

Bismillah Be (Dead) By Lrs vs Majeed Shah on 29 November, 2016

Equivalent citations: AIR 2017 SUPREME COURT 206, 2017 (2) SCC 274, (2017) 1 CLR 275 (SC), (2017) 1 ALL RENTCAS 423, (2017) 1 CAL HN 1, (2017) 169 ALLINDCAS 60 (SC), (2017) 3 CIVLJ 383, (2017) 1 CIVILCOURTC 619, (2017) 1 KER LJ 307, (2017) 2 ICC 51, (2016) 12 SCALE 614, (2017) 2 MAD LW 519, (2017) 1 RENCER 113, (2017) 1 WLC(SC)CVL 186, (2017) 120 ALL LR 217, 2017 (1) KCCR SN 31 (SC)

Author: Abhay Manohar Sapre

Bench: A.K. Sikri, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.11865-66 OF 2016
(ARISING OUT OF SLP (C) Nos. 28516-28517 of 2010)

Bismillah Be (Dead) by L.Rs.Appellant(s)

VERSUS

Majeed ShahRespondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) These appeals are filed against the final judgments and orders dated

27.11.2009 in Second Appeal No. 1097 of 2007 and 15.01.2010 in Review Petition No. 656 of 2009 passed by the High Court of Judicature at Jabalpur, Madhya Pradesh whereby the High Court dismissed second appeal and the review petition filed by the appellant herein.

3) In order to appreciate the short controversy involved in these appeals, few relevant facts need mention infra.

4) The appellant is the plaintiff (Landlord) whereas the respondent is the defendant (Tenant).

5) One Rai Bahadur Motiram Mathuradas was the original owner of the several houses bearing nos. 58, 58-A, 58-B, 58-C, 58-D, 395, 397, 397-A, 398 to 403, 403-A to 403-D and servant quarter Nos. 1-16 situated at Street Nos. 10 & 11, Sadar Bazar Cantonment Jabalpur known as "Moti Bada" later known as "Allaha Baux compound". Rai Bahadur Motiram Mathuradas inducted respondent as his tenant in House no. 402 (hereinafter referred to as "the suit house") on monthly rent of Rs. 80/-.

6) Rai Bahadur Motiram Mathuradas was an income-tax assessee. He did not pay his taxes and thus became the defaulter under the Income Tax Act, 1961 (for short "The Act"). The Income-Tax Department, therefore, initiated tax recovery proceedings.

7) Before the arrears could be paid, Rai Bahadur Motiram died. His son - Kasturilal Mathuradas, who inherited the properties of his late father, sought permission from the Income-Tax Department to sell Moti Bada property to enable him to clear the arrears. The Department granted the permission to Kasturilal.

8) Kasturilal then sold Moti Bada property including suit house to one Vasant Kripalani. The Income Tax Department issued the sale certificate on 11.06.1974 (Ex P -4) in favour of the purchaser pursuant thereto Kasturilal executed registered sale deed dated 16.09.1974 (Ex -P-6) in favour of Vasant Kripalani, who in turn, sold the said property same day jointly to six persons viz., Gyarsi Bai Chouksey, Lalta Bai Chouksey, Bhama Bai Chouksey, Bismilla Be (appellant herein), Idda Bai and Mohd. Jayed by executing another registered deed of sale dated 16.09.1974 (Annexure- P-7). Thereafter, these six persons, by registered partition deed dated 14.03.1984 (Annexure-8), partitioned the said property amongst them. So far as the suit house is concerned, it fell to the share of the appellant (plaintiff). This is how, the appellant became the sole owner of the suit house.

9) The appellant then on 08.05.2003 served legal notice (Annexure-P-9) to the respondent terminating his tenancy. The appellant called upon the respondent to pay the arrears of rent at the rate of Rs. 80/- p.m. for a period of three years preceding the date of notice and also called upon the respondent to vacate the suit house on the ground that he made unauthorized construction in the suit house without seeking the permission of the appellant.

10) The respondent replied to the notice (Annexure P-10) wherein he admitted that he is in possession of the suit house for the last 50 years. He also admitted that the suit house was originally belonged to Seth Motiram and that he was the tenant of Seth Motiram. He also said that on Seth Motiram's death, the Cantonment Board acquired the suit house because he did not leave any successor to inherit his property. This is how the respondent denied existence of any relationship of landlord and tenant with the appellant in relation to the suit house and challenged his derivative title.

11) The appellant then filed a civil suit against the respondent in the Court of Civil Judge, Class I, Jabalpur seeking respondent's eviction from the suit house under the M.P. Accommodation Control Act, 1961. The eviction was sought inter alia on the grounds covered under Section 12(1)(a), i.e.,

arrears of rent; 12(1)(c), i.e., nuisance created by the respondent; 12(1)(e), i.e., the appellant's bona fide need for his residence; and Section 12(1)(m), i.e., unauthorized construction made by the respondent without the permission of the appellant in the suit house.

