

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
S. A. No. 67 of 1996 (R)**

The Tata Iron and Steel Company Ltd. (now Tata Steel Ltd.) Appellant

Versus

1. M/s Punj and Sons (Private) Limited
2. M/s Vani Insulation (P) Ltd. Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Saurabh Agrawal, Advocate
Mr. G.M. Mishra, Advocate

For Respondent No.1 : Mr. Manjul Prasad, Sr. Advocate
: Mr. S.L. Agarwal, Advocate

For Respondent No.2 : Mr. Umesh Pd. Singh, Advocate

C.A.V. ON 13.05.2024

PRONOUNCED ON 13 .06.2024

1. Appellant is plaintiff and this appeal has been preferred against the judgment of reversal passed in Title Appeal No. 12 of 2007.

CASE OF THE PLAINTIFF

2. Plaintiff company filed the suit for a decree for khas possession of land measuring 3.544 acre described in Schedule A of the plaint.
3. Plaintiff company is the proprietor and owner of the land in dispute and defendant respondent is a monthly tenant on a rental of Rs.318.96 per month under the plaintiff/appellant company. As agreed between the parties, the tenancy was extended up to 31.12.1969.
4. The suit land vested in the State of Bihar Act-5 of 1972. However, by deed of lease dated 01.08.1985 State of Bihar leased out the lands including the suit land to the plaintiff/appellant.
5. Notice was sent to the defendant/respondent to vacate the land by 31.12.1970 as the land in suit was required by the company and because also the defendant/respondent had also defaulted in paying the rent to the tune of Rs.5103.36.

CASE OF THE DEFENDANT

6. It is admitted that defendant was inducted on lease in respect of the suit land commencing from 18.12.1958 on year to year basis. It is however denied that extension of the tenancy up-to 31.12.1969.
7. The lease was in pursuance to an agreement between the plaintiff and defendant to set up a plant for manufacturing mineral wood from the slag which is a

byproduct generated by the steel manufacturing unit of the plaintiff's company. In order to install manufacturing plant, heavy investment was made by defendant and, therefore, the tenancy was not terminable. It is also asserted that the suit land was not leased out by the appellant company.

8. The learned Sub-Ordinate Judge framed following main issues on the basis of the pleadings of the parties:
 - I. Has the defendant validly served with the notice determining its tenancy as required under Section 106 of the Transfer of Property Act?
 - II. Has the defendant defaulted in making payment of rent of the suit land from month of September, 1969?
 - III. Is the defendant in arrears of rent for a sum of Rs 5103.36 paise? Is the plaintiff entitled to a decree for Rs 5103.36 paise? Is the plaintiff entitled to a decree for compensation for Rs 63.78?
 - IV. Is the plaintiff entitled to get *khas* possession of the suit land leaving the ground clear of all obstructions and debris by evicting the defendants therefrom?
9. Learned trial Court decreed the suit by recording a finding in favour of the plaintiffs with regard to all the issues. Trial Court held that notice (Ext-1) for vacating the scheduled land was duly served on the defendant. The notice stated that defendant was on monthly tenancy from 18.12.1958 and the lease was extended from time to time and ultimately extended up to 31.12.1969.
10. With regard to the plea of the defendant that land got vested in the State by operation of State of Bihar Act-5 of 1972, it was held that post such vesting the lease deed was executed by the State of Bihar on 06.08.1985 (Ext-6) and the suit land included the land for which the lease was renewed by the State. It held that plaintiff company was competent to file the present suit of eviction of the defendant company and take *khas* possession of the suit land. Status of defendant company with respect to the suit land vis-a-vis the right, title and interest of the plaintiff in the suit land had not undergone any change, for clause XXV of Exhibit 6 had no application in the present case.
11. On appeal by defendant/respondent, the 1st Additional District Judge, Jamshedpur formulated two point for determination of the said appeal:
 - I. *Whether the defendant was inducted as a month to month tenant or it was year to year lease and whether any valid notice under Section 106 T.P*

Act was served.

II. Whether Exhibit 6, the registered deed of lease executed by the State of Bihar does or does not garb the plaintiff with the status of lessee under the State of Bihar with respect to the suit land entitling it to seek eviction of the defendant, a sub-lessee.

