

CASE NO.:
Appeal (civil) 6396 of 2001

PETITIONER:
Bansraj Laltaprasad Mishra

RESPONDENT:
Stanley Parker Jones

DATE OF JUDGMENT: 16/02/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
JUDGMENT

Arijit Pasayat, J.

This is directed against the judgment of a Division Bench of the Bombay High Court in a Letters Patent Appeal. Brief reference to the factual aspects would be necessary:

The appellant filed Suit No. 6954/72 in the Bombay City Civil Court against the respondent inter alia with the following prayers:

- (a) for possession of suit premises of Plots Nos. 81, 82 with shed at Gandhinagar, Bharat Bazar, Worli, Bombay.
- (b) for recovery of an amount of Rs. 6,175/- on account of compensation, and
- (c) for mesne profits.

Certain interim reliefs were also claimed in this suit. The broad allegations made by the plaintiff in the plaint were as follows:

- (a) on request of the Defendant, the Plaintiff allowed the Defendant to use the suit premises on the terms recorded in the Agreement dated 01.05.1091, which was an Agreement for leave and license for 11 months from the date;
- (b) the compensation agreed between the parties was Rs. 475/- per month;
- (c) the Defendant was to carry on the business of motors repairing in the suit premises and was not to change the user of the premises;
- (d) that 2 months' arrears of compensation would entitle the Plaintiff to terminate the Agreement by giving one month's notice in writing and to enter upon the suit premises;
- (e) the license could be renewed at the option of the Defendant by one month's prior notice to the Plaintiff;
- (f) that though the Agreement provided that the Defendant would deposit Rs. 6,000/- by way of security, the Defendant in fact paid only Rs. 5,000/-;
- (g) that, the Defendant had issued 2 cheques respectively for Rs. 950/- and Rs. 793/- towards compensation, which were dishonoured;
- (h) the Plaintiff by his Advocate's letter dated 02.10.1971 informed the Defendant that, from May, 1971 to September, 1971 the Defendant had not

paid compensation amount of Rs. 2,375/- and that, he had committed several breaches of the said license, that the license granted to the Defendant was revoked and that, the Defendant should pay the arrears and hand-over the vacant possession of the suit premises;

(i) the Plaintiff by his Advocate's letter dated 13.04.1972 demanded the arrears of compensation of Rs. 5,225/- upto April, 1972, but the Defendant issued a cheque of Rs. 2,850/- towards compensation, which was also dishonoured.

The defendant-respondent filed Written Statement in which originally the following stands were taken:

(a) That the Civil Court had no jurisdiction to try the suit as the Defendant was the tenant or the sub-tenant of the suit premises and not a licensee as alleged, and that, "the landlord had agreed to this arrangement arrived at between the Plaintiff and the Defendant."

(b) That the Defendant had constructed a shed on a portion of the suit premises by spending Rs. 4,000/-

(c) That the Defendant had not committed any breach of the Agreement and gave explanations for the same in para 9 of his written statement.

(d) That, there was no cause of action for the suit.

Subsequently, both appellant and respondent took out Notice of Motion in the Civil Suit in respect of interim orders passed in the suit, and orders were passed on said Notice by the Civil Court.

On 10.01.1976, the defendant took out Chamber Summons for amendment of the Written Statement in the following terms:

(a) to amend the Written Statement to contend that the Agreement dated 01.05.1971 was void on account of fraud and misrepresentation made by the Plaintiff that, he was the legal tenant of the suit premises;

(b) to delete from the original Written Statement the averment that the Agreement of sub-tenancy between the Plaintiff and the Defendant was consented to by the landlord.

The trial court allowed the said amendment. Subsequently, in 1976 the defendant took out another Chamber Summons praying for amendments in his Written Statement in the following terms:

(a) that, the Defendant was not inducted in the suit premises on 1.5.1971 but that, he was already in possession of the plots with a shed on it and was carrying on his business in the name of Famous Engineering Works on an undertaking arrived at with one Shamsher Khan on 27.12.1990;

(b) that, the said Shamsher Khan vanished away and the Plaintiff approached the Defendant representing him that Plaintiff was the legal tenant of the suit premises and believing the same the Defendant executed the Agreement dated 01.05.1971 in favour of the Plaintiff;

(c) that, the said Mansoor Hussein was the tenant in respect of the suit property and the Defendant was in lawful occupation of the suit property;

(d) that, the Agreement dated 01.05.1971 was void on account of fraud and misrepresentation practised by the plaintiff.

