S. Thangappan vs P. Padmavathy on 24 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3584, 1999 (7) SCC 474, 1999 AIR SCW 3593, 1999 (5) SCALE 283, 1999 (4) LRI 884, 1999 (8) ADSC 433, 1999 SCFBRC 423, 1999 (9) SRJ 212, (1999) 6 JT 464 (SC), (1999) 2 RENTLR 603, (2000) 1 MAD LJ 12, (2000) 1 MAD LW 782, (2000) 1 RENCJ 111, (1999) 2 RENCR 277, (2000) 2 SCJ 427, (1999) 7 SUPREME 498, (1999) 5 SCALE 283, (1999) 4 CURCC 105

Bench: A.P.Misra, N.Santosh Hegde

PETITIONER:
S. THANGAPPAN

Vs.

RESPONDENT:
P. PADMAVATHY

DATE OF JUDGMENT: 24/08/1999

BENCH:
A.P.Misra, N.Santosh Hegde

JUDGMENT:

D E R These appeals are directed against the order of the High Court of Madras dated 24.11.1997 in Civil Revision Petition Nos. 3476 of 1985 and 830 of 1997 dismissing these revisions. These appeals arise under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act No. 18 of 1960), hereinafter referred to as the Act. The short facts are that the appellant is a tenant of the disputed premises, who was running an automobile workshop. The respondent filed the eviction petition against him, on the grounds that he is defaulter, not paid the rents from October 1982 to May 1983, the said premises is required for demolition and reconstruction and that he has sub-let a portion of the disputed premises.

The appellants stand is that earlier he was under an impression that the respondent is the owner of the premises but later he came to know that Arulmigu Athikesava Perumal Peyalwar Devasthanam is the owner of the premises. So he wrote a letter to the said Devasthanam to recognise the appellant as a tenant. Since then and for this reason the appellant did not pay any rent to the respondent bonafide believing the Devasthanam to be the owner. The Rent Controller rejected this defence and held that the appellant committed default in the payment of rent, the premises in question is legitimately required by the respondent for demolition and reconstruction. However, the Rent

Controller rejected the case of sub-letting, which for the present appeal is not in issue as it has become final. The appellant then filed an appeal. The Appellate Authority confirmed the order passed by the Rent Controller and held, there exists relation of landlord and tenant between the respondent and the appellant and the denial of title by the appellant is not bonafide and the default of payment of rent is wilful. Finally, the appellant filed civil revision before the High Court. The main contention raised before the High Court is also the same as raised before us that the courts below have failed to appreciate on the facts and circumstances of this case that denial of title by the appellant is bona fide and hence non-payment of rent cannot be held to be wilful. The appellant also relied on facts which came into existence, during the pendency of the said revision that in fact the said Devasthanam filed a suit on 30th October, 1987 against the appellant and others, claiming paramount title over the land including disputed one and also for eviction before the City Civil Court, Madras. Reliance is sought to be placed on the reply affidavit of the appellant in the said suit, where it is said he has admitted to be the tenant of the Devasthanam. On the other hand aforesaid revision of the appellant was dismissed for default by the High Court on 27th April, 1989. Thereafter, the appellant filed an application for restoration. Meanwhile, the respondent filed execution petition before the Rent Controller. The appellant in this execution also referred to the suit of the Devasthanam, and submitted rent was rightly paid to the temple and not to this respondent thus this execution has become inexecutable. Respondent denied this claim on merit and further objected of this being considered in the execution proceedings. It was urged the executing court cannot go beyond the decree. Thus the executing court on 24th September, 1987 rejected the appellants contention. The appellant thereafter preferred Civil Revision Petition No. 830 of 1997, as aforesaid, before the High Court under Article 227 of the Constitution of India.

