

TAPAS KUMAR SAMANTA

v.

SARBANI SEN & ANR.

(Civil Appeal Nos. 1831-1832 of 2015)

FEBRUARY 12, 2015

**[SUDHANSU JYOTI MUKHOPADHAYA  
AND N.V. RAMANA, JJ.]**

*Code of Civil Procedure, 1908 : s.100 – Substantial question of law – Suit for eviction dismissed by trial court on the ground that the relationship between the parties as landlord and tenant was not sufficiently proved – Appellate court held that the plaintiff proved very clearly that he was the owner of the suit property and ground of eviction was made out – High Court reversed the judgment of first appellate court holding that it discussed alleged grounds for eviction very perfunctorily while concluding the judgment, without discussing the evidence on record – HELD: High Court was not correct in entertaining the second appeal by interfering with finding of fact arrived at by the first appellate court – The finding of appellate court being based on evidence, the High Court erred in interfering with the judgment passed by the appellate court while deciding a second appeal u/s. 100.*

**Allowing the appeals, the Court**

**HELD: 1. All the evidences were noticed and appreciated by the appellate court to come to a definite finding about the relationship of plaintiff and the defendant as landlord and tenant and the need for demolishing the existing building for construction of a new building for his personal use. The appellate court also held that the defendants-tenant had not paid rent to the plaintiff-landlord since he purchased the suit**

A **property. Evidence being also on record, relationship - which was the only dispute raised by the defendant without disputing the other pleadings about personal necessity of plaintiff or non-payment of arrears of rent by defendant having established, the High Court was**  
B **not correct in entertaining the Second Appeal by interfering with finding of fact arrived at by the appellate court. [Paras 14, 15] [169-D-G]**

C **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1831-1832 of 2015**

From the Judgment and Order dated 29.02.2012 of the High Court at Calcutta in S. A. 149 of 2007 with C. A. N. 10467 of 2009

D Soamya Chakrobarty, Danish Zubair Khan for the Appellant.

M. K. Choudhary, Namita Choudhary, Yudhister Bhardwaj for the Respondents.

E The Judgment of the Court was delivered by

**SUDHANSU JYOTI MUKHOPADHAYA, J 1. Leave granted.**

F **2. These appeals have been preferred by the appellant against the judgment dated 29<sup>th</sup> February, 2012 passed by the High Court at Calcutta in S.A. No. 149 of 2007 with C.A.N. No. 10467 of 2009. By the impugned judgment, the High Court set aside the judgment and decree passed by the courts below and remanded the matter back for adjudication of the suit**  
G **afresh.**

**3. The factual matrix of the case is as follows:**

H The appellant-plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for eviction being O.S. No.242 of 2001

before Civil Judge (Jr. Division), Paschim Medinipore against A  
the predecessor in interest of the respondents (hereinafter  
referred to as the 'defendant') on the following grounds:

- (i) *That the defendant defaulted in payment of rent from B  
the month of July, 2000.*
- (ii) *That the plaintiff reasonably requires the suit  
premises for his own use and occupation.*
- (iii) *That the plaintiff is not in possession of any C  
reasonably suitable accommodation. The plaintiff  
wants to demolish the existing structures in the suit D  
premises and the building therein and wants to make  
a new building for his own use and occupation for  
residence and for business. That the plaintiff  
reasonably requires the suit premises for building D  
and rebuilding and to works of. Such building and  
rebuilding cannot be carried out without the suit  
premises being vacated by the defendant.*
- (iv) *That the defendant is guilty of act of waste, E  
negligence, annoyance and nuisance to the  
neighbours including the plaintiff landlord.*
- (v) *That the defendant has made an illegal and un- F  
authorised shed in the northern side of the suit  
premises without any previous permission of the  
plaintiff or from previous landlords.*
- (vi) *That the defendant is also guilty of the breach of G  
Provision of Clause (m), (o) and (p) of Section 108  
of the Transfer of Property Act.*

4. The defendant filed a written statement and denied the  
default of payment of rent on the ground that the defendant  
was not a tenant under Jatindra Nath Sen but he is a monthly  
tenant in respect of the suit premises under Khadims of Lohani H

- A Pir Sahib. The defendant further took plea that the agreement dated 8<sup>th</sup> May, 1994 relied by plaintiff is a fraudulent and fabricated. He also denied the statement made by the plaintiff at paragraph 6 to 8 of the plaint that the plaintiff requires the suit premises for his own use and occupation. He also denied
- B the allegation of making any annoyance and nuisance or illegal and unauthorized construction.

5. On the basis of the pleadings of the parties, the trial court framed the following issues:

- C “1. *Is the suit maintainable in its present form and prayer ?*
2. *What is the cause of action of this suit ?*
- D 3. *What is the locus-standi of the plaintiff to bring this suit ?*
4. *Is the suit barred by the Principles of Specific Relief Act and Law of Limitation?*
- E 5. *Is the suit barred by the Principles of res-judicata?*
6. *Is the suit defective for non-joinder of the parties ?*
- F 7. *Had the plaintiff been dispossessed by the defendant from the possession of the schedule land of plaint ?*
8. *Is the plaintiff entitled to get relief as prayed for ?*
- G 9. *To what other relief, the plaintiff is entitled to get?*
10. *Has the sufficient Court Fees been paid?”*

H *An additional issue about legality and validity of notice of eviction was also framed.*

