

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 412 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRANLAL AMRATLAL JOSHI : Appellant.

Versus

MER RAJA VEJA : Respondent.

Appearance:

MS KJ BRAHMBHATT for the appellant.
Mr. Chirag Kothari, with MR PM RAVAL for the
Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 31/03/2000

ORAL JUDGEMENT

This appeal is directed against the judgment and decree passed by the then learned District Judge, Jamnagar on 17th July 1981 in Regular Appeal No. 118/80 on his file dismissing the appeal and confirming the decree passed by the then learned Civil Judge (JD), Bhanvad at Jamjodhpur on 14th October 1980 in Regular Civil Suit No. 37 of 1978 filed for the recovery of the amount of rent that had become due and possession of the demised premises.

2. Necessary facts may in brief be stated. The appellant is the original-plaintiff and the respondent is the original-defendant. The house of the appellant is situated at Village Amrapur in Jamjodhpur taluka of Jamnagar district. On 24th December 1975 getting the rent note executed the said house was let to the present respondent at the monthly rent of Rs. 70/=. The period of monthly tenancy commenced on Sud-1 of Kartik S.Y. 2032 (4th Nov. 1975). The respondent had to make payment of rent every month according to the Hindu calendar. Initially the respondent made payment of rent of Re.1.00. After the set of with regard to the dealings between the parties he then stopped to make the payment of rent from the month of Maha, S.Y. 2032 (1st February 1976). As he neglected to make the payment of rent, the rent upto the month of Falgun, S.Y. 2033 (upto 19.3.1977) became due. The rent for 14 months had, therefore, become due. A notice demanding the rent and terminating the tenancy was then issued on 27th March 1977. After the service of notice, the respondent neither paid the rent demanded nor vacated the suit house. The appellant, therefore, filed the suit being Regular Civil Suit No. 37 of 1978 in the Court of the Civil Judge (J.D.), Bhanvad - Jamjodhpur for the recovery of the rent and possession of the premises of the house let. The respondent on being served with the summons appeared before the trial Court and filing his written statement at Ex.8 he put forth his defence contending inter alia that there was no relationship of landlord and tenant between him and the tenant. He challenged the title of the appellant. He also called in question the legality and validity of the notice. The then learned Civil Judge (JD) framed necessary issues at Ex. 12. Appreciating the evidence before him, he held that the appellant failed to establish his ownership. The notice was not legal and valid. The respondent succeeded in establishing his case that there was no relationship of landlord and tenant between him and the appellant. In view of such finding he dismissed the suit on 14th October 1980. Being aggrieved by such judgment and decree, the appellant carried the matter in appeal to the District Court, Jamnagar. His appeal came to be registered as Regular Civil Appeal No. 118/80. The then learned District Judge dismissed the appeal and confirmed the judgment and decree passed by the lower court holding that the notice given terminating the tenant was not in consonance with law and on that count the suit of the appellant was liable to be dismissed, although he found that the case regarding denial of title was established. It is against that judgment and decree passed in appeal, this Second Appeal is preferred.

3. The Second Appeal can be entertained only if the substantial question of law is involved. In this case, substantial question of law which is raised is to the effect as to whether the lower appellate Court materially erred in interpreting Section 106 of the Transfer of Property Act and holding that the notice terminating the tenancy was illegal and invalid. On this point, it is the contention of the learned advocate representing the appellant that such notice because of the subsequent pronouncement of the Apex Court was not necessary and therefore even if the notice is found to be illegal, the same would not be the impediment in the way of the appellant in obtaining the decree of eviction. This court may therefore allow the appeal and pass the decree. I will now deal with the substantial question of law raised.

