

CASE NO.:
Appeal (civil) 3965 of 1999

PETITIONER:
SHEELA & ORS.

Vs.

RESPONDENT:
FIRM PRAHLAD RAI PREM PRAKASH

DATE OF JUDGMENT: 04/03/2002

BENCH:
R.C. Lohati & Ruma Pal

JUDGMENT:

R.C. Lahoti, J.

The tenant is in appeal by special leave, feeling aggrieved by the judgment and decree of the First Appellate Court, maintained by the High Court, directing the tenant to be evicted from the suit accommodation, which is a shop, on the ground available under clauses (c) and (h) of sub-section (1) of Section 12 of the M.P. Accommodation Control Act, 1961, (hereinafter, the Act, for short).

The facts, relevant and not in dispute at this stage, are that the property of which the suit accommodation is a part was owned by late Khetsidas who inducted the defendant as a tenant. Khetsidas died issueless. However, he had adopted Prahlad Rai as a son. He had also executed a registered deed of will bequeathing his property to Prahlad Rai. Prahlad Rai has two sons, namely, Prem Prakash and Pawan Kumar. Prahlad Rai and his two sons have constituted a partnership which is registered as Firm Prahlad Rai Prem Prakash.

The firm claiming itself to be the owner of the suit premises filed suit for ejectment of the tenant-defendant on two grounds, firstly, that the accommodation was required bona fide by the plaintiffs for the purpose of continuing their own business, and secondly, that the accommodation was required bona fide by the plaintiffs for the purpose of re-building which could not be carried out without the accommodation being vacated. In the written statement, while contesting the claim of the plaintiffs for eviction, the defendant-tenant pleaded inter alia that the plaintiffs were not the owners of the suit premises and therefore the tenant was not liable to be evicted though in that very written statement, at other places, the defendant admitted the plaintiffs as his landlords, also having paid rent to the plaintiffs after the death of Khetsidas, and also having initiated proceedings for fixing standard rent of the premises in which proceedings the tenant had impleaded the plaintiff-firm as opposite party alleging the firm to be the landlord of the suit accommodation.

The Trial Court framed several issues, arising from the pleadings of the parties, including an issue to the effect — whether the defendant-tenant had denied the title of the landlord, and if so, to what effect. Having tried the issues the Trial Court found that the suit premises were in a dilapidated condition and needed re-construction

for which purpose the plaintiffs were prepared to proceed and had requisite funds available with them, and therefore, the defendant was liable to be evicted so as to hand-over vacant possession over the suit premises to the plaintiffs and the plaintiffs were liable to complete the re-construction and hand-over possession to the defendant-tenant on completion thereof as required by the provisions of the Act. So far as disclaimer is concerned the Trial Court found that the defendant-tenant had admitted ownership of late Khetsidas but had only disputed the derivative title of the plaintiffs which the defendant-tenant could do without incurring the wrath of Section 12(1)(c) of the Act. However, at the end, the Trial Court held the plaintiffs not entitled to decree for eviction inasmuch as the landlord-tenant relationship between the plaintiff-firm and the tenant was not established. The suit was directed to be dismissed.

In an appeal preferred by the plaintiffs the learned Additional District Judge did not agree with the Trial Court so far as the ground of disclaimer is concerned and held that the defendant's plea taken in the written statement furnished a ground for his eviction under Section 12(1)(c) of the Act. The availability of ground under Section 12(1)(h) and the finding of the Trial Court in that regard was neither challenged in First Appeal nor dis-lodged by the First Appellate Court. In view of availability of ground under Section 12(1)(c) of the Act, the First Appellate Court directed the tenant to be evicted and the plaintiffs to be placed in vacant possession of the suit premises.

It appears that the defendant-tenant had died during the pendency of first appeal and his legal representatives were brought on record. They filed second appeal which has failed and the High Court has maintained the decree passed by the First Appellate Court.

We may make it clear that so far as the ground under Section 12(1)(f) of the Act based on bona fide need of the plaintiffs for the suit accommodation is concerned the same was negated by the Trial Court. The plaintiffs gave up this ground and did not pursue the same and therefore this ground is rendered redundant. A mention thereof is being made because it would have relevance for the purpose of deciding availability of ground of eviction under Section 12(1)(c) of the Act as will be noticed shortly hereinafter.

The clauses relevant for our purpose, viz. (c), (f) and (h) of sub-section (1) of Section 12 of the Act read as under:

Sec.12. Restriction on eviction of tenants.

