(2008) 11 CAL CK 0049

Calcutta High Court

Case No: F.A.T. No''s. 127-129 of 2008

Bharat Earth Movers Ltd.		APPELLANT
	Vs	
Puranmal Kedia and Another		RESPONDENT

Date of Decision: Nov. 4, 2008

Acts Referred:

- Evidence Act, 1872 - Section 116
- Income Tax Act, 1961 - Section 131
- Transfer of Property Act, 1882 - Section 108, 111, 112

Citation: (2009) 1 CALLT 397 : (2008) 4 CHN 838 : (2009) 1 ILR (Cal) 419

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Bikash Ranjan Bhattacharya, Alok Kumar Banerjee and Prodyut Kumar Das, for the Appellant;S.P. Roychowdhury, Harish Tandon and S.K. Tribedi, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

These three first appeals were heard analogously as these arose out of a common judgment dated 20th December, 2007 passed by the learned Civil Judge (Senior Division), Second Court, Alipore, District South 24-Parganas, thereby disposing of three suits which were heard analogously. By the said common judgment, all the three suits being Title Suit No. 6 of 1992, Title Suit No. 74 of 1992 and Title Suit No. 79 of 1992 were decreed.

2. Being dissatisfied, the common defendant of those three suits has come up with the present three first appeals.

3. The case made out by the plaintiff-respondent in Title Suit No. 6 of 1992 may be summed up thus:

(a) The plaintiff was the Karta of a Hindu Undivided Family governed by Mitakshara School of Hindu Law carrying on business under the name and style of Puranmall Narayan Prasad Kedia. The defendant No. 2 is the wife of the said Karta.

(b) By a registered deed of covenant dated September 7, 1961 between the defendant No. 2 and East Coast Commercial Company Ltd., the defendant No. 2 purchased the house together with land measuring 9 cottahs 7 chittaks approximately situated at 9/2, Dover Lane, Calcutta, PS Ballygunge.

(c) Sometime in the year 1980, the defendant No. 2 commenced the construction of the building after demolishing the then existing structure and constructed a multi-storied building consisting of number of flats.

(d) During the period of construction, by two agreements dated April 28, 1980 and April 6, 1981 made between the plaintiff and the defendant No. 2, the plaintiff agreed to purchase such flat bearing No. 2S on the southern side of the 2nd floor measuring an area of 1700 sq. ft. and also open parking space for one car on the ground floor and one servants quarter on the mezzanine floor on the terms and conditions contained in the aforesaid two agreements for sale.

(e) Pursuant to those agreements, the plaintiff received possession of the said flat and open car parking space and the servants'' quarter.

(f) By and under an indenture of lease dated June 20, 1983, the plaintiff as the Karta of the said Hindu Undivided Family leased out to the defendant No. 1 the said flat No. 2S along with the said open car parking and one servants'' quarter on the terms and conditions and covenants contained in the said indenture of lease of 99 years commencing from the date of possession of the demised fiat.

(g) According to the terms of the said lease, the defendant No. 1 would pay the monthly reserved rent of the suit flat at the rate of Rs. 592/- a month and also pay maintenance charges, corporation tax and electrical charges and other expenses in respect of the said flat and it was clearly stipulated that the monthly rent payable by the defendant No. 1 would be adjusted month by month out of the security and/or advance paid to the plaintiff by the defendant No. 1 in terms of the said lease.

(h) Pursuant to the terms and conditions of the said lease, the plaintiff on or about July 27, 1983 duly made over possession of the said flat to the defendant No. 1 upon payment of a sum of Rs. 7,03,296/- as security deposit as per terms of the lease. The monthly rent payable by the defendant No. 1 had been adjusted out of the said security deposit up to September 30, 1989 and the defendant had also paid the electric charges up to July, 1989 and maintenance charges up to August, 1989. The plaintiff had adjusted and granted credit to the defendant No. 1 of the respective amount of rent against the bills issued by the plaintiff to the defendant No. 1 from time to time.

