State Of A.P. & Ors vs D. Raghukul Pershad (D) By Lrs & Ors on 8 August, 2012

Equivalent citations: AIRONLINE 2012 SC 320, (2012) 120 ALLINDCAS 221, (2012) 2 CLR 639 (SC), (2012) 2 ORISSA LR 913, (2012) 2 RENCR 201, (2012) 3 ALL RENTCAS 185, (2012) 3 ICC 767, (2012) 4 CIVILCOURTC 129, (2012) 4 RECCIVR 336, (2012) 5 ALL WC 4378, (2012) 5 CAL HN 74, (2012) 5 MAD LW 709, (2012) 7 SCALE 313, 2012 (8) SCC 584, (2013) 115 CUT LT 837, (2013) 118 REVDEC 668, (2013) 1 CIVLJ 338, (2013) 1 RENTLR 401, (2013) 96 ALL LR 256

Bench: Sudhansu Jyoti Mukhopadhaya, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5822 OF 2012
(Arising out of SLP(Civil) No. 35306 of 2009)

STATE OF A.P. & ORS. Appellant(s)

VERSUS

D. RAGHUKUL PERSHAD (D) BY LRS & ORS. Respondent(s)

O R D E R

Leave granted.

The facts briefly are that the respondents herein filed OS No. 2379 of 1990 in the Court of 5th Assistant Civil Judge, City Civil Court, Hyderabad against the appellants no. 1 to 4 for ejectment and resumption of possession of the suit land. The case of the respondents in the plaint was that the appellants had taken lease of the suit land from their common ancestor late Shri Dwaraka Pershad who had purchased the suit land from Nawab Raisyar Bahadur. The further case of the respondents

in the plaint was that as the appellants failed to pay any rent from 1986 and renewed the lease after 1986, the respondents gave a notice to the appellants on 30.11.1989 to vacate the suit land. The appellants filed written statement pleading, inter alia, that the suit land actually belonged to the appellants and the lease deed had been executed and the rent had been paid to the respondents by mistake of fact. The learned Civil Judge decreed the suit for eviction after recording a finding, inter alia, that the appellants have not been able to prove the title to the land. The appellants filed First Appeal before the 3rd Additional Chief Judge, City Civil Court, Hyderabad which was numbered as AS No. 294 of 2005. The First Appellate Court held that the appellants were estopped from setting up title in them so long as they have not surrendered possession of the land to the lessees, namely, the respondents and further held that the appellants have not been able to establish their title to the suit land.

Aggrieved, the appellants filed Second Appeal SA No. 270 of 2009 before the High Court and by the impugned order, the High Court has dismissed the Second Appeal after holding that the appellants cannot be permitted to deny the title of the respondents under the provisions of 116 of the Indian Evidence Act and also holding that the appellants have not been able to adduce any evidence to prove that the suit land belonged to the appellants. The High Court also held in the impugned order that in a writ petition WP No. 9717 of 1993 filed before the High Court one Mohammed Khasim and Ameena Begum had challenged the entries with regard to Survey No. 58(Old) of Bahloolkhanguda Survey No. 127(new) and the High Court had observed that Rayees Yar Jung was the owner and sales made by Rayees Yar Jung were therefore, valid. The High Court further observed that the order passed by the High Court in writ petition no. 9717 of 1993 was challenged before this Court by the Government but this Court had dismissed the appeal and therefore, the appellants were estopped from taking a different stand with regard to the ownership of the land. With the aforesaid findings, the High Court dismissed the Second Appeal of the appellants.

Mr. P.S. Narasimha, learned senior counsel appearing for the appellants cited a full Bench Judgment of the Madras High Court in Venkata Chetty Vs. Aiyanna Gounden AIR 1917 Madras 789 and particularly the observations of Abdul Rahim, officiating C.J., to the effect that a tenant who was not let into possession by the person seeking to eject him is not estopped from denying the plaintiff's title and he may also show that the title is in some third person or himself. He also relied on the observations of Sheshagiri Aiyar, J. in the aforesasid case that under the Indian Contract Act, it can be shown that any contract into which a party has entered into is vitiated by mistake and the principle of estoppel should not be held to override these provisions of law of contract. He argued relying on the aforesaid observations in the judgment of the Madras High Court that the appellants, therefore, were entitled to plead in the written statement that the execution of the lease acknowledging title of the respondents was a mistake of fact and that the appellants were actually the owners of the suit land.

We have considered the submissions of Mr. P.S. Narasimha and we find that although plea was raised by the appellants in their written statement that the execution of the lease deed in the present case, as well as payment of rent pursuant to the lease deed were under mistake of fact, no issue as such was framed by the trial Court on whether the lease deed was executed by mistake of fact. This issue is an issue of fact and it is at the stage of trial that this issue will have to be raised and framed

by the trial Court so that parties could lead evidence on the issue. In this case, as this issue has not been framed, parties have not adduced evidence and no finding as such has been recorded by the trial Court on this issue. Hence, we are not in a position to consider the argument of Mr. P.S. Narasimha that the lease deed was executed and the rent was paid by mistake of fact.

The law is settled by this Court in D. Satyanarayana vs. P. Jagdish 1987(4) SCC 424 that the tenant who has been let into possession by the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord. Although, there are some exceptions to this general rule, none of the exceptions have been established by the appellants in this case. Hence, the appellants who were the tenants of the respondents will have to surrender possession to the respondents before they can challenge the title of the respondents.

In the plaint as framed by the respondents in the present case, the relief of eviction against the appellants was not based on the title of the respondents. Mr. M.L. Varma, learned senior counsel appearing for the respondents vehemently submitted that on a reading of the plaint, it will appear that the respondents had claimed to be owners of the land. We find that although an averment has been made in the plaint that the respondents were the owners of the suit land, no relief for declaration of title as such has been claimed by the respondents. Only the relief of eviction was sought in the plaint on the ground that the lease had not been renewed after 1986 and the rent had not been paid since 1986. In our considred opinion, therefore, this being not a suit of declaration of title and recovery of possession but only a suit for eviction, the trial Court, the First Appellate Court and the High Court were not called upon to decide the question of title.

For the aforesaid reasons, we set aside the findings of the trial Court, the First Appellate Court and the High Court on title, but we maintain the decree for eviction. We, however, order that the appellants will vacate the suit land within six months from today and further make it clear that the suit, if any, filed by the appellants for declaration of title and consequential relief cannot be entertained by the Court unless the appellants first vacate and handover possession to the respondents.

The judgment of the Courts below are modified accordingly. The appeal is allowed to the extent indicated above. No costs.

.....J. (A.K. PATNAIK) .....J. (SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI AUGUST 08, 2012.