4. The Supreme Court, in the case of V. Dhanapal Chettiar Vs. Yesodai Ammal - A.I.R. 1979 S.C. 1745, has elaborately, referring several decisions of different High Courts, discussing the issue about the requirement of the notice in rent suit, held that in order to get a decree or order for eviction against the tenant under the Rent Control Act, it is not necessary to give notice under Section 106, Transfer of Property Act. Determination of a lease in accordance with Transfer of Property Act is unnecessary and is mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. When that is so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceedings on the basis of the determination of the lease by issuance of notice in accordance with Section 106 of the Transfer of Property Act. The tenant becomes liable to be evicted and forfeiture of the tenancy comes into play only if he has incurred the liability to be evicted under the State Rent Act applicable otherwise not. The notice terminating the tenancy under Section 106 of the Transfer of Property Act is therefore not necessary. In view of such pronouncement of the Supreme Court which was subsequent to the lower appellate court disposed of the appeal the notice in the case on hand being not necessary under Section 106 of Transfer of Property Act, the appellant cannot fail on the only ground of the notice being not in consonance with Section 106 of the Transfer of Property Act. Had the decision been pronounced earlier, the learned appellate Judge would have certainly taken the view I am taking but when the appeal was being disposed of, the Apex Court's

decision referred hereinabove had not come into being as per the then prevailing position of law the appellate court held that the appellant's suit was liable to be dismissed on the ground of illegality of the notice alone. In view of the decision in V. Dhanpal's case (Supra) the appellant should not have a retreat.

5. In view of the decision of the Supreme Court referred to hereinabove when the notice under Section 106 of the Transfer of Property Act is not necessary, the appellant's learned advocate prays to pass the decree of eviction on the ground of non-payment of rent but on another count the appellant cannot succeed qua the said ground. Even if the notice under Section 106 of Transfer of Property Act is not necessary, the landlord is not absolved from issuing the legal notice under Section 12 of the Bombay Rent Act if the possession is claimed on the ground of non-payment of rent. Of course in the case on hand giving notice under Section 12 of the Bombay Rent Act specific amount of rent is demanded and after the service of notice the appellant waited for a month, but the notice issued cannot be said to be in consonance with law, namely Section 27 of the Bombay Rent Act. The said Section provides that the rent has to be charged calculating in accordance with the British calendar. If accordingly the rent is not claimed or demanded, what can be the effect was the question raised before this Court in the case of Jethanand Dulhanumal Lalvani Vs. Pratapray Parshottam, Proprietor of Parshottam Hemchand, Bhavnagar - 16 G.L.R. 496, wherein it is held that when the legislature wanted to introduce the uniform system in the matter of payability of rent, the method of paying the rent must be in accordance with the British calendar and therefore vide Section 27 the legislature provides that no landlord can charge from his tenant the rent according to any other calendar except the British calendar. If the suit is filed on the ground of arrears of land calculated according to the calendar not answering the description of the calendar given in sub-section (1) of Section 27, i.e., British calendar, the same is not maintainable. In short, what is held is that if the rent is claimed not according to the British calendar but according to other calendar, the suit is not maintainable. In view of the law made clear by this court in the aforesaid decision the appellant also on this count fails because he has claimed the rent in accordance with the Hindu calendar and not British calendar. However the appellant's suit cannot be turned down.

6. As the rent is not claimed in accordance with the

British calendar the appellant cannot succeed, and the appeal must fail, is however the contention raised by Mr. Kothari, the learned advocate representing the respondent but his contention cannot be accepted because the issue regarding disclaimer of title is involved. While narrating in short the pleadings of the parties hereinabove, I have mentioned that in the written statement the respondent has come out with a case of denial of title because he has taken a plea that the appellant is not the owner of the house in question and there was no relationship of landlord and tenant between him and the tenant. When he has come out with the plea of disclaimer of title the effects thereof are required to be examined. In the case of Nanduben Dayalji Vs. Bhatia Ranchhoddas Lalji & Anr. - 18 G.L.R. 140, this Court has made it clear that the moment the title of the landlord is disputed by the tenant, he loses the protection under Section 12(1) of the Bombay Rent Act. Mr. Kothari, however, at this stage contends that the decree on that count cannot be passed in the very suit, the landlord-appellant must be asked to file another suit on that count. The contention cannot find favour in view of the decision of the Supreme Court rendered in the case of Majati Subbarao Vs. P.V.K. Krishna Rao (deceased) by Lrs., - AIR 1989 S.C. 2187. Negativating the likewise contention it is observed;