This second amendment was also allowed.

The Civil Court allowed the plaintiff-appellant to plead cause of action

occasioned by the alternate plea of sub-tenancy raised in the Written Statement by amendment. The plaintiff was allowed to amend the plaint for raising the plea of forfeiture incurred by the defendant-respondent by reason of denial of the plaintiff-appellant's title to the suit premises.

Supplementary Written Statement was filed. Issues were framed and by judgment and decree dated 30.10.1987 the Shor Cause Suit No. 6954/72 was dismissed. Being aggrieved by the judgment and decree passed by the trial Court, First Appeal No. 1109/1987 was filed in the Bombay High Court and the learned Single Judge set aside the judgment and decree of the trial Court and the plaintiff-appellant's suit for possession was decreed. Aggrieved by the said judgment and decree dated 29.4.1988 and 15.09.1990 respectively passed by learned Single Judge defendant-respondent filed Letters Patent Appeal which was numbered as LPA No. 161/1993. The Division Bench set aside the judgment and decree passed by the learned Single Judge and restored those passed by the trial Court.

In support of the appeal, learned counsel for the appellant submitted that the approach of the Division Bench was clearly erroneous and based on a misreading of Section 116 of the Indian Evidence Act, 1982 (in short "the Evidence Act"). Great emphasis was laid by the Division Bench on the question of title of the plaintiff at the time when the alleged agreement between the plaintiff and the defendant was entered into. According to learned counsel for the appellant this is really irrelevant and is contrary to the specific language used in Section 116 of the Evidence Act. It was pointed out that the learned Single Judge has elaborately dealt with the scope and ambit of Section 116 of the Evidence Act. It was pointed out that what is relevant is the possession of the the licensor but not the title. The Division Bench lost sight of this distinction and went on to decide the appeal in favour of the defendant-respondent as if title was sine qua non for the application of Section 116 of the Evidence Act.

Per contra, learned counsel for the respondent submitted that if the entire factual scenario is taken note of, one thing is clear that the appellant was not in possession when the alleged agreement on 1.5.1971 was executed.

It is not in dispute that on 1.5.1971 an agreement was entered into. What the defendant tried to establish was that prior to the date of agreement one Shamsher Khan had put the defendant in possession and therefore the subsequent agreement with the plaintiff-appellant was really of no consequence. This aspect was dealt by the learned Single Judge in detail. It was held that the concept of constructive possession was clearly applicable even if the defendant's case of Shamsher Khan having put him in possession is accepted. Illustrations were given to buttress the interpretation given. The learned Single Judge was of the view that the word "possession" in Section 116 also includes constructive possession. Unfortunately the Division Bench has not dealt with this aspect. It would be relevant at this point of time to take note of what is stated in Section 116 of the Evidence Act. The same reads as follows:

"Estoppel of tenant; and of licensee of person in possession-No tenant of immoveable 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 immoveable 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 a title to such possession at the time when such licence was given."

The "possession" in the instant case relate to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any immoveable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.

The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

The principle of estoppel arising from the Contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.

As laid down by the Privy Council in Krishna Prasad Lal v. Barabani Coal Concern Ltd., AIR (1937) P.C. 251 "It (Sec. 116) deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation".

Obviously, the stress is on the possession of the person who is in possession of the immovable property. Unfortunately, The Division Bench had not addressed itself to this question which according to us was the core question.

The Division Bench erroneously laid stress on title as indicated above which has no relevance in the background of what is stated in Section 116 of the Evidence Act. The Division Bench disposed of the matter without even discussing as to why the learned Single Judge was not justified in the conclusions arrived at. Therefore, we remand the matter to the Division Bench for fresh hearing and disposal. However, we make it clear that we have not expressed any final opinion on the merits of the case. As the matter is pending since long, we request the High Court to dispose of the matter within three months. The interim order passed in this appeal shall continue till the disposal of the matter by the High Court.

The appeal is disposed of accordingly.