12) The respondent filed his written statement. He reiterated his stand, which he had taken in reply to the appellant's legal notice. While admitting the ownership of original owner Rai Bahadur Motiram so also the creation of tenancy by Motiram with him in relation to the suit house denied such creation with the appellant. He further denied the grounds pleaded by the appellant for claiming his eviction from the suit house.

13) The Trial Court framed issues on the basis of the aforesaid pleadings. Issue no.1 was whether the appellant (plaintiff) has proved the relationship of landlord and tenant with the respondent in relation to suit house and, if so, its effect.

14) The Trial Court held that the appellant (plaintiff) was not able to prove the relationship of landlord and tenant with the respondent in relation to suit house. This being the main issue and the same having been answered against the appellant, it resulted in dismissal of the appellant's suit though the Trial Court also answered other issues.

15) The appellant, felt aggrieved, filed an appeal before the Court of VIII Additional District Judge, Jabalpur being Civil Appeal No. 15-A of 2006. By order dated 28.03.2007, the District Judge dismissed the appeal.

16) Against the said order, the appellant filed second appeal being S.A. No. 1097 of 2007 in the High Court. By impugned order dated 27.11.2009, the High Court dismissed the appeal in limine saying that the appeal does not involve any substantial question of law. It was held that since both the Courts below have dismissed the suit by answering the issue of relationship of landlord and the tenant against the appellant and also on other issues, such findings are concurrent findings of fact and are binding on the High Court. The High Court, however, neither set out the facts of the case and nor the legal principle applicable to such controversy.

17) Against the judgment of the High Court in second appeal, the appellant filed review petition being Review Petition No. 656 of 2009 before the High Court. By judgment dated 15.01.2010, the High Court dismissed the said review petition.

18) Challenging the judgment in the second appeal and the review petition, the appellant(plaintiff) has filed these appeals by special leave before this Court.

19) Heard Mr. Puneet Jain, learned counsel for the appellant and Mr. Anoop Kr. Srivastav, learned counsel for the respondent.

20) Mr. Puneet Jain, learned counsel for the appellant (plaintiff), while assailing the impugned order has urged three points. In the first place, learned counsel submitted that all the three Courts below erred in dismissing the appellant's suit. It was his submission that the Courts below failed to

even see much less apply the law dealing with "challenge to derivative title of the landlord" to the facts of the case. Learned counsel urged that on facts pleaded and the documents filed by the appellant coupled with the admission of the respondent in his reply to the appellant's legal notice and in his written statement wherein he had, in no uncertain terms, admitted the ownership of original landlord in relation to the suit house and also admitted creation of tenancy between him and the original landlord, the Courts below should have answered the issue in favour of the appellant by holding that the appellant was able to discharge his burden by proving his ownership over the suit house and, in turn, was also able to prove the devolution of original tenancy on the appellant with the respondent by operation of law. It was his submission that the respondent simply challenged the appellant's title but failed to prove his case, which was pleaded in the written statement whereas the appellant was able to prove the title of original landlord and also her own and thus discharged the burden.

21) In the second place, learned counsel submitted that since the appellant's suit was dismissed on the ground that the appellant failed to establish the relationship of landlord and the tenant with the respondent in relation to suit house, the other questions as to whether any ground pleaded by the appellant for respondent's eviction from the suit house though considered but not properly by the courts below on merits. Learned counsel, therefore, urged that the case should be remanded to the Trial Court for deciding the question afresh as to whether any ground for eviction under Section 12(1) of the M.P. Accommodation Control Act is made out on merits against the respondent.

22) In the third place, learned counsel submitted that the High Court erred in summarily dismissing the appellant's second appeal on the ground that it did not involve any substantial question of law. It was urged that the High Court should have admitted the appeal by framing substantial questions of law, which, according to learned counsel, did arise in the case and the questions framed should have been answered by decreeing the appellant's suit against the respondent.

23) In reply, learned counsel for the respondent (defendant) supported the impugned order and prayed for dismissal of the appeal.

24) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellant.

25) Law relating to derivative title of the landlord (Lessor) and challenge, if made, to such title by the tenant (Lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of Section 116 of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an Assignee/Vendee of the original landlord (Lessor) of the demised property in an action brought by the Assignee/Vendee against the tenant for his eviction from the demised property under the Rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the Assignee/Vendee. In other words, if the tenant/lessee pays rent to the Assignee/Vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an Assignee/Vendee in the proceedings.

