sale and claimed to have purchased the same at a Court-sale on 21.5.1956. Mainavati, thereafter, conveyed the property by sale in favour of a certain Gopinath Agrawal. C D

Appellant who was in occupation of the premises as a tenant even prior to the sale attorned the tenancy in favour of the purchaser Gopinath and came to pay the rents to Gopinath accordingly. Gopinath, in turn, sold the property in favour of Chhaya Gupta, the third respondent herein. Both the vendor-Gopinath and the purchaser-Chhaya Gupta issued notices to the appellant to attorn the tenancy in favour of the purchaser, Chhaya Gupta. But appellant-tenant declined to do so and assailed not only the derivative title of the third-respondent to the property but also the validity of the sale in favour of Gopinath himself. E F

3. The provocation for the denial on the part of the appellant of the third respondent's title was this: It would appear that in a separate litigation which culminated in the judgment dated 6.7.1971 of the Allahabad High Court in First Appeal No. 260 of 1968 between the said Mainavati on the one hand and a certain Chamanlal on the other, it was held that what Mainavati had acquired under the execution sale of 24.4.1956 was not the totality of all rights and interests in the property, but was only such right, title and interest as the judgment- G H

A debtor, i.e. Dhoomchand, had and that the Court-sale did not convey to Mainavati the interest of Rajul Devi, the widow of Shamboolal Jain. It was also held that Chamanlal who obtained a decree against both Dhoomchand and the estate of Shamboolal would, notwithstanding the sale in favour of Mainavati, be entitled to bring the residuary interests in the same property for sale in his execution. Appellant B sought to raise this defect in Mainavati's title. But the point to note, however, is that the appellant had attorned the tenancy in favour of Gopinath Agarwal, paid rents through-out the period during which Gopinath's interest subsisted. The question was whether despite this attornment, the appellant could assail Gopinath's title. Appellant sought to assert that the sale in favour of Gopinath was void and conveyed nothing.
C

This act, on the part of the appellant, of denial and disclaimer of the title was the foundation of the proceedings in ejectment. The High Court, dismissing the appellant's writ petition, has upheld the order of ejectment made by the Courts below.

D

4. We have heard Shri K.B. Asthana, learned Senior Counsel for the appellant and Shri B.D. Aggarwal, learned Senior Counsel for the contesting third-respondent. The point that Shri Asthana sought to put across was that the High Court was in error in its view that the stand taken by the appellant in his reply dated 3.4.1972 amounted in E law to a denial of title of the land-lord and that, at all events, the view of the High Court on the scope of a tenant's estoppel was clearly untenable. Learned counsel submitted that the estoppel of a tenant does not go so far as to bar him from questioning the derivative title of an assignee of the reversion or from contending, as here, that, in addition to the particular person claiming to be the successor or F assignee of the reversion, there were also others who were co-owners of the reversion. On the first aspect, learned counsel submitted that where a tenant requires from the person, claiming to be assignee or successor-in-interest of the reversion, proof of the vestitive facts on which the claim rests or where the tenant alleges that the reversion vested not exclusively in the person so claiming, but in a body of G co-owners, there was no disclaimer of the position of the tenant as tenant.

On the second aspect, learned counsel submitted that estoppel of a tenant is in respect of, and confined to, the title as at the time the tenant was inducted or let-into possession, that appellant could yet H show that the attornment made in favour of Gopinath Agarwal, from

whom the third respondent claims, was in ignorance of the full facts and the result of fraud and mis-representation, and that under these circumstances, appellant's acknowledgment of Gopinath Agarwal as the landlord, would not debar him from contending that Gopinath himself was not the full owner, but had acquired only an undivided share and interest in the property. A

B

5. The law as to estoppel of a tenant under Section 116 of the Evidence Act is a recognition, and statutory assimilation, of the equitable principles underlying estoppel in relation to tenants. The section is not exhaustive of the law of estoppel. The section, *inter-alia*, predicates that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, title to such property. C

Referring to the reason underlying this branch of the doctrine of estoppel Marton B said: (*Cuthberton* v. *Irwing*, 28 LJ Ex. 306).