(i) The electric meter in respect of the said flat is in the name of the plaintiff. The bills of CESC Ltd. are made in the name of the plaintiff who in turn raises and submits bills to the defendant No. 1 for the exact amount thereby realising the amount from the defendant No. 1 for payment to the CESC Ltd.

(j) After taking over possession of the said premises, the defendant No. 1 had committed various breaches of the terms, conditions and covenants of the said lease and in particular, made alterations and additions by demolishing several constructions and raising permanent structure. The defendant No. 1 had converted the eastern side bedroom into an extra kitchen, thus, damaging the construction of the building. The defendant No. 1 had illegally cut the floor and joined the pipe carrying kitchen-waste-water with the pipe carrying bathroom-waste-water which eventually crated jamming and damaged the sanitation system of the building in contravention of the various terms and conditions of the said lease.

(k) In the premises, the plaintiff was compelled to bring to the notice of the defendant No. 1 the aforesaid breaches and called upon the defendant No. 1, inter alia, by its letter dated March 14, 1985 to remedy the said breaches with specific threat that otherwise, the plaintiff would be compelled to terminate the said lease. In spite of service of such notice, the defendant No. 1 had failed to remedy the said breaches in respect of the wrongful addition and alteration to the said flat in violation of the Building Rules of the Calcutta Municipal Corporation Act and without obtaining sanction from the Calcutta Municipal Corporation.

(1) In the month of February 1989, it transpired that in answer to certain queries raised by the Commissioner of Income Tax, West Bengal Circle X, the defendant No. 1 deliberately misrepresented before the Commissioner of Income Tax that the defendant No. 1 had taken the demised flat at the rate of Rs. 400/- per sq. ft. along with car parking space and servants'' quarter for an additional lump sum price of Rs. 20,000/-. The object of the defendant No. 1 in making such misrepresentation before the Commissioner of Income Tax, West Bengal Circle X was to assert that the defendant No. 1 had purchased the demised premises and there was a transfer of the said demised premises by the plaintiff to the defendant No. 1.

(m) The defendant No. 1 in spite of his full knowledge that he had taken the said flat on lease from the plaintiff subject to payment of the monthly rent reserved and performance and observance of the terms and conditions and covenants as contained in the indenture of lease, made out such false statement and as such, the said false statement was tantamount to an express repudiation and renouncement of the relationship of the lessor and lessee between the plaintiff and the defendant No. 1 in terms of the said lease. The said conduct also amounted to repudiation of the plaintiffs title to the property.

(n) As a result of such misrepresentation and the statement made by the defendant No. 1 knowing those to be false, the defendant No. 1 had set up right, title and

interest in itself and had renounced its character as a lessee by setting up and claiming such right, title and interest in itself and by reason thereof had incurred the liability of forfeiture of the said lease.

(o) By a notice dated October 23, 1989 written for and on behalf of the plaintiff addressed to the defendant No. 1, the plaintiff determined and forfeited the said lease of the said flat and called upon the defendant No. 1 to quit, vacate and deliver vacant and peaceful possession of the said flat on the expiry of the month of November, 1989. By the said notice, the defendant No. 1 was also informed that in default of vacating and delivering possession of the said flat, legal proceeding would be instituted for recovery of possession and other relief.

(p) Notwithstanding the expiry of the said period mentioned in the notice, the defendant No. 1 failed and neglected to vacate and deliver vacant and peaceful possession of the flat to the plaintiff.

(q) The defendant No. 1 was also guilty of committing acts of waste in the said flat by addition and alteration and continuous damage on the floor wall. Hence the suit for eviction and arrears.

4. The similar allegations were made in the other two suits filed in respect of other two flats being Flat Nos. IS and IN in occupation of the defendant No. 1 therein with this variation that the rate of rent in respect of Flat No. IN was Rs. 725A a month and a total amount of Rs. 8,61,000/- was paid by the defendant No. 1 as security while in respect of Flat No. IS, the rate of rent was Rs. 592/- a month and the total amount paid by the defendant No. 1 by way of security was Rs. 7,93.296/- which was equal to the amount payable in respect of Flat No. 2S.