___ (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely:-

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

(c) that the tenant or any person residing with him has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the interest of the landlord therein

xxx	xxx	xxx	xxx
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xxx xxx xxx xxx

(f) that the accommodation let for non-residential purpose is required bona-fide by the landlord for the purpose of continuing or starting his business or that any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

xxx xxx xxx xxx

(h) that the accommodation is required bonafide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or alterations cannot be carried out without the accommodation being vacated.

(emphasis supplied)

'Landlord' and 'tenant' are defined in the Interpretation Clause of the Act as under:-

(b) "landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord.

(i) "tenant" means a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

While seeking an ejectment on the ground of bona fide requirement under clause (f) abovesaid the landlord is required to allege and prove not only that he is a 'landlord' but also that he is the 'owner' of the premises. The definition of 'landlord' and 'tenant' as given in clauses (b) and (i) of Section 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a 'landlord' though not an 'owner' of the premises. The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the rent of any

accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit of any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an eviction of the tenant on one or more of such grounds falling within the ambit of Section 12(1) of the Act which do not require the landlord to be an owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) contemplates a claim for eviction being maintained by an owner-landlord and not a landlord merely. Though of course, we may hasten to add, that the concept of ownership in a landlord-tenant litigation governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. In M.M. Quasim Vs. Manoharlal Sharma — (1981) 3 SCC 36, it was held that an 'owner-landlord' who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title lesser than his own. In Dilbagrai Punjabi Vs. Sharad Chandra (1988) Supp SCC 710, this Court held that it was essential to sustain a claim of eviction under Section 12(1)(f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to notice given before the institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on title against a person setting up a contending title while disputing the title of the plaintiff. Nevertheless pleading and proving ownership, in the sense as it carries in Rent Control Law, is one of the ingredients of the ground under Section 12(1)(f) of the Act.

What is denial of landlord's title or disclaimer of tenancy and what impact it has on the landlord's right to evict and tenant's liability for eviction under the Act?

It is pertinent to note that denial of title of the landlord or disclaimer of tenancy is not as such set out as a ground on which tenant may be evicted under Section 12 of the Act. Section 12(1)(c) provides inter alia that a tenant incurs liability for eviction if the tenant or any person residing with him has done any act which is likely to affect adversely and substantially the interest of the landlord therein. A tenant's denial of the landlord's title and/or disclaimer of tenancy has been held to be an act which is likely to affect adversely and substantially the interest of the landlord. In a series of decisions, the High Court of Madhya Pradesh has consistently taken this view and we see no reason to make a departure therefrom. It has to be seen how and in what manner a denial of title or disclaimer by tenant would attract applicability of Section 12(1)(c) of the Act? In our opinion, the denial or disclaimer to be relevant for the purpose of Section 12(1)(c) should take colour from Section 116 of the Evidence Act and Section 111(g) of the Transfer of Property Act. Section 116 of the Evidence Act embodies therein a rule of estoppel. 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. This estoppel so long as it binds the tenant excludes the tenant from raising a plea disputing the title of his landlord at the commencement of the tenancy. It flows as a corollary therefrom that the proof of landlord-tenant relationship tantamounts during the continuance of tenancy to proof of ownership of landlord over the tenancy premises at the beginning of the tenancy so far as the tenant is concerned. It is significant to note that on the phraseology of Section 116 of the Evidence Act the rule of estoppel applies so long as the tenancy is not terminated and the rule estops the tenant from laying challenge to the ownership of the landlord at the commencement of the tenancy. But the rule of estoppel as incorporated in Section 116 is not exhaustive and it may be extended or suitably modified in its application to other situations as well, retaining the basic feature of the rule. Clause (g) of Section 111 of the Transfer of Property Act, insofar as relevant for our purpose, provides that a lease of immovable property determines by forfeiture in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. This provision contemplates two fact-situations which entail the lessee having renounced his character as such and they are: (i) when the lessee sets up a title in a third person, or (ii) when he claims title in himself. In either case, the tenant has disputed and denied the title of his landlord because a title in third person or title in himself cannot co-exist with the title in the landlord.

The law as to tenancy being determined by forfeiture by denial of the lessor's title or disclaimer of the tenancy has been adopted in India from the Law of England where it originated as a principle in consonance with justice, equity and good conscience. On enactment of the Transfer of Property Act, 1882, the same was incorporated into clause (g) of Section 111. So just is the rule that it has been held applicable even in the areas where the Transfer of Property Act does not apply (See — Raja Mohammad Amir Ahmad Khan Vs. Municipal Board of Sitapur and Anr. AIR 1965 SC 1923). The principle of determination of tenancy by forfeiture consequent upon denial of the lessor's title may not be applicable where rent control legislation intervenes and such legislation while extending protection to tenants from eviction does not recognize such denial or disclaimer as a ground for termination of tenancy and eviction of tenant. However, in various rent control legislations such a ground is recognized and incorporated as a ground for eviction of tenant either expressly or impliedly by bringing it within the net of an act injurious to the interest of the landlord on account of its mischievous content to prejudice adversely and substantially the interest of the landlord.