6. The trial court on hearing parties and appreciation of evidence by judgment dated 17<sup>th</sup> February, 2006 held that the suit is not maintainable as the relationship between the parties has not been sufficiently proved as landlord and tenant and hence the notice of eviction is not at all binding. A

7. On appeal being Appeal No.36 of 2006 preferred by the appellant the Additional District Judge, Fast Track, 2<sup>nd</sup> Court, Paschim Medinipore by judgment and decree dated 21<sup>st</sup> August, 2006 allowed the same. On appreciation of evidence, the Appellate Court held that the plaintiff has proved very clearly that he is the owner of the suit property and during the time of ownership of the suit property by the previous owner - Mr. Sen, Mr. Sen inducted the defendants as tenants. The Appellate court further held that when the plaintiff acquired the suit property the defendant became tenant under the plaintiff w.e.f. July, 2000. It was further held that the notice issued by the plaintiff to the defendant-tenant was legal and valid. With regard to the reasonable requirement of the plaintiff and the illegalities done by the defendant with respect to suit property, the Appellate Court held that there are sufficient evidences to prove that the plaintiff required the suit premises for his own use and occupation and the defendant made unauthorized construction in the suit property without permission of the plaintiff and the defendant is guilty of nuisance. B  
C  
D  
E

8. By the impugned judgment, the High Court in Second Appeal held that the lower Appellate Court discussed the issues as to landlord-tenant relationship between the parties and validity of eviction notice exhaustively but alleged grounds for eviction were discussed very perfunctorily while concluding the judgment, without discussing the evidence on record. F  
G

9. Learned counsel for the appellant submitted that the High Court erred in interfering with the finding of facts while sitting in Second Appeal. In fact, the questions of law framed by the High Court are not substantial questions of law. H

A        10. Learned counsel appearing on behalf of the  
respondents submitted that neither the trial court nor the  
Appellate Court has framed issue or discussed evidence to  
hold personal necessity of the appellant. Therefore, the  
judgment and decree passed by the Appellant Court was set  
B        aside and the matter is remitted back to the trial court for  
determination of suit afresh.

      11. From the plaint it is clear that the plaintiff had  
specifically pleaded that the defendants defaulted in payment  
C        of rent from the month of July, 2000 and the plaintiff reasonably  
required the suit premises for his own use and occupation.  
The plaintiff wanted to demolish the existing structure in the  
suit premises and make a new building therein for his own  
use. He also pleaded that the defendant is guilty of the act of  
D        waste, negligence, annoyance and nuisance to the plaintiff as  
well as neighbours. The defendant has made the illegal and  
unauthorized shed in the northern side of the suit premises  
and found guilty of the breach of Provision of Clause (m), (o)  
and (p) of Section 108 of the T.P. Act.

E        12. The defendant in the written statement has not denied  
the personal necessity of the plaintiff and non-payment of rent.  
The defendant denied the relationship between the plaintiff and  
the defendant resulting denial of personal necessity and non-  
F        payment of rent. DW.1- Smt. Srabani Sen in her statement  
stated that the plaintiff never attorned the deceased (original)  
defendant in the month of July 2000 or any date the deceased  
defendant also never paid any rent to the plaintiff. She stated  
that the deceased (original) defendant was a monthly tenant  
G        in the suit premises under Hazi Sekhawat Ali Khan and Hazi  
Samsu Ali Khan both Khadim's of Lohani Pir Saheb. Service  
of notice given by plaintiff was admitted. In her cross-  
examination she admitted that the Medicine Shop under the  
name and style "Sen Pharmacy" was existing in the suit  
H        premises. She denied about the relationship in between

Dakshina Rajan Sen and Tapas Kumar Samanta. In her cross-examination she said that she was unable to say about the name of the owner of the suit property and that the plaintiff had issued an eviction notice. A

13. Deposition of PW-1, Tapas Kumar Samanta is also on record. In his statement he stated that he is the owner of the suit premises pursuant to the Registered Sale Deed dated 19<sup>th</sup> June, 2000. He stated that he has no house of his own, he is a married man and he has other two brothers and a sister. He needs the building to rebuild the existing house by demolishing the same which cannot be done without the suit premises being vacated by the defendant. He further stated that he also wants to reside in a portion of the house to be reconstructed and he has the capacity to spend for reconstruction of house. B C D

14. All the aforesaid evidences were noticed and appreciated by the Appellate Court to come to a definite finding about the relationship of plaintiff and the defendant as landlord and tenant and the need for demolishing the existing building for construction of a new building for his personal use. The Appellate Court also held that the defendants-tenant had not paid rent to the plaintiff-landlord since he purchased the suit property. E

15. Evidence being also on record, relationship - which was the only dispute raised by the defendant without disputing the other pleadings about personal necessity of plaintiff or non-payment of arrears of rent by defendant having established, we are of the view that the High Court was not correct in entertaining the Second Appeal by interfering with finding of fact arrived at by the Appellate Court. The finding of appellate court being based on evidence, the High Court erred in interfering with the judgment and decree passed by the Appellate Court while deciding a second appeal under Section 100 C.P.C. F G H

A        16. For the reasons aforesaid, we set aside the impugned judgment dated 29<sup>th</sup> February, 2012 passed by the High Court in S.A.No.149 of 2007 with C.A.N.No.10467 of 2009 and upheld the judgment and decree passed by the Appellate Court. The appeals are allowed. No costs.

B

Devika Gujral

Appeals allowed