

(1998) 09 KAR CK 0056

Karnataka High Court

Case No: House Rent Revision Petition No. 360 of 1995

Mahakali alias Bhadrakali
Temple, Gokarn

APPELLANT

Vs

Smt. Parvati Krishna Holla and
others

RESPONDENT

Date of Decision: Sept. 25, 1998

Acts Referred:

- Evidence Act, 1872 - Section 116
- Karnataka Rent Control Act, 1961 - Section 21 (1) (a)

Citation: (1999) ILR (Kar) 236 : (2000) 3 KarLJ 147

Hon'ble Judges: H. Rangavittalachar, J

Bench: Single Bench

Advocate: Sri G.S. Kannur, for the Appellant; Sri M. Rama Bhat for Sri G.S. Shastry, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner herein filed an eviction petition u/s 21(1)(a) of the Karnataka Rent Control Act (hereinafter referred to as "the Act") on the file of the Munsiff, Kumta against one Sreedhar Lakshminarayana Ital since deceased by his legal representatives, respondents herein on the ground that two items of properties in Survey No. 374/B were leased to respondents by means of a lease deed dated 6-1-1975 on a monthly rent of Rs. 30/- but subsequently raised to Rs. 60/- p.m. from the year 1978. Respondents defaulted to pay the rents from 1978. Hence a notice was issued dated 10-11-1980, received by him on 17-11-1980. Respondent failed to comply with the terms of notice, hence eviction was sought u/s 21(1)(a) of the Act.

2. Respondent contested the petition denying generally he was due any rents but more specific of his defence was that of the two items of property sought for eviction, one item of property was a vacant land, over which he has put up the

construction which has been granted to him by the jurisdictional Deputy Commissioner by his order dated 19-12-1983, and thus he has acquired title to the said property. Hence there does not exist any jural relationship between the parties in respect of this property.

3. Learned Munsiff, Kumata after enquiry has partly allowed the petition ordering the respondent to vacate the temple room while directing the petitioner to have his title established in a Civil Court in respect of other item of land i.e., vacant land including the alleged construction put up by respondent as in his opinion there is a bona fide question of title involved.

4. Aggrieved by the said order, petitioner filed a rent revision before the learned District Judge, Karwar against the order rejecting his petition in respect of other items of property. The learned District Judge concurred with the findings of the learned Munsiff and has dismissed the revision petition.

5. These two orders as stated above are under challenge.

6. The learned Counsel for the petitioner submitted that both the Courts below have failed to exercise the jurisdiction by misdirecting themselves in holding that there is a complicated question of title involved hence the parties should have it resolved before a competent Civil Court. He submitted when the respondent entered possession of property as a tenant by executing a lease deed in favour of petitioner, recognized him as his landlord, and as a tenant paid rents for eight long years, he cannot be permitted to deny the petitioner's title as landlord merely on the ground that during subsistence of tenancy he acquired title to leased property from a third party. He is obliged first to surrender tenancy and thereafter establish title and claim consequential reliefs to the property in pursuance of his claim if any. In support his submission he relied on the decision of the Supreme Court in the case of [Sant Lal Jain Vs. Avtar Singh](#) .

7. Per contra the learned Counsel for the respondents defended the order, and submitted, that where a person enters into tenancy in ignorance of the title of landlord as in this case, estoppel will not operate; In support of the said submission he relied on the decision of Bombay High Court in [John Nadjarian Vs. E. F. Trist](#) . Let me consider the rival submissions. That one Devali Shridhar Lakshminarayana Ital predecessors of respondents herein under a lease marked as Exhibit D. 1 before the Trial Court was inducted as a tenant with regard to two items of property in Survey No. 374/B situate at Gokarna, one item of it was a constructed portion mentioned at Sl. No. 2 of the petition schedule premises (regarding which eviction has already been ordered) and another a vacant land Item No. 1 to petition schedule subject-matter of this revision petition on a monthly rent of Rs. 30/-, which according to the petitioner was enhanced to Rs. 60/- p.m. from the year 1978, however disputed by respondents. That the said Shridhar Lakshminarayana Ital was paying rents to the petitioner herein regarding both the items of leased premises till

1978 though it is claimed by the former even subsequent to 1978 he paid the rents. That it appears on an application by one of the respondents herein to the Deputy Commissioner, Uttara Kannada, Karwar, the latter by his order dated 19-12-1983 granted one of the items of leased property Exhibit P. 1 to the said respondent. Subsequent to which he got the Khata changed to his name, claims to have become the owner of the property though petitioner contends that he was never aware of such an order as he was not heard in the matter, be that as it may, what emerges it.

