Kamaljit Singh vs Sarabjit Singh on 2 September, 2014

Author: T.S. Thakur

Bench: C. Nagappan, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8410 OF 2014
(Arising out of S.L.P. (C) No.19532 of 2011)

Kamaljit Singh …Appellant

Vs.

Sarabjit Singh …Respondent

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. This appeal arises out of an order dated 9th July, 2010 passed by the High Court of Punjab and Haryana at Chandigarh whereby Civil Revision Petition No.580 of 2005 filed by the appellant has been dismissed and order dated 5th November, 2004 passed by the Rent Controller, Phagwara, dismissing a petition under Section 13-B of the East Punjab Urban Land Restriction Act, 1949 upheld.

3. The suit premises comprise a shop in a building bearing No.XVI/258/1 situate at Banga Road, Phagwara. It was let out to the respondent-tenant by the appellant who was born and brought up in India but having spent over 30 years in U.K. has returned in the year 2000 with the intention to settle down and establish a hotel at Phagwara his home town. An eviction petition under Section 13-B of the East Punjab Urban Land Restriction Act, 1949 was filed by the appellant on the ground that as a Non Resident Indian in need of the shop for his own use, he was entitled to have the same vacated from the respondent-tenant.

4. The eviction petition was contested by the respondent on several grounds including the ground that the appellant was not a NRI and that the eviction petition was barred by the provisions of Order 2 Rule 2 CPC. It was also contended by the respondent-tenant that although he was a tenant in occupation of the premises under the appellant, the sale-deeds relied upon by the respondent did not relate to the land underlying the shop in question.

5. By an order dated 5th November, 2004, the Rent Controller dismissed the eviction petition filed by the appellant holding that the appellant had failed to prove his ownership over the demised premises for a period of five years before the filing of the eviction petition. The Rent Controller held that the deposition of the witnesses appearing on behalf of the appellant did not satisfactorily prove that the building comprising the shops one of which happened to be the suit shop was constructed on the land purchased by the appellant in terms of the two sale-deeds set up by him. The Rent Controller was of the view that although the sale-deeds in question had been proved by the appellant, he had failed to co-relate the same to the suit shop or other shops over which he claimed ownership. The Rent Controller, therefore, dismissed the eviction petition no matter the appellant's case that he was an NRI and had returned home to set up his own business was accepted.

6. Aggrieved by the judgment and order passed by the Rent Controller, the appellant filed revision petition No.580 of 2005 before the High Court of Punjab and Haryana at Chandigarh. An application for permission to lead additional evidence filed by the appellant in the said revision petition to establish that the sale-deeds proved by the appellant at the trial, indeed related to the land comprising the shop in dispute was dismissed by the High Court by its order dated 9th July, 2010 and so also the revision petition. The High Court concurred with the view that the appellant had failed to prove that he was the owner of the suit shop for more than five years prior to the filing of the petition, a condition essential for invoking the provisions of Section 13-B of the Act. The High Court also held that the additional evidence sought to be adduced was very much within the knowledge of the appellant and could have been adduced by him if only he was diligent in doing so. Additional evidence, could not, observed the High Court, be allowed to fill up the lacunae in the appellants' case.

7. Section 13-B of the East Punjab Urban Land Restriction Act, 1949 reads as under:

> "13-B. Right to recover immediate possession of residential building or scheduled and/or non-residential building to accrue to Non-resident Indian – (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:
>
> Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.
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> (2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her;

> (3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly."

8. A careful reading of the above would show that the same entitles a Non-Resident Indian who returns to India to demand eviction of any residential or non-residential building, as the case may be, let out by him or her, if the same is required by such non-resident Indian for his or her use or for the use of any one ordinarily living and dependant on him or her. In terms of the proviso, however, the right to seek eviction of the tenant is available only after a period of five years from the date of such Non-Resident Indian becoming owner of any such building. It is further subject to the condition that any such right shall be available to a Non- Resident Indian owner of the premises only once during his life time.

9. In terms of sub-section (2) the Non-Resident Indian owner of the demised premises is entitled to apply for eviction from only one residential or one scheduled building or one non-residential building chosen by him or her. Sub-section (3) postulates that if the owner recovers possession of the building under Section 13-B but transfers it through sale or any other means or lets the same out before the expiry of a period of five years from the date of taking possession of the said building, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly. There is, therefore, no gainsaying that Section 13-B is a code by itself for the special category of cases where the landlord happens to be a non-resident Indian who returns to India and needs the demised premises for his or her own use or for the use of anyone ordinarily living with and dependant on him or her. The only limitation on the exercise of the right vested under Section 13-B (supra) is that the NRI owner must apply for eviction of the tenant only after a period of five years from the date he becomes the owner of such a building and that any such right shall be exercisable by him only once during his life time and in respect of one of the several buildings that he may be owning. The short question that arises in the above backdrop is whether the appellant had satisfied the above conditions in the case at hand.