The application of the appellant for restoration of the revision was allowed. Finally, the High Court dismissed both the said revisions. In the restored revision High Court held, even if the entire property belong to the temple, but since at the initial stage through the arrangement with the respondent, the appellant was inducted into the tenancy, the appellant cannot deny his right and title. Consequently, held that non-payment of rent to the respondent was wilful. It also confirmed that the building is required by the respondent for demolition and reconstruction. In the revision, against the order passed by the executing court, the High Court held that merely because the paramount title holder filed a suit, the arrangement between the appellant and the respondent cannot come to an end, hence claim of the appellant was rejected. The appellant aggrieved by these dismissal orders of the High Court in the two revisions, which upheld the concurrent findings recorded by both the authority below has filed the present appeals.

The main contention by the learned senior counsel for the appellant, Mr. M.N. Krishnamani, is that the courts below have neither applied its mind to the facts of this case nor recorded any finding that the denial of title by the appellant was not bonafide. The submission is that he denied the title of the respondent in favour of temple on the basis of information received from the Temple which is also born out by the subsequent event, leading to filing of the suit by the Devasthanam, thus his paying rent to the temple constitute to be bonafide one. Further he submits the said affidavit of the respondent in the Devesthanam suit where he admits to be lessee, not owner, is contrary to what he has stated in the present petition under Section 14 (1)

(b) of the Act where he assert himself to be the owner. For all these reasons conduct of the appellant should be construed to be bonafide.

The said averment made by the respondent in para 3 of the petition under Section 14 (1)(b) read with Section 10 (2)(i) and 10 (2) (a) of the Act, is quoted hereunder: The petitioner states that she is the absolute owner of the premises house and ground bearing municipal door No. 108, Pilliar Koil Street, Alwarpet, Madras - 600018. The respondent herein is a tenant under her in respect of the said property.

While in para 2 of the affidavit filed by the respondent for impleadment in the Devasthanam suit he states:

> I respectfully submit that I am the lessee in the land of the first respondent herein. I have put up superstructure and a portion was let out to the second respondent herein.
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> It is on this it is submitted he admits to be the lessee of Devasthanam then he cannot be the owner or the landlord of the appellant. The two statements are contradictory. On the other hand, learned counsel for the respondent submits, there is concurrent finding by all the courts that the appellant default in payment of rent is wilful and building is required for demolition and reconstruction, hence this Court should not interfere. It is also submitted there is no contradiction in the two statements and even if there is, it would be of no avail to the appellant. The denial of title cannot be held to be bonafide as the appellant was aware he was inducted into tenancy by the predecessor of the respondent, there was nothing to show since thereafter respondent lost his title thus even filling of the subsequent suit by the Devasthanam would not change the position as relationship of landlord and tenant between the respondent and the appellant continues, under the Act. So, on these facts the denial of title of the respondent by the appellant followed by refusal to pay rent to the respondent constitutes wilful default.
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> Mr. M.N. Krishnamani, learned senior counsel for the appellant referred to Mangat Ram & Anr. Vs. Sardar Meharban Singh & Ors., 1987 (4) SCC 319, wherein it is observed as hereunder:
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> In the premises, the High Court as well as the learned Additional District Judge were clearly in error in decreeing the suit brought by respondent 1 under Section 20 (2)(a) of the Act by relying on the rule of estoppel embodied in Section 116 of the Evidence Act, 1872. The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end.

Similarly, he referred to D. Satyanarayana Vs. P. Jagadish, 1987 (4) SCC 424:

The appeal must be allowed on the short ground that there being a threat of eviction by a person claiming title paramount i.e. head lessor Krishnamurthy, the appellant was not estopped under Section 116 of the Evidence Act from challenging the title and his right to maintain the eviction proceedings of the respondent P. Jagadish as the lessor. Section 116 of the Evidence Act provides 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, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words during the continuance of the tenancy have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy. The rule of estoppel is thus restrict not only in extent but also in time i.e. restricted to the title of the landlord and during the continuance of the tenancy; and by necessary implication, it follows that a tenant is not estopped, when he is under threat of eviction by the title paramount, from contending that the landlord had no title before the tenancy commenced or that the title of the landlord has since come to an end.