8. That the alleged acquisition of title by the petitioner from a third party was after respondent became a tenant and during the subsistence of tenancy, under such circumstances can he disclaim the title of the petitioner and resist eviction.

9. Section 116 of the Evidence Act provides that tenant during the subsistence of tenancy is estopped from denying that the landlord had no title to the property at the commencement of tenancy. Section 116 is extracted herein for ready reference:

"Estoppel of tenant and of licensee of person in possession.--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; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had title to such, possession at the time when such licence was given".

By reading of Section 116 of the Evidence Act, it is clear that respondents having entered tenancy under a contract and recognizing petitioner's as their landlord by paying rents are clearly estopped from denying his title to property. In such a situation the landlord need not establish his title to the leased property. The estoppel will continue to operate against him till the tenant acquires the landlord's title by a process known to law. But it is not defence to the Rule of Estoppel, to state that "he acquired title to the leased property by a third party", a stranger to landlord's title.

10. However if a tenant wants to set up a title in himself to the leased property, he should first terminate the tenancy brought about by his contract and surrender possession, thereafter claim or establish his title to the same. This is the position of law is clear by the rulings of the Supreme Court in [Sri Ram Pasricha Vs. Jagannath and Others](#), .

11. In Sri Ram Pasricha's case, supra, it has been held by interpreting Section 116 of the Evidence Act as follows:

"The relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord u/s 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at

the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant".

and Sant Lal Jain's case, supra, referred to by the learned Counsel for the petitioner wherein it has been held again on interpretation of Section 116 of the Evidence Act as under:

"The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from someone else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession".

12. Coming to the contention of the respondent that where a tenant in ignorance of title of the landlord entered into contract of tenancy and paid rents as in this case the rule of estoppel does not operate and the decision cited by the learned Counsel namely John Nadjarian, supra, is concerned, the facts of the said case are distinguishable and in no way assist the case of the respondent. In the said case the tenant of the original landlord has sublet it. Later the said tenant assigned the lease in favour of the plaintiffs the sublessee who was the defendant in the said case, directly attorned the tenancy in favour of the original landlord. Therefore the assignee that is the plaintiff in the said suit filed a suit for evicting the sub lessee defendant in the said case. When the question came up whether the rule of estoppel operates to the facts of the said case namely when the defendant sublessee after paying rents and attorning the tenancy in favour of the assignee of a tenant could be prevented from denying the title to the later, the Court held as under:

"That estoppel operates only in cases where the landlord puts the tenant into possession. But if the tenant had already been in possession the estoppel did not arise and it was competent to the tenant to show that his landlord had no title".

(emphasis supplied)

13. Admittedly in this case respondent was put in possession of the property by the petitioner as a tenant. This decision therefore, instead of helping the case of the respondent advances the case of the petitioner. Therefore there is no substance in this contention. If the origin of possession is traceable to a "lease" or a "licence"

granted by a person claiming to be a owner, and when a person takes possession of the property either as "licensee" or a "tenant"; it is no defence to the rule of estoppel, to state that he has not aware of the title of such a person putting him in possession; At the cost of repetition it has to be said that the only remedy of such a party is first to surrender possession to the person from whom he got it, and thereafter make a claim whatsoever, either against the person or against the property; As long as he continues or enjoys possession of the property under a title derived under the contract of lease or licence, his status continues only as lessee or a licensee.

14. In this case both the Courts below have completely failed to take into consideration the doctrine of estoppel which operates to the case on hand; and merely on the basis that the respondent-tenant acquired title to the property by a grant made by the Deputy Commissioner have refused to grant relief to the petitioner, which is not correct.

15. For the reasons stated above, this revision petition is allowed, that portion of the order of the learned Munsiff as well as the learned District Judge dismissing the eviction petition filed u/s 21(1)(a) of the Act in respect of one of the items of the schedule property is set aside. However since the Courts below have refused to enquire on the question whether petitioners are entitled for the relief u/s 21(1)(a) of the Act, the matter is remanded to the file of the learned Munsiff to enquire into the petition filed u/s 21(1)(a) of the Act and pass orders according to law after providing an opportunity to the parties to lead such additional evidence as they may choose in this behalf.

16. The learned Munsiff is further directed to dispose of the matter expeditiously.

17. Petition allowed.