5. The suits were contested by the defendant No. 1 by filing written statement thereby denying the material allegations made in the plaint and the defence of the appellant may be summarised thus:

(1) The suit was not maintainable in the present form and was barred by the principle of estoppel, waiver, acquiescence, etc. The appellant relied upon the terms of the lease-deed which provided as follows:

(i) The lease was free from all encumbrances, charges, liens, attachments, claims and demands for a period of 99 years commencing from the date of delivery of possession of the said flat.

(ii) The sum of Rs. 7,93,296/- advanced by the defendant No. 1 to the plaintiff in terms of the said lease in respect of Flat Nos. IS and 2S and the sum of Rs. 8,61,000/- in respect of Flat No. IN would be held by the plaintiff free of interest and the plaintiff would be entitled to adjust there from the rent payable in respect of those flats at the rate of Rs. 592/- a month for the Flat Nos. IS and 2S and at the rate of Rs. 725/- in respect of Flat No. IN. In other words, the defendant No. 1 paid the entire rent payable in respect of those three flats to the plaintiff for the period of 99 years

calculated at the prescribed rate of rent.

(iii) The defendant No. 1 had the right of assignment or subletting or otherwise parting with possession of the said flat after obtaining the permission from the company or association that might be formed.

(iv) After the expiry of period of 99 years, the defendant No. 1 would be at his option be entitled to purchase the said flat from the plaintiff at or for a lump sum amount of Rs. 5,000/- in such condition as will be existing at that time.

(v) The defendant No. 1 shall not be entitled to refund the monthly rent paid by way of advance as aforesaid in any manner whatsoever but the same should be adjusted towards the rent reserved and payable by the defendant No. 1 to the plaintiff.

(vi) It was denied that the defendant No. 1 had converted the eastern side bedroom into an extra kitchen thus damaging the construction of building or the defendant No. 1 had illegally cut out the floor or joined the pipe carrying waste-water which eventually created jamming or damaged the sanitation system as alleged. In terms of the said lease, the plaintiff was under obligation to provide the following facilities:

(A) To permit the defendant No. 1 to hold and enjoy the said flat during the terms of the said lease without any interruption in any manner whatsoever;

(B) To permit the defendant No. 1 at all times by day or night and for all purposes in connection with the use and enjoyment of the said flat to go, pass and re-pass over and along the common passage and all common places and along the main entrance of the house and the passages, landings and staircase landing to the said flat.

(C) To permit the defendant No. 1 with or without motorcars or other vehicles at all times by day or by night and all purposes in connection with the use and enjoyment of the demised premises to pass and re-pass over and along the common passage of the house for passing cars and for passing motorcars at the car parking space.

(D) To permit the defendant No. 1 to use part of the house reserved for keeping refuge to be provided by the occupiers of the house.

(E) To provide the defendant No. 1 with free and uninterrupted passage and running of water, soil, electricity for and to the flat through swears, drains and water courses, cables, pipes and wires which may at any time be in or under or passing through the said house or any part thereof.

(F) To provide the free and uninterrupted right to have installation of telephones, air-conditions, television, electricity at the demised flat.

(2) As regards the allegation that the defendant No. 1 made false claim in Income Tax department, the defendant had merely answered to such queries and it will be evident from such reply that the defendant No. 1 had specifically disclosed before

the Income Tax authority that the suit property was taken by the defendant No. 1 for long lease of 99 years. It was wrongly alleged that the defendant No. 1 had made wrong representation before the Commissioner of Income Tax, West Bengal Circle X as alleged. The defendant No. 1 never represented before the Income Tax authority that they had purchased the flat in question; on the contrary they had disclosed before the Income Tax authority that they had taken the flat in question on long lease of 99 years and thus the suit was liable to be dismissed.

6. At the time of hearing of the suit, two witnesses deposed in favour of the plaintiff and one Biswajit Roy gave evidence on behalf of the defendant No. 1 in opposing the prayer of the plaintiff.

