Guru Amarjit Singh vs Rattan Chand And Others on 12 August, 1993

Equivalent citations: AIR1994SC227, 1993(3)ALT53(SC), JT1993(4)SC536, (1994)1MLJ50(SC), 1993(3)SCALE363, (1993)4SCC349, [1993]SUPP1SCR523, AIR 1994 SUPREME COURT 227, 1993 (4) SCC 349, 1993 AIR SCW 3676, (1993) 4 JT 536 (SC), 1994 (1) ALL CJ 137, 1993 (4) JT 536, 1993 SCFBRC 370, 1993 HRR 667, 1994 ALL CJ 1 137, (1994) 1 RENCR 12, (1993) 3 SCJ 533, (1993) 3 CURCC 364, (1993) 2 APLJ 72, (1993) 2 RENCJ 263, (1993) 3 ANDH LT 53, (1994) 1 CIVLJ 508, (1994) 1 LANDLR 194, (1994) 1 MAD LJ 50, (1994) 1 RENTLR 15

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Bench: K. Ramaswamy, S. Mohan

ORDER

K. Ramaswamy, J.

1. The appellant-plaintiff laid the suit for ejectment of the respondents pleading that the property in question belongs to Guru Naunihal Singh, his grand-father, and he succeeded by inheritance to 5 Kanals 17 Marias of land in Kartarpur Village. His grandfather had leased the same to Sardha Ram and Nar Singh Dass, predecessors of the respondent on October 20, 1905 on payment of Rs. 2 as yearly rent. They constructed the buildings at their own cost, but the 1st respondent sold 30 Marias to the defendant 5 to 7 on October 9, 1967 and defendants 2 to 5 had sold some plots to defendants Nos. 8 on January 4, 1968, which came to his knowledge in 1970. A notice of forfeiture under Section 111(g) of the Transfer of Property Act, for short 'the Act' was got issued and served on June 4, 1917 and the suit laid. The respondents in their written statements pleading that the father of the first defendant and the father of defendant Nos. 2 to 5 died in the year 1955. They have no knowledge of execution of any lease deed by the predecessor-in-interest. The land was in possession and enjoyment of their predecessors as owners even prior to 1905. No lease deed was executed. Even if there was any such lease, it was only nominal and never intended to be acted upon. They did not pay any rent to the appellant. Even if the tenancy is proved, being occupancy tenants they became owners by operation of Punjab Occupancy Tenants (Vesting of Property Right) Act, 1958. If the respondents are proved to be raiyats, they became owners, by operation of Punjab Village Common Lands Act, 1961. Alternatively they pleaded that they had prescribed adverse possession as they were not paying any rent at any time since 1905, but as owners they have been paying property

tax to the Govt. On merits they denied the allegations made in the plaint. They disclaimed any receipt of notice prior to the suit.

2. The trial court found that the original lease deed was not produced. A copy of more than 30 years old was produced and was admissible in evidence which would show that Shardha Ram and Nar Singh Dass had executed a lease deed on October 20, 1905 in favour of Guru Naunihal Singh. But there is no proof of payment of any rent of Rs. 2 per year. Jamabandi entries did not show any payment of rent, but only existence of terms of lease to pay rent at Rs. 2 per annum. Non-production of the receipts of the payment of rent clearly indicates that there was no relationship of landlord and tenants."There is hardly any evidence if the plaintiff accepted them to be his tenants. In these circumstances it can hardly be stated that defendants 1 to 5 are the tenants of the plaintiff. He concluded that from 1955 the respondents were holding the land as trespassers, and they had no relationship of tenancy with the appellant and that the suit was barred by limitation and the defendants have become owners by adverse possession. Accordingly, the trial court dismissed the suit. On appeal, the Addl. District Judge assumed several things in favour of the appellant and concluded that there is a proof of payment of rent of Rs. 2 per year till 1966-67 as per Jamabandi, though Jamabandi only mentioned the lease and rent of Rs. 2/-per year. It is settled law that entries in the Jamabandi are not proof of title. They are only statements for revenue purpose. It is for the parties to establish the relationship or title to the property unless there is unequivocal admission. Yet the appellate court contrarily deduced inference and findings in favour of the appellant and thereby it held that the respondents are continuing as tenants at sufferance on permissive possession and there was no hostile assertion of title to the knowledge of the appellant, so the question of adverse possession does not arise. Therefore, he allowed the appeal and decreed the suit.