Denial of landlord's title or disclaimer of tenancy, is it an act injurious to interest of landlord? How does this rule operate and what makes it offensive? Evans & Smith state in the Law of Landlord and Tenant (Fourth Edition, 1993, at p.89) that it is an implied condition of every lease, fixed-term or periodic and formal or informal, that the tenant is not expressly or impliedly to deny the landlord's title or prejudice it by any acts which are inconsistent with the existence of a tenancy. Disclaimer of the landlord's title is analogous to repudiation of a contract. The rule is of feudal origin; the courts are not anxious to extend it and so any breach of this condition must be clear and unambiguous. Hill & Redman in Law of Landlord and Tenant (Seventeenth Edition, para 382, at page 445-446) dealing with "Acts which prejudice lessor's title" state that there is implied in every lease a condition that the lessee shall not do anything that may prejudice the title of the lessor; and that if this is done the lessor may re-enter for breach of this implied condition. Thus, it is a cause of forfeiture if the lessee denies the title of the lessor by alleging that the title of the landlord is in himself or another; or if he assists a stranger to set up an adverse title or delivers the premises to him in order to enable him to

set up a title. It is a question of fact, however, what intention underlies the words or the actions of a tenant, whether in fact he is definitely asserting a title adverse to the landlord or, as the case may be, intending to enable someone else to set up such a title. Thus, it is not sufficient that the lessee does not at once acknowledge the title of the landlord and a general traverse in the defence to an action for possession does no more than put the landlord to proof and does not assert that the title is in another. The essential characteristic of disclaimer by tenant as stated in Foa's General Law of Landlord and Tenant (Eight Edition, para 934, at p.589) is that it must amount to a renunciation by the tenant of his character of tenant, either by setting up a title in another, or by claiming title in himself. A mere renunciation of tenancy without more, though it may operate as a surrender, cannot amount to a disclaimer. The denial, though it need not be express and can be implied, must nevertheless be a clear denial and it must be clearly proved.

In Williams and Jeffery v. Cooper (1840) 1 Scott NR 36, Tindal CJ stated, "a disclaimer, as the word imports, must be a renunciation by the party of his character of tenant, either by setting up a title in another, or by claiming title in himself." Setting up a title hostile to that of the landlord by the tenant himself or the tenant assisting another person to set up such a claim entails forfeiture of tenancy, said Lord Lyndhurst, C.J. in Doed Ellerbrock v. Flynn, 1 Cr M&R 137. As held in Doed Grav v. Stanion, (1836) 1 M&W 695 at p.703, the disclaimer may be verbal or written but it must amount to a direct repudiation of the landlord-tenant relationship or it may be a distinct claim to hold possession of the estate, upon a ground wholly inconsistent with the existence of that relationship which is a repudiation of such relationship by necessary implication. Park B. therein explained, "an omission to acknowledge the landlord as such, by requesting further information, will not be enough".

After the creation of the tenancy if the title of landlord is transferred or devolves upon a third person the tenant is not estopped from denying such title. However, if the tenant having been apprised of the transfer, assignment or devolution of rights acknowledges the title of transferee either expressly or by paying rent to him, the rule of estoppel once again comes into operation for it is unjust to allow tenant to approbate and reprobate and so long as the tenant enjoys everything which his lease purports to grant how does it concern him what the title of the lessor is [See Tej Bhan Madan Vs. II Additional District Judge and Ors. (1988) 3 SCC 137]. A denial of title which falls foul of the rule of estoppel contained in Section 116 of Evidence Act is considered in law a malicious act on the part of the tenant as it is detrimental to the interest of the landlord and does no good to the lessee himself. However, it has to be borne in mind that since the consequences of applying the rule of determination by forfeiture of tenancy as a result of denial of landlord's title or disclaimer of tenancy by tenant are very serious, the denial or disclaimer must be in clear and unequivocal terms (See __ Majati Subbarao Vs. P.V.K. Krishna Rao (deceased) by Lrs. (1989) 4 SCC 732, Kundan Mal Vs. Gurudutta (1989) 1 SCC 552 and Raja Mohammad Amir Ahmad Khan, (supra). We may quote with advantage the law as stated by a Division Bench of Calcutta High Court in Hatimullah and Ors. Vs. Mahamad Abju Choudhury, AIR 1928 Calcutta 312. It was held, "the principle of forfeiture by disclaimer is that where the tenant denies the landlord's title to recover rent from him bona-fide on the ground of seeking information of such title or having such title established in a Court of law in order to protect himself, he is not to be charged with disclaiming the landlord's title. But where the disclaimer is done not with this object but with an express repudiation of the tenancy under the landlord, it would operate as forfeiture".