7. As indicated earlier, the learned Trial Judge by the common judgment and decrees impugned herein has decreed the suits on the ground that the act of the defendant in asserting title before the Income Tax authority amounted to forfeiture of the lease thereby attracting Section 111(g)(2) of the Transfer of Property Act. The learned Trial Judge found that the lessee renounced its character by setting up a title or by claiming title in itself. The learned Trial Judge further found that there was violation of Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act as the defendant No. 1 demolished the old structure and constructed several new constructions and caused leakage and damage to the building. All the three suits were, thus, decreed on the aforesaid ground.

8. Being dissatisfied, the defendant No. 1 has come up with the present three first appeals.

9. Mr. Saktinath Mukherjee, the learned Senior Advocate appearing on behalf of the appellant, at the first instance, submitted that the learned Trial Judge erred in law in passing a decree for eviction on the ground of forfeiture by totally overlooking the fact that there is no provision in the deed of lease for giving right to the plaintiff to re-entry in case of any violation and, thus, there was no scope of passing any decree on the alleged ground of forfeiture.

10. Mr. Mukherjee next contends that the plaintiff having specifically alleged in the plaint that they gave a notice in the month of March, 1985 drawing attention to the breaches of the agreement but even thereafter having accepted the rent till the determination of the lease in the month of November, 1989, there was waiver of the breach of the agreement even if it occurred and the suit should fail on that ground.

11. Lastly, Mr. Mukherjee contends that his client, before the Income Tax authority, disclosed the real fact and also produced the terms of the lease which itself indicated that all the terms of the lease were disclosed and, thus, never claimed hostile title. According to Mr. Mukherjee, the finding of the learned Trial Judge that the plaintiff claimed hostile title in itself was perverse one and, thus, was liable to be set aside. Mr. Mukherjee, therefore, prays for setting aside the judgment and decree passed by the learned Trial Judge.

12. Mr. Roychowdhury, the learned Senior Advocate appearing on behalf of the respondent, has, on the other hand, opposed the aforesaid contention of Mr. Mukherjee and has contended that the appellant has deliberately violated the specific prohibition contained in the lease-deed by demolishing part of the building and making addition and alternation. Mr. Roychowdhury further contends that by showing the property to be the fixed asset of the defendant No. l, the said defendant has asserted title to the property which is inconsistent with its position as a lessee thereof and, therefore, the learned Trial Judge rightly passed a decree for eviction on the ground of forfeiture. Mr. Roychowdhury, thus, prays for dismissal of the appeals.

13. After hearing the learned Counsel for the parties and after going through the materials on record, we find that there were three different deeds of lease for 99 years between the parties in respect of three different flats of the premises commencing from the date of delivery of possession and except the rate of rent and the security deposit in respect of Flat No. IN, all other terms and conditions of the leases are substantially the same. The rent for the entire period of lease has been paid in advance by way of alleged security giving the lessor the right of adjustment of the rent, the moment it falls due. An option has been given to the lessee to purchase the flats at the expiry of the period of lease at the price of Rs. 5000/- only. The lessee, however, would not be entitled to claim refund of any amount of security deposit even if intended to surrender the lease. In addition to the rent, it was the exclusive liability of the lessee to pay both share of the Corporation taxes and maintenance charges. Although the lessee has no right to demolish or cause to be demolished the flat or any part thereof, it has the right to make any addition, alteration and internal modification of the flats without affecting the right of other occupiers. The lessee has also been given right to assign, sublet or part with possession of the flats in question without taking consent from the lessor.

14. The three suits out of which these appeals arise are based on notice dated October 23, 1989 issued on behalf of the lessor in exercise of right of forfeiture alleging denial on the part of the lessee of the title of the lessor by giving false information before the Income Tax authority that the lessor had conveyed title to the lessee; in other words, it has been alleged that the lessee has falsely claimed title over the flats in question by giving false declaration before the Income Tax authority and the flats have been shown to be the permanent assets of the lessee. By the said notices, the lessee was asked to vacate the flats in question with the expiry of November, 1989. In the said notice, there was however no allegation of violation of Clauses (m), (o), or (p) of Section 108 of the Transfer of Property Act (hereinafter referred to as the Act) although in the plaint such allegation has been made.