10. In support of his claim of ownership over the suit premises, the appellant places reliance upon two sale-deeds one dated 10th April, 1985 and the other dated 19th April, 1985. These sale-deeds have been satisfactorily proved and accepted at the trial before the Rent Controller. The findings recorded by the Rent Controller to that effect are clear and specific. What is according to the Rent Controller and the High Court, not established is that the sale-deeds relied upon by the appellant relate to the land underlying the shops. That view is not, in our opinion, sound. The reasons are not far to seek. The appellant has, in para 1 of the amended eviction petition, made a specific averment to the effect that the appellant is the owner of the building bearing No.XVI/258/1, situate at Banga Road, Phagwara, comprising 15 shops and open courtyard, as described in the plan attached with the eviction petition. In reply, the respondent- tenant has denied the ownership of the appellant over the shop in dispute. It is also denied that there are 15 shops in the building in dispute. It is,

however, admitted by the respondent that 6 out of the several shops that comprise the building, are in the possession of the appellant-landlord while the remaining are in possession of the tenants each one of them having a separate provision for ingress and egress. More importantly, the appellant has in para 2 asserted that the respondent is a tenant in shop no.4 under the appellant since the same was demised in 1989 on a monthly rent of Rs.400/-. The respondent in reply to the said averment admits that he is in occupation of the shop in dispute but denies that his possession relates back to the year 1989. The respondent's case is that he is in possession of the suit shop since the year 1992 only. Para 2 of the reply to the eviction petition reads:

> "2. That para no.2 of the application is correct only to the extent that the respondent is in possession of the shop in dispute. The rest of the para is wrong and incorrect. The respondent is in possession of the shop in dispute since 1992 not from 1989, the answering respondents is not the subletee of the shop in dispute. The respondent took the shop in dispute on rent and since the day of creation of tenancy the respondent works in the shop in dispute."

11. It is evident from the above that the respondent does not dispute either the jural relationship of landlord and tenant between the parties or the rate of rent settled between them. All that the respondent has asserted is that he has been in possession of the shop since the year 1992 and not since 1989 as asserted by the appellant. It is also not the case of the respondent that he is the owner of the suit shop or that he had taken the same on rent from anyone other than the appellant. Such being the position, the question is whether the respondent can dispute the title of the appellant over the shop assuming that he was let in possession by the appellant in the year 1992 as asserted by him and not in the year 1989. Our answer is in the negative. We say so because once the respondent admits that he has been let in possession as a tenant by the appellant in the year 1992 i.e. more than 10 years before the filing of the eviction Petition, the requirement of appellant being owner of the property for more than five years within the meaning of Section 13-B (supra) would stand satisfied. The respondent would then be estopped from denying the title of the appellant during the continuance of the benefit that he is drawing under the transaction, between him and the appellant. It is trite that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it another time. It would estop him from denying his previous assertion, act, conduct or representation to say something contrary to what was implied in the transaction under which he obtained the benefit of being let in possession of the property to be enjoyed by him as a tenant.

12. Lord Edward Coke, Chief Justice of the Kings Bench and 17th Century English Jurist explains estoppel thus:

> "Cometh of the French Word 'estoupe', from where the English word stopped; and it is called an estoppels or conclusion, because a man's own act or acceptance stoppeth or closet up his mouth to allege or plead the truth." [Co. Litt. 352a]

13. Law Lexicon (Second Edition, Page 656) defines estoppel in the following words:

> "An Estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is affected by it is not permitted to contradict it." [11th Edn p. 744 in the note to the Dutchess of Kingston's case] "An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies." "The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part, or on the part of those under whom he claims."

14. Black's Law Dictionary (9th Edn., page 629) describes Estoppel as :

> "A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."

15. Section 116 of the Evidence Act deals with estoppel against tenants and of licensees or persons in possession. Estoppel under this provision falls in the category of estoppel by contract and is relatively a recent development. The rule embodied in Section 116 simply prevents the tenant in occupation of the premises from denying the title of the landlord who let him into possession, just as it applies to a mortgagor or a mortgagee, vendor or a vendee, bailer or a bailee and licensor or a licensee. The rationale underlying the doctrine of estoppel against the tenant's denial of title of his landlord was stated by Jessel. M.R. in Re: Stringer's Estate, LR Ch 9 as under:

> "Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract."

16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

> "116. Estoppel of tenant; and of licensee of person in possession.—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; 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 a title to such possession at the time when such licence was given."

17. A three-Judge of this Court in Sri Ram Pasricha v. Jagannath and Ors. (1976) 4 SCC 184 reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant. The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property. We are not, however, dealing with a case where the respondent-tenant claims that the property is vested in anyone else who could be described as the paramount title holder or there was any extinction of the title of the appellant on any count whatsoever since the induction of the respondent as a tenant into the premises. We need not, therefore, be detained by any one of those considerations. What is important is that so long as a jural relationship exists between the respondent-tenant and the appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the appellant to the property. The inevitable inference flowing from the above proposition would be that (viz-a-viz the respondent) the appellant was and continues to be the owner of the premises in question since the year 1992 when the respondent was inducted as a tenant. Reckoned from the year 1992 the appellant has established his ownership of the premises for a period of five years before the filing of the eviction petition thereby entitling him to invoke the provisions of Section 13-B of the East Punjab Urban Land Restriction Act, 1949.

18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.

19. The upshot of the above discussion is that the Courts below fell in manifest error in holding that the appellant-landlord was obliged to prove his title to the property, no matter the tenant clearly admits the existence of jural relationship of landlord and tenant between him and the appellant. We have, in the circumstances no hesitation in reversing the view taken by the Courts below and in decreeing the eviction petition.

20. We accordingly allow this appeal, set aside the judgment and order passed by the Courts below and direct eviction of the respondent from the suit premises. Since the respondent has been in possession of the suit property for a considerable length of time, we are inclined to grant him reasonable time to do so. We accordingly direct that the respondent shall have time till 31st March, 2015 to vacate the premises in question and handover the peaceful possession of the same to the appellant subject to the following conditions:

The respondent files an undertaking in this Court on usual terms within four weeks.

The respondent deposits arrears of rent, if any, with the Rent Controller within six weeks from today.

The respondent pays/deposits with Rent Controller compensation for use and occupation of the premises @Rs.2000/- per month w.e.f. 1st September, 2014 onwards till the date of vacation.

In the event of the failure of the respondent to comply with any one of the above conditions, the order of eviction shall become executable, forthwith.

.....J. (T.S. THAKUR) .....J. (C. NAGAPPAN) New Delhi, September 2, 2014