26) However, once the Assignee/Vendee proves his title to the demised property, the original tenancy devolves on the Assignee/Vendee and tenant/lessee by operation of law on the same terms and conditions on which it was entered into with the original landlord/lessor and continues till either modified by the parties or is determined by the landlord in accordance with law. It enables the Assignee/Vendee to acquire the status of a "new landlord" in place of the original landlord of the demised premises qua tenant/lessee. (See Law of Evidence by Sarkar, 16th Edition, pages 2106-2108).

27) Keeping the aforementioned principle of law in mind and applying the same to the facts of the case, we are of the considered opinion that the appellant (plaintiff) has proved his title to the suit house so also the relationship of landlord and tenant with the respondent in relation to suit house. This we say for more than one reason stated infra.

28) First, it is an admitted fact that Rai Bahadur Motiram Mathuradas was the original owner of the suit house, which was a part of Moti Bada. Second, it is also an admitted fact that the respondent was inducted as a tenant by Rai Bahadur Motiram Mathuradas in the suit house. Third, the respondent, in his reply, has admitted the aforesaid two facts in para 4 of his reply to the appellant's legal notice and in para 13 of his written statement. Fourth, the suit house was sold after obtaining permission from Income Tax Department to Mr. Kriplani by registered deed of sale dated 16.09.1974 and Mr. Kriplani, in turn, sold to six persons, which included the appellant, by another registered deed of sale dated 16.09.1974. Fifth, these six persons (co-owners) then by registered deed of partition dated 14.03.1984 effected partition inter se and the suit house fell to the share of the appellant herein. Sixth, all these five facts enumerated herein were duly proved by the appellant by first pleading in the plaint and then by filing documentary evidence. Seventh, the appellant served quit notice to the respondent setting out therein all these facts. Eighth, the respondent failed to adduce any evidence in rebuttal to disprove the appellant's case except bald denial of the appellant's title over the suit house and lastly, the respondent having admitted the ownership of his original landlord and his tenancy with the original landlord, he became the appellant's tenant by operation of law on the appellant's proving his title over the suit house.

29) In the light of aforementioned eight reasons, we find no difficulty in holding that the appellant proved her title over the suit house and thus she became a landlady of the suit house. In consequence thereof, the respondent became her tenant by operation of law on the same terms as agreed upon with the original landlord. The appellant then rightly determined the tenancy by serving quit notice to the respondent.

30) In the light of foregoing discussion, we answer issue nos. 1, 2 and 3 framed by the Trial Court in favour of the appellant (plaintiff) and against the respondent (defendant) and accordingly hold that the appellant (plaintiff) is the owner/landlord of the suit house whereas the respondent (defendant) is the appellant's tenant and there exists relationship of landlord and tenant between the appellant and the respondent in relation to the suit house; second, the respondent (defendant) is the tenant at the rate of Rs. 80/- per month and third, the appellant (plaintiff) has served proper quit notice on the respondent (defendant) demanding balanced rent .

31) In view of what is held above, it is not necessary to remand the case to the High Court for deciding the second appeal afresh on merits which, in our view, did involve the substantial questions of law within the meaning of Section 100 of the Code of Civil Procedure, 1908 and deserved its admission for final hearing.

32) The cursory disposal of the second appeal in limine by the High Court without mentioning the facts, the submissions of the appellant, the points arising in these appeals and legal principles applicable to the case can not be countenanced.

33) Though the Trial Court has also recorded findings on other issues against the appellant but we find that the findings on other issues were influenced by the findings given on the first three issues.

34) In our view, in the light of the reversal of findings of three courts by this Court, it would be just and proper that the case is remanded to the Trial Court (Civil Judge Class I), Jabalpur for deciding the suit afresh on merits on issues nos. 4 to 11 which relate to grounds for seeking eviction under Section 12 of the Act.

35) Parties are granted liberty to amend the pleadings, in case if they so wish, in support of their case pleaded in relation to issue nos. 4 and

11. Parties are also granted liberty to lead additional evidence in addition to what has been already adduced in support of their respective pleadings on these issues. The Trial Court shall decide the suit on merits on issues nos. 4 to 11 in accordance with law within 6 months from the date of appearance of the parties before him.

36) In view of foregoing discussion, these appeals succeed and are allowed with costs of Rs.5000/- payable by the respondent to the appellant. The impugned judgments of the High Court, first Appellate Court and the Trial Court are set aside. The civil suit out of which these appeals arise is restored to its file. Parties to appear before the Trial Court on 03.01.2017 to enable the Trial Court to proceed in the matter, as directed, in accordance with law.

.....J.
[A.K. SIKRI]

.....J.
[ABHAY MANOHAR SAPRE] New Delhi;

November 29, 2016