Having heard learned counsel for the parties and after perusing the orders passed by the Rent Controller and Appellate Authority we find they concurrently held that the denial of title by the appellant was not bona fide and the default was wilful. They also held building is required for demolition and reconstruction. Challenging these findings the learned counsel for the appellant argued with vehemence that the authorities below should not have addressed itself into the question of title, as it had no jurisdiction to decide the question of title, hence approach of the appellate authority was against the jurisdiction vested in it under the law. Learned counsel referred to the case in, LIC of India Vs. India Automobiles & Co. and Ors., 1990 (4) SCC 286, to contend that the question of title cannot be gone into in these proceedings. There is no dispute of this proposition neither it is disputed by the learned counsel for the respondent nor this question of title has been decided in these proceedings. It is only when a tenant denies title of the landlord, the court has to scrutinise the evidence and come to the conclusion prima facie, whether the denial of title is bona fide or not. It is in the context of course court has to go into the evidence to test the veracity of this denial of title. Thus, any finding in this regard could not be a finding on the question of title.

There is neither any claim of title set up by the respondent nor there is any such issue between the parties in these proceedings and hence recording of any finding in this regard is only to be understood for a limited purpose of testing the bona fide of tenant to deny the title of the landlord.

What has to be considered in a case of denial of title by a tenant is, whether their still exists any relationship of landlord and tenant inter se, as in the present case between the respondent No.1 and the appellant. In other words by such denial of title does liability to pay this rent to such landlord ceases? Does mere denial of title is sufficient not to tender rent to such landlord or at what stage such liablity ceases. These are all considerations in the context of testing the defence of a tenant in not tendering the rent to such landlord. So the question is to whom rent is payable? In this regard definition of landlord under Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is relevant, which is quoted hereunder:

> Sec.2(6) landlord includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent to be entitled to receive the rent, if the building were let to a tenant :
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> Explanation : A tenant who sub-let shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant.
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> The definition of landlord is very wide to include any person who is receiving or is entitled to receive the rent. The explanation includes even a tenant to be landlord under this Act. In the present case it is not in dispute that the appellant was inducted into tenancy by the predecessor of the respondent. After such induction he had been paying rent first to the predecessor of the respondent No.1 from 1962 and then to the respondent No.1 since 1980. The appellant in his cross examination has admitted this by stating that he came as a tenant under one Shivlingam who is the elder brother of Respondent No.1 and from 1980 onwards he had been paying rent to respondent No.1. It is in this background we have to test the submission for the appellant with respect to the default and denial of title. It is clear as is also finding recorded that the appellant himself approached the Devasthanam subsequently to execute the tenancy of the disputed premises in question to him. In order to appreciate the conduct of the appellant in denial of title of the Respondent No.1 we herewith record the finding of the trial court in this regard;
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> The petitioner strongly and curiously would contend that since he came to know all of a sudden that Arulmigu Audikesava Perumal Peyalwar Devasthanam is the true owner of the petition premises, he stopped the payment of rent to the petitioner. In fact, the said Devasthanam never demanded the rent from the respondent at any point of time, at their own accord. Further, the said Devasthanam never intimated to the respondent that they are the owners of the petition premises. The above said Devasthanam had not informed the petitioner that the said Devasthanam is the true owner of the petition premises. For the first in the history, the 1st respondent writes a letter Ex.R.1 dt. 28.3.83 stating that he may be recognised as a tenant under the said Devasthanam in respect of the petition premises, as he considered that the said Devasthanam is the true owner of the petition premises. Thus the respondent himself

gives right and title to the said Devasthanam.

The said Arulmighu Audikesavaperumal Peyalwar Devasthanam sent a reply to the 1st respondent on 4.5.83, which is marked as Ex. R.3 in this petition. Even in Ex.R.3, the said Devathanam had not examined any right and title over the petition premises and the said devasthanam had not even admitted their ownership over the petition premises. Therefore, I hold that the contention of the respondent that the petitioner has no right or title over the petition premises, is not true even for a moment.