15. The learned Trial Judge has accepted the version of the lessor that the declaration given by the "appellant before the Income Tax authority amounted to

denial of title within the meaning of Section 111(g), Clause (2), of the Act and at the same tune, also found the appellant guilty of violation of Clauses (m), (o), (p) of the Section 108 of the Act and after holding that the notice to quit was valid, passed a decree for eviction.

16. Therefore, the questions that falls for determination in this appeal are 1) whether on the basis of terms of the lease between the parties, the lessor was entitled to claim forfeiture on the alleged violation of the Clauses (m), (o), (p) of Section 108 of the Act and 2) whether the declaration given by the appellant before the Income Tax authority came within the purview of Section 111(g) Clause (2) of the Act.

17. In order to appreciate the questions mentioned above, it will be profitable to refer to Sections 111 and 112 of the Act which are quoted below:

111. Determination of lease. - A lease of immovable property, determines:

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event - by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event - by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to Clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the

former lease and such lease determines thereupon,

112. Waiver of forfeiture. - A forfeiture u/s 111, Clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

18. On a plain reading of the abovementioned two provisions of the Act, it is clear a lease duly entered into by the parties may be determined by virtue of Section 111(g) of the Act under any of the following three circumstances:

(1) if the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter;

(2) if the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself even though there is no provision for re-entry;

(3) if the lessee is adjudicated as an insolvent and the lease provides that the lessor may re-enter on the happening of such event.

19. However, in the aforesaid cases, the lessor or his transferee, must give a notice in writing to the lessee of his intention to determine the lease on the ground mentioned in Section 111(g) of T.P. Act above.

20. Therefore, the right to evict a lessee on the ground of forfeiture mentioned above must be exercised by the lessor by specifically giving a notice determining the tenancy; otherwise, notwithstanding the existence of the circumstances mentioned above, it should be presumed that the lessor has waived his right to evict the lessee on the ground of forfeiture. Over and above, even if any such notice has been given, as provided in Section 112 of the Act, the right of forfeiture would be waived by the lessor if despite the knowledge of forfeiture, he accepts the rent for a period after such information of forfeiture or applies for distress of such rent or does any other act manifesting his intention to treat the lease subsisting. However, acceptance of rent after the institution of suit for eviction should not be treated to be an act of waiver.

21. In the light of the aforesaid law relating to forfeiture, we now propose to examine whether in the case before us, there is any scope of grant of a decree for eviction on the alleged ground of violation of Clauses (m), (o), (p) of Section 108 of the Act.

22. In the cases before us, in the notices to quit dated October 23, 1989 on the basis of which the suits are filed, there is no allegation of violation of Clauses (m), (o), or

(p) of Section 108 of the Act. In the said notice only the allegation of asserting adverse title in the lessee itself has been taken. But subsequently, in the plaint, the ground alleging those violations has been put forward and the learned Trial Judge has accepted the case of the plaintiff.

23. We, therefore, find that in the notice u/s 111(g) of the Act, there being no allegation of violation of Clauses (m), (o) and (p) of Section 108 of the Act, the suit filed for eviction of the lessee based on such a notice alleging those violations was not mentionable.

24. Moreover, in order to avail of the ground of forfeiture by invoking Clauses (1) or (3) of Section 111(g) of the Act, it is necessary that in the deed of lease, it must be expressly provided that such violation would give rise to a ground for re-entry at the instance of the lessor. In the cases before us, the terms of deeds of lease did not confer any right to the lessor for re-entry in case of violation of any of the terms of the deed. In such a situation, at the most, the lessor would be entitled to claim compensation for the loss actually suffered by him, if at all, for the breach of the agreement. Over and above, in spite of the knowledge of the alleged violation of Clauses (m), (o), (p) of Section 108 of the Act at least from the month of March, 1985 (vide Exbt.-8), the lessor having accepted rent by adjustment from the security deposit till November, 1989, and in the notice determining the tenancy dated October 23, 1989, there being no mention of such allegation, the lessor had waived his right to get a decree for eviction on that ground. Therefore, the suit for eviction on the ground of violation of Clauses (m), (o), (p) of Section 108 the Act was not maintainable and the learned Trial Judge erred in law in passing decree for eviction on that ground.