In our opinion, denial of landlord's title or disclaimer of

tenancy by tenant is an act which is likely to affect adversely and substantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of clause (c) of sub-section (1) of Section 12 of M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by Rent Control Law but without disowning his character of possession over the tenancy premises as tenant cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of Section 12(1)(c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability.

We have perused the copy of written statement, made available to us by the learned counsel for the defendant-appellant, wherein is contained the alleged denial of title. Vide para 2 of the written statement the defendant stated "the owner of the house was late Khetsidas. On what basis the plaintiff-firm or its partners claim themselves to be the owner of the property is for them to prove". Vide para 3 of the written statement it is again stated "the plaintiff-firm is not the original owner of the house nor the rent of Rs.17/- per month was settled between the defendant and the plaintiff". However, nowhere in the written statement the defendant has disowned the character and nature of his possession over the suit premises as tenant. He has neither pleaded the title in the suit property in himself nor pleaded that anyone other than the plaintiffs is the owner of the property. On the contrary, in the written statement, as also in his deposition, the defendant has admitted his having paid rent to the plaintiffs and having initiated proceedings before the Rent Controller for fixation of standard rent of the premises impleading the plaintiff-firm as the landlord-opposite party. To put it in other words, what the tenant has said, is something like this — "Yes, I am a tenant in the suit premises; I have paid the rent to you (and I may continue to do so); but before you may be held entitled to a decree under Section 12(1)(f) of the Act, I, in order to protect myself from eviction, call upon you to satisfy the court and let me also be satisfied if you are the owner of the suit premises." The nature of the plea raised and the stand taken by the defendant in the written statement and at the trial is that he is the tenant and the plaintiffs are the 'landlord', as defined in the Act, but the defendant demands proof of 'ownership' of the plaintiffs over the suit property as it cannot be spelled out from the averments made in the plaint how the title over the property came to vest from Swami Khetsidas, who had inducted the defendant as tenant in the suit premises, to Prahlad Rai though the latter was not a natural born son of Swami Khetsidas and again from Prahlad Rai to the partnership firm which was suing the tenant claiming itself to be the landlord of the premises and arraying itself as plaintiff. The tenant would feel satisfied once the information leading to such vesting of title was disclosed and appealed to the Court. The primary purpose behind raising the plea was a bona fide effort on the part of the tenant to protect himself by insisting on the plaintiff satisfying all the requirements of the relevant provision of law, that is Section 12(1)(f), before he was called upon to vacate. The pleading of the defendant has to be read and appreciated in the light of the requirements of Section 12(1)(f) of the Act which provision requires a decree for eviction on the ground of bona fide requirement being passed only in favour of an 'owner-landlord'; ownership (as understood in Rent Control Law) being one of the ingredients of the ground for eviction. Such a plea raised by the defendant in his written statement is not a malicious act of the tenant. The plaintiff staking a claim for eviction

under Section 12(1)(f) has also to prove ownership, apart from landlordship. It would have been different if the tenant would have raised such a plea as a malicious or wanton act of himself by raising on his own a dispute as to the title of the landlord as owner of the suit premises though the question of ownership was not germane to the claim for eviction or if he would have disowned his character as tenant whilst in possession of the premises. The plea raised by the defendant in his written statement is not a clear and unequivocal denial of the title of the landlord. There is no reason to doubt the bona fides of the tenant while raising such plea. The First Appellate Court and the High Court were, therefore, not right in holding availability of ground under Section 12(1)(c) of the Act for eviction of the tenant basing such finding on the tenant's plea raised in the written statement.

So far as the availability of ground under Section 12(1)(h) of the Act is concerned no fault can be found with the finding arrived at by the Trial Court that the accommodation was required bona fide by the landlord for the purpose of re-building the same which activity could not be carried out without the accommodation being vacated.

The appeal is therefore allowed in part. Decree for eviction of tenant under Section 12(1)(c) of the Act is set aside. Instead the tenant is held liable to be evicted under Section 12(1)(h) of the Act. Before passing the decree, the requirement of Section 18 shall have to be fulfilled. The parties shall appear before the Trial Court which shall ascertain from the tenant whether he elects to be placed in occupation of the accommodation from which he is to be evicted consistently with Section 18 of the Act and to make consequential orders as contemplated therein. The appeal is disposed of accordingly. No order as to the costs.

J.
(R.C. LAHOTI)

J.
(RUMA PAL)

March 4, 2002