3. The High Court has rightly placed the case squarely within the fore corners of the pleadings of the appellant. The appellant pleaded that the respondents forfeited their lease by sale of the land to third parties claiming themselves as owners of the property. Admittedly, the sale deeds have not been produced. Therefore, in what character the respondents have sold the lands is not proved. The copy of the lease-deed was in Urdu and the learned Judge got it translated into English. It is part of the record. It does not disclose that there is any covenant prohibiting alienation of the land and for breach thereof, right of re-entry was provided thereunder. The only ground on which the right of re-entry by forfeiture was provided thereunder was non-payment of annual ground rent of Rs. 2. But that is not the ground on which the suit was laid. Section 111(g) of the Transfer of Property Act provides that a lease of immovable property determines by forfeiture, that is to say - (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces is character as such by setting up a title in a third person or by claiming title in himself... and the lease provides that the lessor may re-enter on the happening of such event and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

4. The High Court held that the first clause has no application to the facts of this case as there was no covenant prohibiting sale or on its breach providing of the right of re-entry. Accordingly the suit is liable to be dismissed on this ground alone. Then it was contended that since the respondents had set up title in themselves renouncing their character as tenants and also pleaded adverse possession

in the written statement, it entails forfeiture under Clause (2) of Section 111(g) and thereby the appellant became entitled to have the respondents ejected in this suit. That was rejected by the High Court holding that the respondents had not unequivocally set up adverse possession or title in themselves. In the background of facts in this case they would be justified in raising those pleas and therefore, Clause (2) of Section 111(g) does not apply. Thus the High Court in Regular Second Appeal No. 1962 of 1977 by judgment and decree dated July 5, 1979 allowed the appeal, set aside the decree of the appellate court and confirmed that of trial court. Thus this appeal by special leave.

5. Sri Tarkunde, the learned senior counsel for the appellant placing reliance on the decision of this Court in Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur and Anr. and Sada Ram v. Gajjan Shiam , contended that the respondents successively denied the title firstly by claiming title in themselves and secondly renouncing their character as tenants and selling the lands to third parties and thirdly setting up adverse possession each of which constitute clearly an separately forfeiture of lease under Clause (2) of Section 111(g) of the Act. Though Prima facie the argument impressed us at first instance, but on our probing deep into the facts of the case and circumstances surrounding the litigation, we find that the view of the High Court is correct and that the plea of forfeiture is not available to the appellant. It would appear from the evidence on record that on October 20, 1905, Sardha Ram and Nar Singh Dass, sons of Bihari appears, to have executed a deed, ryatanama. It was mentioned therein that their predecessors had already constructed permanent house and they were living therein. They were also in possession and enjoyment of the property. They undertook to pay ground rent at the rate of Rs. 2 per annum and on their committing default, right of re-entry was provided. There is no covenant therein that they have no right to sell the property in their occupation and enjoyment or on breach thereof right of re-entry was provided for. Therefore, the first clause of Section 111(g) has no application and the foundation of the plaintiffs case in his pleading ol forfeiture by sale of land to defendants Nos. 6 to 8 had fallen to the ground as held by the High Court.

6. The question then emerges whether setting up a title in themselves as owners or acquisition of title and continuance in possession by operation of law or plea of adverse possession entails forfeiture, under Clause (2) in the background and circumstances of the case. The right of forfeiture is founded upon the existence of a lease and the jural relationship of lessor and the lessee as contemplated under Section 105 of the Act. It is implicit that if the lease is in operation the lessor had been given right to determine such a lease for committing breach of a covenant or for disclaimer by the lessee or tor the insolvency of the lessee, and the happening of any of the three specified events ipso facto does not put an end to the lease, but it only exposes the lessee to the risk of forfeiting his lease and gives a right to the lessor, if he so elects, to determine the lease. Under Clause (2) disclaimer by denial of the landlord's title or setting up a title in himself or third party is a ground for forfeiture. In other words, there must be a renunciation of the character of the lessee as such either by setting up a title in himself or in other person or unequivocal plea of adverse possession. But the repudiation must be clear and unequivocal and anterior to the issuance of the notice determining the lease under Section 111(g) of the Act and must put the lessor to notice of determination of the lease. The disclaimer my be in the pleading anterior to the suit in question or in any other documents, but directly relatable to the knowledge of the lessor. An incidental statement per se does not operate forfeiture.

