## APPELLATE CIVIL.

*Before Mr. Justice Broomfield and Mr. Justice Divatia.*

1940
*July* 8

YESHWANT BHIKAJI VILANKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* SADASHIV GOVIND AREKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Civil Procedure Code (Act V of 1908), O. XXXV, r. 5—Interpleader suit—Suit by tenant—Suit maintainable if other person's claim is consistent with landlord's title—Indian Evidence Act (I of 1872), s. 116.*

The rule of English law is that an interpleader suit is only maintainable if the landlord *subsequent to the letting* has done some act whereby his right to recover the rent is entangled.

The rule laid down in s. 116 of the Indian Evidence Act, 1872, prevents a tenant from denying the title of the landlord at the commencement of the tenancy.

Therefore, the tenant cannot bring an interpleader suit in which a claim inconsistent with his landlord's title at that time is to be litigated.

APPEAL from the decision of Lokur J. in Appeal No. 84 of 1937 from Order.

The facts of the case and His Lordship's judgment are reported in [1939] Bom. 383.

*A. G. Desai*, with *M. G. Chitale*, for the appellant.

*G. N. Thakor*, with *Y. V. Dixit*, for respondent No. 1.

BROOMFIELD J. This is a Letters Patent appeal from a judgment of Mr. Justice Lokur, and the question is as to the maintainability of an interpleader suit. The plaintiff, who is now the appellant, alleged that he took some land belonging to defendant No. 2 on an oral lease on November 1, 1927. He paid rent to defendant No. 2 in accordance with the lease up to July, 1935. He then received notices both from defendant No. 2 and defendant No. 1. Defendant No. 2, somewhat superfluously as it would seem, informed his tenant that he was not to pay the rent to

* Appeal No. 6 of 1939 under the Letters Patent.

defendant No. 1. Defendant No. 1 demanded that the rent should be paid to him. The plaintiff then brought the suit and he said in the plaint that he had no knowledge as to how defendant No. 1 claimed the land, that the demands of defendants Nos. 1 and 2 were opposed to each other, that both made demands for the rent from him, and that he was, therefore, compelled to make them both defendants and bring the suit.

The trial Court dismissed the suit as being barred by r. 5 of O. XXXV of the Civil Procedure Code. On appeal, the District Judge reversed the decree and remanded the suit for disposal. In second appeal, Mr. Justice Lokur restored the decree of the trial Court.

It may be mentioned that, as stated in the plaint, defendant No. 1 did not content himself with sending a notice to the plaintiff; he actually filed a regular suit against him. We are informed that that suit has been decided. We are also informed that defendant No. 2 has brought a suit. That being so, it is difficult to see what necessity there can be for a suit by the plaintiff.

However that may be, we have to dispose of the legal point arising, which is whether the suit is barred by O. XXXV, r. 5. That rule says this:

"Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords."

The point in a nut-shell is whether defendant No. 1 claims through defendant No. 2.

The plaintiff has not alleged that in his plaint. Defendant No. 1 in his written statement says that he purchased the suit property from defendant No. 2 on May 27, 1926, although by oversight the property was not mentioned in the sale-deed. He alleged that it was he, and not defendant

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No. 2, who had leased the suit property to the plaintiff. Defendant No. 2 referred to this sale of May 27, 1926, but said that it was benami, hollow and without consideration. He denied the assertion of defendant No. 1 that the suit land was intended to be included in the deed. On these pleadings it appears that the dispute is as to whether defendant No. 1 or defendant No. 2 is the owner of the property, and whether the plaintiff is the tenant of defendant No. 1 or defendant No. 2. Nothing in the pleadings would seem to justify the conclusion that defendant No. 1 claims under defendant No. 2 who, according to the plaintiff, is his landlord. On the contrary, the claims would seem to be adverse to one another and inconsistent.

The learned District Judge appears to have found that there was no transfer of the property by defendant No. 2 to defendant No. 1 in May 1926, and having so found, he says that it is clear that defendant No. 1 claims the property through defendant No. 2. That conclusion, however, does not seem to follow from the premiss. If defendant No. 1 has no title, he is not claiming through defendant No. 2 or any one else. The learned counsel who appears for the appellant puts the argument in this way. The plaintiff says that defendant No. 2 is his landlord. As the suit property was not in fact included in the sale-deed by defendant No. 2 to defendant No. 1, defendant No. 1 got no title. He has only a right to get the deed rectified or a supplementary deed. Therefore, defendant No. 1 claims through defendant No. 2. This, as I said before, seems to be a *non sequitur*. If nothing passed by this sale-deed in May 1926, defendant No. 1 cannot be said to derive any right from defendant No. 2 or to claim under him.

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Learned counsel for the appellant sought to rely on the rule of English law, which is referred to by Mr. Justice Lokur in his judgment and also in *Orr.* v. *Chidambaram Chettiar*.[1] The rule is that an interpleader suit is only maintainable if the landlord *subsequent to the letting* has done some act whereby his right to recover the rent is entangled. The circumstance relied on here is that on February 1, 1928, defendant No. 2 made a statement before the revenue authorities to the effect that the land in suit was intended to be conveyed to defendant No. 1 and had been omitted from the sale-deed through oversight. However, as Mr. Justice Lokur has pointed out, this statement of defendant No. 2, if it had any legal effect at all, could only validate the sale-deed of May 1926. Defendant No. 1 would acquire no right, nor would defendant No. 2's right to recover rent be entangled or interfered with, as from the date of the statement. The basis of the English rule is the principle underlying s. 116 of the Indian Evidence Act. A tenant is not permitted to deny his lessor's title at the commencement of the tenancy, and therefore, in order that an interpleader suit may lie, the claim of the party other than the landlord must be consistent with the title of the landlord at the commencement of the tenancy in question. The plaintiff, therefore, is in this dilemma. Either defendant No. 1 has no title at all, in which case he cannot be said to be claiming through defendant No. 2, or he acquired his title before the lease and his claim is inconsistent with the title of the lessor.

A further argument was sought to be based on the use of the word "compelling" in O. XXXV, r. 5. Mr. Desai says that there is no question of compulsion of the landlord in this case because defendant No. 2 has not objected that

[1] (1909) 33 Mad. 220.

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the suit is not maintainable. In fact, he seems to have been perfectly willing that the suit should proceed, and defendant No. 1's case is that the plaintiff and defendant No. 2 are acting in collusion. However, we do not think that the plaintiff can get out of the difficulty arising from r. 5 in this way. Section 116 of the Indian Evidence Act seems to be the answer to this argument also. That rule, as I have said, prevents a tenant from denying the title of the landlord at the commencement of the tenancy. Therefore, he cannot bring a suit in which a claim inconsistent with his landlord's title at that time is to be litigated.

In our opinion, Mr. Justice Lokur is right. We dismiss the appeal with costs.

*Appeal dismissed.*

Y. V. D.