25. The next question is whether the learned Trial Judge was justified in passing a decree for eviction against the appellant on the ground of denial of landlord''s title by setting up the title in itself by giving wrong information to the Income Tax authority.

26. We are quite conscious that if a lessee denies the title of the landlord by setting up a title in himself or a third person, such act on his part gives right of eviction to the landlord even in the absence of any clause of reentry in the terms of lease as provided in Clause (2) of Section 111(g) of the Act and such right can be exercised even in case of a permanent lease.

27. The Apex Court had the occasion to consider the effect of Clause (2) of Section 111(g) of the Act in the case of Guru Amarjit Singh Vs. Rattan Chand and others, , where it had taken into consideration almost all the earlier important decisions on the subject. Before considering whether in these cases before us, the appellant is guilty of disclaimer as provided in Section 111(g) of the Act, we think it apposite to rely upon the following observations of the Supreme Court in the aforesaid case:

Under Clause (2) disclaimer by denial of the landlord''s title or setting up a title in himself or third party is a ground for forfeiture. In other words, there must be a renunciation of the character of the lessee as such either by setting up a title in himself or in other person or unequivocal plea of adverse possession. But the repudiation must be clear and unequivocal and anterior to the issuance of the notice determining the lease u/s 111(g) of the Act and put the lessor to notice of determination of the lease. The disclaimer may be in the pleading anterior to the suit in question or in any other documents, but directly relatable to the knowledge of the lessor. An incidental statement per se does not operate forfeiture.

In Sheikh Abdulla Vs. Mohammad Muslim, it was held that a denial of the execution of Kabuliyat is not denial of title. So it would mean only repudiation of jural relationship as lessor and lessee and does not touch upon title. In case of proof of lease tenant is estopped u/s 116 of Evidence Act to deny title of the landlord. In Bhiwaji v. Tuka Ram AIR 1916 Nag 15(2) and 16 it was held that by selling or mortgaging the property by the lessee is not necessarily a denial of the title of the lessor. The same view was reiterated in Prag Narain v. Kadir Baksh ILR (1913) All 145 at p. 148; Mohammad Mahmud Khan v. Laja Mal AIR 1934 Lah 289 at p. 290 and Vithoba v. Bapu ILR (1891) Bom 110. Some State Buildings (Lease and Rent) Acts provides plea of bona fide denial of title and on its being upheld landlord has to establish title in a Civil Court. If the plea of tenant is found not bona fide, it itself is a ground for eviction. Non-acceptance of the relationship of landlord and the tenant, therefore, does not amount to disclaimer of title as stated earlier. It is implicit that the very existence of the lease and jural relationship of lessor and the lessee is a pre-condition to invoke forfeiture u/s 111(g) of the Act. It is, therefore, necessary to plead and establish, if denied, the relationship of landlord and tenant and on proof thereof the condition prescribed in Section 111(g) gets attracted and itself is a ground for election to the landlord to determine the lease u/s 111(g) and lay the suit for eviction.

This Court in Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Another, held that Section 111(g) applies to permanent tenancy and if there is disclaimer of tenancy by denial of title of the landlord, it must be clear and unequivocal and must be to the knowledge of the landlord. It was held that the background of the case and nature of the pleadings must also be looked into. On a construction of the pleadings in that case it was held that the denial was not unequivocal and the pleas set up in the circumstances emerging from the history of the treatment of the land and the nature of the enjoyment and the rights emerging there from do not constitute forfeiture. This Court had considered the effect of the enjoyment of lands, history of the case and held that the plea that property belonged to the appellant therein was merely of substantial character and the plea cannot be said to be a disclaimer of the right of the Govt. Similarly in paragraph 16 also it was held that the statements by the appellants claiming to have permanent and heritable interest in the land "belong to him" and that he was the "owner" of it,

etc. did not amount to denial of landlord''s title. Similarly setting up of the title thus for declaration of his title of his character in the suit property does not amount to unequivocal disclaimer inviting forfeiture u/s 111(g) of the Act.