12. First Appellate Court decided the first point for determination in favour of the plaintiff and upheld the finding of the learned subordinate Judge by holding that whether the tenancy was month to month or it was a year to year lease, in either case the notice under Section 106 of T.P Act was fully complied the provision of Section 106 T.P. Act.
13. Point No. 2 was decided against the plaintiff on the ground that the description of the suit land given in Schedule-A of the plaint did not specifically speak of the name of any village or mouza which may be found in the whole deed of lease. Name of the place Burma Mines of Burma Mines Area mentioned in the lease deed (Ext.6) did not figure at all not only in Schedule-IV to the deed of lease or in any schedule appended to it. Plot number or khata number of the suit land has also not been mentioned in Schedule A of the plaint. Even if Burma Mines area would have been mentioned in the said place as a village in the schedule of Ext.6, it would not have been possible to find out whether the specific land for which the suit has been filed figured amongst the lands of the said village leased out to the plaintiff company by the State of Bihar. The learned Court, therefore, held that the plaintiff failed to prove that it was at the moment anything to do with the suit land much less it is the lessee with respect to the suit land. On this finding appeal was allowed and the plaintiff's suit was dismissed.
14. The second appeal has been admitted to be heard on the following substantial question of law:
 - I. Whether the first appellate court had exceeded his jurisdiction in deciding the title of the plaintiff over the suit property where from the eviction was sought for when landlord and tenant relationship was not denied and when the termination of tenancy under Section 106 of the TP Act has been held valid by both the courts.**
 - II. Whether the first appellate court committed error of law in not considering Section 7-E which has been incorporated in the Bihar Land Reforms Act in deciding the matter in issue.**

15. During the pendency of the second appeal, the factory shed was purchased by M/s Vani Insulation Pvt. Ltd and after the sale, was impleaded in the appeal. The certified copy of the sale deed has been adduced into evidence and marked as Ext-9.
 16. Both the learned Courts below have recorded a concurrent finding with regard to the service of notice for termination of tenancy by the plaintiff to the defendant. The main argument advanced on behalf of the appellant is that it was not permissible for the learned court below to enter into question of title in a suit brought by the lessor against the lessee. A lessee is estopped from questioning the title of lessor in view of Section 116 of the Evidence Act. Admittedly the original defendant was a lessee of the plaintiff and the present respondent No. 2 M/s Vani Insulation Pvt. Ltd stepped into the shoes of the original defendants/respondent No. 1 by virtue of the sale deed (Ext. 9) executed on 21.10.2014, who was permitted to be impleaded in the appeal subject to the condition that the impleaded party shall not be allowed to take a plea in contradiction to the plea of original respondent.
 17. It is argued that learned First Appellate Court misconstrued Section 7E of the Bihar Land Reforms Act, 1950 (hereinafter BLR Act).
 18. It is argued by the learned counsel on behalf of the respondent that Ext. 9 cannot be looked into as it has not been formally proved.
 19. It is further argued that the scope of re-appreciation of evidence in second appeal is limited one and the High Court cannot substitute its own finding merely on the ground that another view was possible.
 20. After vesting the land by the Act 5 of 1972, in case of sub lease by industrial undertaking to another industrial undertaking for its expansion by establishing new industry, or to an individual to be deemed as leased with it by State Government on same terms. It is submitted that the effect of insertion of Section 7E in the BLR Act is that the status of lessor and lessee has been transformed to the extent that State Government has become lessor in all such cases.
- FINDING**
21. Argument advanced on behalf of Respondent No.2 against marking as exhibit of sale deed dated 21.10.2014 executed by Respondent No.1 in favour of Respondent No.2, thereby transferring the suit property in favour of it, is somewhat puzzling. Respondent no.2 has been impleaded in this case vide order

dated 10.05.2016 relying on this very document and now it wants to keep the content of this document away from the gaze of this Court on the ground that it has not been formally proved. I do not find any merit in the argument, because certified copy of a sale deed can be admitted into evidence without its formal proof in view of the ratio laid down in ***State of Haryana v. Ram Singh, (2001) 6 SCC 254, Santosh Kumar v. Purnima Kumari, 2010 SCC OnLine Jhar 820***