"Yet another important feature of the Rent Acts

is that either by way of a non obstante clause or by necessary implication these enactments have done away with the law contained in section 108 of the Transfer of Property Act dealing with rights and liabilities of the lessor and the lessee. The difference between the position obtaining under the Transfer of Property Act and the Rent Acts in the matter of determination of a lease is that under the former Act in order to recover possession of the leased premises determination of the lease is necessary because during the continuance of the lease the landlord cannot recover possession of the premises while under the Rent Acts the landlord becomes entitled to recover possession only on the fulfillment of the conditions laid down in the relevant sections. He cannot recover possession merely by determining the tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. In the case before us, we find that the denial of landlord's title by the tenant has been expressly made a

ground for eviction under section 10(2)(vi) of the A.P. Rent Act which we have already set out earlier. In view of this, the entire basis for the argument that the denial of title must be anterior to the proceedings for eviction under the A.P. Rent Act is knocked out. In our opinion, the argument of learned counsel for the appellant must, therefore, be rejected. We find, on the other hand, that a number of High Courts have taken the view that even a denial of the landlord's title by a tenant in a written statement in an eviction petition under the Rent Act concerned furnishes a ground for eviction and can be relied upon in the very proceedings in which a written statement containing the denial has been filed (See : Sada Ram v. Gajjan Shiyama, AIR 1970 Punj & Har 511; Shiv Parshad v. Smt. Shila Rani, AIR 1974 Him Pra 22 and Machavaram Venkata Narayana Rao v. Sarvepalli Narayana Rao Sarada, (1978) 1 Ren CJ 368: (AIR 1978 NOC 160) (Andh Pra). As observed by the Punjab and Haryana High Court to insist that a denial of title in the written statement cannot be taken advantage of in that suit but can be taken advantage of only in a subsequent suit to be filed by the landlord would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture entailed by the tenant's denial of his character as a tenant in the written statement."

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"We agree that normally this would have been so but, in the present case, we find that the Trial Court, namely, the Rent Controller, framed an issue as to whether the tenant's denial of the landlord's title to the schedule property including the said premises was bona fide. The parties went to trial on this clear issue and the appellant had full knowledge of the ground alleged against him. It was open to him to have objected to the framing of this issue on the ground that it was not alleged in the eviction petition that the appellant had denied the title of the respondent and that the denial of title was bona fide. If he had done that the respondent could have well applied for an amendment of the eviction petition to incorporate that ground. Having failed to raise that

contention at that stage it is not open now to the appellant to say that the eviction decree could not be passed against him as the ground of denial of title was not pleaded in the eviction petition."

In view of such decision, if the parties have gone to trial on this issue with the knowledge that the particular plea is raised and the issue is framed or if the issue is not framed but the parties had full knowledge regarding the ground raised and have gone to the trial and invited the decision of the court, and then once the tenant fails, it would not be open to him to see that the eviction decree cannot be passed against him on the ground of denial of title in the very suit. In the case on hand, after the plea was raised in the written statement, Issues No. 1 & 5 were framed and parties led the evidence on those issues. Of course the learned Civil Judge gave finding in favour of the respondent but the then learned District Judge found that the decision of the learned Civil Judge on those two issues was erroneous. He therefore considering the evidence and assigning cogent and logical reasons reversed the findings and held that the case regarding disclaimer of title was established, but his hands were tied in passing the decree of eviction because the notice given was not in consonance with Section 106 of the Transfer of Property Act although u/s. 12(1) of the Bombay Rent Act as stated above the landlord is entitled to a decree of eviction on the ground of denial of landlord's title by a tenant. For the reasons stated hereinabove now that notice is not necessary and therefore legality or illegality of the notice will not be the impediment in the way of the appellant in getting the decree if he succeeds on the disclaimer of title. For the reasons just now stated above, he succeeds in establishing the case of disclaimer of title regarding which the finding is given by the appellate court in his favour. The appellant is therefore entitled to the decree of eviction on the ground of disclaimer of title albeit the fact that the notice is not in consonance with Section 12 of the Bombay Rent Act.

7. For the aforesaid reasons, this appeal is required to be allowed and the suit is required to be decreed. The appeal is hereby allowed accordingly. The respondent do pay Rs. 459/= to the appellant and do hand over the vacant and peaceful possession of the house in question to the appellant on or before 1st June 2000. If by the time the respondent does not vacate, it will be open to the appellant to get the decree executed.

8. For mesne profit, the appellant is free to initiate necessary action regarding the enquiry as contemplated under Order 20 Rule 12, Civil Procedure Code. The decree be drawn accordingly.
rnr.