7. In Abdulla v. Mohd. Muslim AIR (1926) Cal 1205 at .1206, it was held that a denial of the execution of Kabuliat is not denial ol title. So it would mean only repudiation of jural relationship as lessor and lessee and does not touch upon title. In case of proof of lease tenant is estopped under Section 116 of Evidence Act to deny title of the landlord. In Bhiwaji v. Taka Ram AIR 1916 Nagpur 15 & 16, it was held that selling or mortgaging the property by the lessee is not necessarily a denial of the title to the lessor. The same view was reiterated in Prag Nurain v. Kadir Baksh, ILR (1913) 35 Alld. 145 at 148 (D.B.), Mohammad Mahud Khan v. Laja Mal AIR (1934) Lahore 289 at 290, and Vilhoba & Am: v. Bapu, ILR (1891) Bom 110 (D.B.). Some v State Buildings (Lease and Rent) Acts provides for plea of bona fide denial of title and on its being upheld landlord has to establish title in a civil court. If the plea of tenant is found not bona fide it itself is a ground for eviction. Non-acceptance of the relationship of landlord and the tenant, therefore, does not amount to disclaimer of title as stated earlier. It is implicit that the very existence of the lease and jural relationship of lessor and the lessee is a pre-condition to invoke forfeiture under Section 111(g) of the Act. It is, therefore, necessary to plead and establish, if denied, the relationship of landlord and tenant and on proof thereof the condition prescribed in Section 111(g) gets attracted and itself is a ground for election by the landlord to determine the lease under Section 111(g) and lay the suit for eviction.

8. This Court in Raja Mohammad Amir Ahmad's case held that Section 111(g) applies to permanent tenancy and if there is disclaimer of tenancy by denial of title of the landlord, it must be clear and unequivocal and must be to the knowledge of the landlord. It was held that the background of the case and nature of the pleadings must also be looked into. On a construction of the pleadings in that case it was held that the denial was not unequivocal and the pleas set up in the circumstances emerging from the history of the treatment of the land and the nature of the enjoyment and the rights emerging therefrom do not constitute forfeiture. This Court had considered the effect of the enjoyment of lands, history of the case and held that the plea that property belonged to the appellant therein was merely of substantial character and the plea cannot be said to be a disclaimer of the right of the Govt. Similarly in paragraph 16 also it was held that the statements by the appellants claiming to have permanent and heritable interest in the land "belong to him" and that he was the "owner" of it, etc. did not amount to denial of landlord's title. Similarly setting up of the title thus for declaration of his title or his character in the suit property does not amount to unequivocal disclaimer inviting forfeiture under Section 111(g) of the Act.

9. In Punjab's decision there is an unequivocal admission of the relationship of landlord and tenant in prior litigation and on the basis thereof, it was held that the lessee forfeited his right to lease. This ratio also is of little assistance to the appellant.

10. From the copy of the alleged lease, it is clear that predecessors of Shardha Ram and Nar Singh Dass had already constructed the buildings and they were in enjoyment of the land and buildings and they continued to enjoy the property. The statutory operation of law conferring title was pleaded. The respondents were not parties to the lease deed and they had no knowledge of it. There is no proof, that they had knowledge of 1905 lease or that they acknowledged or acted on it. There is no clear proof or finding that they received any notice under Section 111(g) said to have been issued by the appellant. The respondents had no knowledge of the entries in the Jamabandi. It is common

knowledge that the tiller of the land primarily pre-occupies with cultivation and seldom notices the entries made by the Patwari in revenue records unless he is of litigious mind. Maintenance and custody of revenue records is the exclusive domain of the Patwari and it is not uncommon that revenue records are often tinkered by him to suit the exigencies. Therefore, the entries often are not to the knowledge of the respondents and may not be genuine or accurate. There is no proof that the respondents had such knowledge or brought to their notice and that they accepted or acquisced. If the entries are made in the regular course of duty, the entries may furnish presumptive rebuttable evidence of being correct. Jamabandi entries at best would show of the lease covenanting to pay Rs. 2 per annum as ground rent. They do not, therefore, establish any proof of payment of rent. Admittedly no iota of evidence to prove payment of rent or passing of receipts were thus produced by the appellant. Under those circumstances and in the light of the statutory operation of the aforesaid two Acts pleadings of the respondents that they became owners is not a clear unequivocal disclaimer of title. The plea cannot be said that it is unequivocal disclaimer. In this background the plea of adverse possession and particularly in the face of the non-payment of rent and their payment of revenue to the State also cannot be said to be unequivocal. As seen earlier lease is only unproved document of 30 years old to which knowledge was disclaimed by the respondents. Therefore, it does not amount to unequivocal and clear disclaimer of title but at best denial of relationship of lessor and lessee and docs not entail forfeiture. The High Court rightly, in the nature of pleadings and scope of the suit, did not go into the plea of adverse possession on merits.

11. Under these circumstances, we have no hesitation to hold that the findings of the High Court are not beset with any illegality warranting interference. The appeal is accordingly dismissed with costs quantified at Rs. 2,500.