22. A bare perusal of the recital of the sale deed (Ext-9) executed in favour of Respondent No. 2 will show that an area measuring 3.544 acres situated at Burmamines Area within P.S and P.O Burmamines, Jamshedpur was originally allotted by M/s Tisco Ltd., in the name of vendor (Respondent No.1) in the year 1958 for its factory purposes on monthly ground rent basis. This document is an admission in evidence with regard to the nature of relationship of original defendant to the Plaintiff Company which was that of lessor and lessee, and the description of suit land corresponds to the leasehold land purchased by Respondent No.2, who being a *pendente lite* purchaser cannot set up a new case contrary to that of the original contesting defendant/respondent no.1. Once the relationship of lessor and lessee is established the defendant or subsequent purchaser cannot question the title of the original lessor. Position of law has been laid down with ample clarity in ***Anar Devi v. Nathu Ram, (1994) 4 SCC 250 at page 254:***

12. Indeed, the said doctrine of tenant's estoppel, finds statutory recognition in Section 116 of the Indian Evidence Act, 1872, for short 'the Evidence Act', in that, it states that "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".

23.Under the circumstance the learned First Appellate Court was in clear error to adjudicate on the title of Respondent No.2, when there was an admitted position that its vendor was lessee of the Plaintiff Company. First substantial question of law is, accordingly, answered in favour of the plaintiff.

24. In order to appreciate arguments advanced on behalf of the both sides and answer the second substantial question of law, it will be desirable to extract Section 7E of the BLR Act which reads as under:

"7E land and building, etc., acquired for an industrial undertaking and leased out by it to another industrial undertaking for its expansion by establishing new industry or to an individual to be deemed as leased with

it by State Government on some terms- If any portion out of the land acquired for an industrial undertaking under the Land Acquisition Act, 1894 (Act 1 of 1894) has been leased out by the industrial undertaking before the 22nd June, 1970 to another industrial undertaking for establishment of a new industry or its expansion or to any individual or society or association for residential, commercial or for such other purpose, the whole of such land, buildings or structures covered by such lease shall with effect from the commencement of this Act, be deemed to be leased to the industrial undertaking for such period as may be determined by the State Government subject to payment of fair and equitable rent as determined by the State Government and the association to whom lease has been granted by the industrial undertaking shall be deemed to be sub-lessee of the original industrial undertaking and the provisions of clauses (G) and (H) of Section 4 shall not be effective with respect to such land or buildings or structures thereon.

The terms and conditions of the lease granted under sub-Section (1), shall be determined by the State Government.

Provided that if the period of sub-lease expires before the expiry of the lease granted under sub-Section (1) then in that condition at the time of renewal of the sub-lease, the State Government shall have power to revise the amount of rent payable to State Government by the lessee.”

25. Import of the above provision is that the plaintiff becomes a lessor and defendant the sub lessee of the suit area. The provision does not in any way change the relationship of the plaintiff and defendant. What has changed after the enactment of this provision which has been inserted by Act 5 of 1972 and further substituted by Act 17 of 1983 (02.01.1984), is that in the original lease of 1958 plaintiff claimed to be the proprietor of land, but after coming into force of Bihar Land Reform Act, 1950 with its subsequent amendments, it ceased to be a proprietor and became a lessee by virtue of the lease agreement entered into between the Governor of the State of Bihar and the plaintiff company on 1st August, 1985 (Exhibit 6).

26. In this view of matter, when admittedly the factory shed had been purchased by respondent no.2 from the original lessee (respondent no.1), the plea that with operation of Section 7E of the BLR Act contesting respondent no.2,

defendant/respondents no longer continued to be the lessee and had acquired independent proprietary right over the property, is without any basis.

27. As discussed above, there is concurrent finding of both the courts below regarding service of notice under Section 106 of the Transfer of Property Act, and there has been a default of payment in rent and continued in the possession of the suit land. Without any evidence of lease by the State in favour of Respondent no.2 or the original respondent an inference cannot be drawn that it had become a lessee of the State and not of the plaintiff/appellant. The second substantial question of law is accordingly answered in favour of the plaintiff.
28. Learned First Appellate Court completely misconstrued the law while allowing the first appeal in favour of the defendant/respondent. Judgment and decree passed by the learned First Appellate Court is set aside and that of the learned Trial Court is restored.

Appeal is allowed.

I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated the 13th June, 2024
AFR / AKT /Satendra