> ".....This state of the law in reality tends to maintain right and justice and the enforcement of contracts which men enter into with each other—for so long as a lessee enjoys every—thing which his lease purports to grant how does it concern him that the title of the lessor ..... is?" D

Shri Asthana may be right in his submission that a tenant who, without disclaiming his own position as tenant, however, seeks proof of title from an alleged assignee of the reversion cannot be held to have denied the landlord's title. It may also be true that the estoppel of a tenant is primarily in relation to his landlord who had let him into possession and that, accordingly, such tenant is not precluded from questioning the alleged derivative title of a person claiming to be the successor to, or assignee of, the reversion, for want of proof of the vestitive facts on which the claim for attornment is based. The rule of estoppel does not also preclude a tenant from contending that the landlord's title has since terminated by transfer or otherise or has been lost or defeated by title-peramount. In English case law there was some authority for the proposition that the tenant was only estopped from denying his landlord's title only if at the time he took the lease from the landlord he was not already in possession of the land. E F G

In *Kumar Krishna Prasad Lal Singha Deo* v. *Baraboni Coal Concern Ltd. and Ors.*, AIR 1937 PC 251 the judicial committee noticed this contention thus: H

A "The defendant company contended before the High Court that the section only applies where it is shown that the landlord put the tenant into possession of the property, and that when a person already in possession of land becomes tenant to another there is no estoppel against his denying his lessor's title ...."

B

However, it was held:

"There is in English case law some authority for the view that a tenant is only estopped from denying his landlord's title if at the time when he took his lease he was not already in possession of the land. But in Section 116, the Indian C Legislature has formulated no such condition. The words 'at the beginning of the tenancy' give no ground for it. When a demise of land is made and acted on, when the tenant proceeds to occupy and enjoy under the grant, gets the shelter of the grantor's title and the benefit of his covenants, it is difficult to see why 'during the continuance D of the tenancy' he should be free of this form of estoppel. 'Tenant who has occupied but not entered' is a difficult notion to thrust into Section 116 and quite impossible to find therein."

6. In the present case the plea of the landlord is that the general E principles of estoppel preclude the tenant from denying the title of the person to whom he has attorned. In *Kumar Krishna Prasad's* case their Lordships observed:

"..... The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have F since become entitled to the reversions, *though in such cases there may be other grounds of estoppel e.g.*, by attornment, acceptance of rent etc. ....."

"The section does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant ..... Whether during the currency of a term the tenant by G attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term is estopped from disputing the claim which he has once admitted are important questions, *but they are instances of cases which are outside Section 116 altogether* ....."

H

(emphasis supplied)

In regard to the effect of attornment Spencer Bower on Estoppel says:

> "192. 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 is 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.*"
>
> (emphasis supplied)
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> (Estoppel by Representation by Spencer Bower & Turner—III Edn.)

The concurrent findings of facts in this case—it is indeed a matter of admission of the appellant—that ever-since the purchase by Gopinath Agarwal the appellant attorned the tenancy in his favour and paid rent to him. Appellant did not establish that there was misrepresentation on the part of Gopinath or mistake on the part of the appellant misleading appellant into this attornment. High Court observes:

> "..... In the courts below, an attempt was made to get over the effect of the defendant having attorned to Gopinath Agrawal by trying to demonstrate that the attornment was as the result of fruad and mis-representation practised by Gopinath Agrawal. Both the Courts below have rejected this plea, which is undisputably purely one of fact. Counsel for the petitioner made no attempt to show that the said finding of the courts below is wrong."

8. Now, Section 3(1)(f) which refers to one of the grounds for eviction under the Act envisages:

> "(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not

A waived his right or condoned the conduct of the tenant;"

There can be a denial of the title of his landlord without the tenant renouncing his character as such where, for instance, he sets up a plea B of *Jus-tertii*. The stance of the appellant against the third-respondent's title was not on the ground of any infirmity or defect in the flow of title from Gopinath, but on the ground that the latter's vendor-Mainavati herself had no title. The derivative title of the third-respondent is not denied on any ground other than the one that the vendor, Gopinath—to whom appellant had attorned—had himself no title, the implication of which is that if appellant could not have denied Gopinath's title by C virtue of the inhibitions of the attornment, he could not question third-respondent's title either. Appellant did himself no service by this stand.

It must, accordingly, be held on both the aspects contended-for D by Shri Asthana that what appellant did, indeed, amounted to a denial of title and that appellant was precluded from doing so on the general principles of estoppel between landlord and tenant. The principle, in its basic foundations. means no more than that under certain cricumstances law considers it unjust to allow a person to approbate and reprobate.

E Having regard to the circumstances of this case and the findings of fact recorded by the High Court it appears to us to be a clear case which attracted the grounds under Section 3(1) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 (Act 3 of 1947). The view taken by the High Court does not call for interference. We accordingly find no merit in this appeal which is dismissed but without F an order as to costs.

R.S.S. Appeal dismissed.