REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1831-1832 OF 2015
(Arising out of SLP(C) Nos.5902-5903 of 2013)

TAPAS KUMAR SAMANTA … **APPELLANT**

VERSUS

SARBANI SEN & ANOTHER … **RESPONDENTS**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J

Leave granted.

2. These appeals have been preferred by the appellant against the judgment dated 29th 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 afresh.

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

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 the predecessor in interest of the respondents (hereinafter referred to as the 'defendant') on the following grounds:

Signature Not Verified
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Ramana Venkata Ravi
Date: 2015.07.12
16:37:31 IST
Reason:

(i) That the defendant defaulted in payment of rent from 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 reasonably suitable accommodation. The plaintiff wants to demolish the existing structures in the suit 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 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, negligence, annoyance and nuisance to the neighbours including the plaintiff landlord.

(v) That the defendant has made an illegal and un-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 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 Pir Sahib. The defendant further took plea that the agreement dated 8th 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 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:

"1. Is the suit maintainable in its present form and prayer ?

2. What is the cause of action of this suit ?

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?

5. Is the suit barred by the Principles of res-judicata ?

6. Is the suit defective for non-joinder of the parties ?

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 ?

9. To what other relief, the plaintiff is entitled to get ?

10. Has the sufficient Court Fees been paid?"

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 17th 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.

7. On appeal being Appeal No.36 of 2006 preferred by the appellant the Additional District Judge, Fast Track, 2nd Court, Paschim Medinipore by judgment and decree dated 21st 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.

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.

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.

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 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 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 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.

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-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 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 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.

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 19th 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.

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.

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.

16. For the reasons aforesaid, we set aside the impugned judgment dated 29th 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.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(N.V. RAMANA)

NEW DELHI,
FEBRUARY 12, 2015.

ITEM NO.1B COURT NO.4 SECTION XVI
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 5902-5903/2013

(Arising out of impugned final judgment and order dated 29/02/2012 in SA No. 149/2007, 29/02/2012 in CAN No. 10467/2009 passed by the High Court Of Calcutta)

TAPAS KUMAR SAMANTA **Petitioner(s)**

VERSUS

SARBANI SEN & ANR. **Respondent(s)**

Date : 12/02/2015 These petitions were called on for pronouncement of judgment today.

For Petitioner(s)
Mr. Soumya Chakraborty, Adv.
Mr. Danish Zubair Khan, Adv.

For Respondent(s)
Mr. M. K. Choudhary, Adv.
Mr. Yudhister Bhardwaj, Adv.
Ms. Namita Choudhary, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice N. V. Ramana.

Leave granted.

The appeals are allowed in terms of the signed reportable judgment.

(Nidhi Ahuja) **(Suman Jain)**
COURT MASTER **COURT MASTER**

[Signed reportable judgment is placed on the file.]