The aforesaid finding speaks for itself the conduct of the tenant in denial of Respondent No.1 title. In spite of no claim of the rent made from the appellant he on his own volition requested the Devasthanam to accept him as his tenant. Further, Devasthanam had not even informed the appellant that they are the owner. In this background can denial of title by tenant could be held to be bona fide? The courts below rightly held it to be not bonafide.

With reference to the subsequent event the other submission for the appellant is with reference to the Devasthanam suit, viz., the affidavit by the respondent in which it is urged he admits to be lessee of Devasthanam and thus his averment in the present proceeding being the owner of the premises is wrong. This also would be of no avail. Firstly, we are not called up to examine the said suit. The respondent No.1 was not even impleaded hence was not a party there. This apart relationship between the appellant and the respondent is of tenant and landlord under the Act while relationship between the respondent and Devasthanam may be of lessee and lessor in a different set of fact. This would make no difference. The definition of landlord is under Section 2 (6) and under its explanation even tenant is treated to be landlord. The aforesaid two decisions, viz., Mangat Ram and others (supra) and D. Satyanarayan (supra) neither render any help to the appellant nor could it be distinguished as not to apply to the facts of the present case. On the contrary the two decisions squarely applies to the present case. Section 116 of the Indian Evidence Act deals with the principle of estoppel against a tenant where he denies the title of his landlord. Section 116 reads as under;

116. Estoppel of tenant and of licensee of person in possession - No tenant of immovable [roperty, 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.

This section puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the beginning of his tenancy. The significant words under it are at the beginning of the tenancy. This is indicative of the sphere of the operation of this section.

So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord title. Thus, this principle of estoppel debars a tenant from denying the title of his landlord from the beginning of his tenancy. Howsoever defective title of such landlord could be, such tenant cannot deny his title. But subsequent to his induction as tenant if the landlord looses his title under any law or agreement and there is threat to such tenant of his eviction by subsequently acquired paramount title holder then any denial of title by such tenant to the landlord who inducted him into the tenany will not be covered by this principle of estoppel under this Section. In Mangat Ram and Ors. (supra) this Court held:

> The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end.
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> Similarly in D.Satyanarayan (supra) also this Court holds in para 4; The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlords titl e, however defective it may be . Similarly, the estoppel under Section 116 of the Evidence Act is restricted to the denial of the title at the commencement of the tenancy.
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> Now reverting to the facts of the present case, we find, admittedly the appellant were inducted into tenancy by the predecessor of Respondent No.1 in 1962 and he continued to pay rent to Respondent No. 1 since 1980. There is no case or any evidence that since thereafter Respondent No. 1 lost his title to the disputed premises. On the contrary denial of title in the present case is based on some information that Devasthanam is the owner of the property since inception. No case, Devastanam became owner of this property after 1962. In other words, the denial of title by the appellant against his landlord is from the very inception. This is forbidden under Section 116 of the Evidence Act. So both on law and facts we do not find the submissions for the appellant is sustainable. All the courts below rightly concluded that denial of title by the appellant was not bona fide and hence non payment of rent to him amounts to wilful default.
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> Lastly, submission is there is no finding by the courts below that denial of title by the appellant was not bona fide. The submission has no merit. We find the trial court very clearly recorded;
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> Since it was found that the allegation of the respondent is disputing the title of the petitioner is mala fide and motivated. I hold that the default committed by the respondent in the payment of rent is wilful.
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> Thus, none of the contentions raised by learned counsel for the appellant has any merit. All the courts below also concurrently held that the disputed premises is required for demolition and reconstruction. No illegality worth consideration has been pointed out to set aside such findings. In view of the aforesaid findings, we do

not find any merit in the present appeal and is, accordingly, dismissed. Costs on the parties. At this time a request was made by learned counsel for the appellant to grant some time to the appellant to vacate the premises, since they are in occupation of this premises since 1962. We heard learned counsel for the parties. In the background of this case, we grant six months time to the appellant to vacate the premises in question from this date, on condition that he submits a usual undertaking to the effect that he will hand over peaceful possession of the disputed premises to the respondent immediately at the expiry of this six months, without creating any third party right. He shall file this undertaking within four weeks from today before the trial court.