

SUPREME COURT OF INDIA

Tapas Kumar Samanta

Vs.

Sarbani Sen & Ors.

[2015] INSC 113

(Sudhansu Jyoti Mukhopadhaya and N.V. Ramana, JJ.)

12.02.2015

JUDGEMENT

Sudhansu Jyoti Mukhopadhaya, J.

1. Leave Granted.

2. These appeals have been preferred by the Appellant against the judgment dated 29 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. 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: (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.

3. 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 8 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. ;