(Emphasis supplied by us).

28. Bearing in mind the aforesaid observations, we now propose to deal with the allegations against the appellant in this case.

29. The information that was given by the appellant to the Income Tax authority is quoted below:

Bharat Earth Movers Limited

Unity Buildings, J.C. Road

Bangalore - 560 002

Ref.....LC/Nil/Cal/ Dated 14th Feb, 1989.

Commissioner of income tax

West Bengal

Calcutta.

Sir,

Sub: Summons of witnesses u/s 131 of the income tax

Act, 1961 in respect of the flats at Dover Lane, Calcutta.

As desired we are furnishing herewith a statement showing the parawise comments on the points raised by your Department in respect of the flats taken on lease by us at Dover Lane, Calcutta.

Kindly acknowledge the receipt of the same.

Thanking you,

Yours faithfully,

For Bharat Earth Movers Limited

Sd/- B.S. Satanarayana

Asstt. Manager (Legal)

30. Parawise comments on the points raised by Income Tax Officer, West Bengal, Calcutta in respect of flats taken on lease at Dover Lane, Calcutta.

SI. No.	Points	Reply

1.	Minutes of the Board of Directors/Chairman''s approval for purchase of flats from persons who are not the legal owners the immovable property	We have taken on long lease of 99 years tw flats of 1700 sq. ft. as also one flat of sq. ft. (approx) at Rs. 400A per sq. ft. al with car parking/servant quarters for each flat at an additional lump sum price of Rs. 20,000/- as per our CMD''s approval vide No No. MDS/Oll/Cal/135 dt. 01.02.1983. The Lease Deeds entered into between the Lessors and ML have already been furnished to Income Tax Officer during April 84. After the expiry of lease period of 99 year we are entitled to exercise our option to purchase the flats from the Lessors at or for a lump sum amount of Rs. 5,000/- in suc condition as will be existing at that time. The terms and conditions of the lease deed clearly shows that this is a transaction of perpetual lease of 99 years and not a "sale absolute. It is also confirmed that the Lessors are t legal owners of this immovable property.
2.	Any Understanding with supposed sellers to ultimate ownership of the flat (3 in numbers)	The understanding with the Lessors as the already said above is that after the expiry of the lease period of 99 years we can exercise our option to purchase the demised flat at Rs. 5,000/- each in such condition will be existing at that time
3.	The circumstances under which the Agreement for sale with Smt. Kedia got converted into lease agreement with relatives of the lady.	As this transaction is that of a perpetual lease of 99 years with an option to purchas after 99 years, this point did not arise,
4.	Time when the flats in question are occupied/	The dates of which the possession of the flats at 9/1, Dover Lane, Calcutta are

given possession of. furnished as under:

Flat No.	Possession taken in:
IN	16.04.1984
IS	23.02.1983
2S	23.02.1983

for Bharat Earth Movers Limited

Sd/- B.S. Satyanarayana

Asstt. Manager (Legal)

31. After going through the aforesaid information given by the appellant we find that the appellant specifically disclosed the terms of the lease and described itself to be a lessee of 99 years with option to purchase the property at the price of Rs. 5000/- after the expiry of the period of 99 years and never claimed to be the absolute owner of the property. In the information supplied there is no claim over the property which is adverse to that of the lessor. The finding of the learned Trial Judge in this regard must be held to be perverse.

32. We, therefore, find that the aforesaid information given by the appellant did not attract the Clause (2) of Section 111 of the Act and thus, the learned Trial Judge erred in law in passing a decree for eviction on that ground in the facts of the present case.

33. We, consequently, allow the appeals, set aside the judgement and the decrees passed by the learned Trial Judge and dismiss the three suits for eviction three suits for eviction filed by the plaintiff with costs assessed at 1000 Gms. for each of the appeals payable by the plaintiff to the appellant.

Rudrendra Nath Banerjee, J.

34. I agree.