

Uma Mishra (Sanyal) Vs Monoranjan Sinha

F.A. No"s. 220 and 221 of 1986, 117, 118, 119, 120 of 1987 and 10 of 1988

Court: Calcutta High Court

Date of Decision: Sept. 19, 1991

Acts Referred:

West Bengal Premises Tenancy Act, 1956 " Section 13(3A)

Citation: (1992) 2 ILR (Cal) 386

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Amal Kanti Bhattacharjee, J

Bench: Division Bench

Advocate: Sudhis Dasgupta, Vinoy Mishra, Subhra Kamal Mukherjee and Ujjal Bhattacharjya and D.N. Trivedi and S. Dubey, for the Appellant; Monoranjan Das, for the Respondent

Judgement

Bhagabati Prasad Banerjee, J.

All the eight appeals had been heard together in view of the fact that the Plaintiff-Appellant Uma Sanyal had

filed several ejectment suits being ejectment suits Nos. 932 of 1976, 1270 of 1978, 1285 of 1978, 1290 of 1978, 1295 of 1978, 1303 of 1978

and 788 of 1979 for ejectment of the respective tenants from the premises No. 10B, Baranashi Ghosh Street, P.S. Jorasanko, Calcutta. All the

above suits were heard together by R.K. Kar, Judge, Fifth Bench, City Civil Court, Calcutta, and by a common judgment dated July 8 1985,

decreed the ejectment suits Nos. 1270 of 1978, 1285 of 1978, 1290 of 1978, 1295 of 1978, 1303 of 1978, 788 of 1979 and the Defendants

therein were directed to vacate the premises No. 10B, Baranashi Ghosh Street, within three months from the date of the judgment. By the said

judgment the Court below dismissed the ejectment suit No. 932 of 1976. All the above suits were heard analogously on the prayer of the parties

and for the sake of convenience and similarly all the appeals had been heard together for the sake of convenience and on the prayer of the parties.

The Plaintiff-landlady purchased the premises No. 10B, Baranashi Ghosh Street, Calcutta, by a registered deed of conveyance dated August 11,

1975 from one Radhika Bibi who was the owner of the premises and landlady of the Defendants tenants. The Plaintiff-landlady resides in a rented

flat at premises No. 6B, Dihi Entally Road, Calcutta, comprising only three rooms on the ground floor. According to the Plaintiff-landlady the

accommodation available in the rented flat was neither suitable nor sufficient for her and her family members. The Plaintiff-landlady and her

husband are both Advocates who are engaged in the legal profession. The said ejectment suit was filed on various grounds including the ground of

reasonable requirement of the suit premises. The property was purchased on August 11, 1975, and the title suit No. 932 of 1976 was filed within

a year from the date of the purchase of the property. There are common questions involved in the suits and appeals which will be dealt with after

the facts of each title suit are set out below:

In F.A. No. 120 of 1987 (Ejectment Suit No. 932 of 1976) the Plaintiff-landlady's case was that the Defendant was a tenant in respect of one

room in the ground floor of the premises at a monthly rental of Rs. 23 per month. The other grounds of ejectment were that the Defendant-tenant

had defaulted in payment of rent since March 1976 and the Defendant-tenant was guilty of committing acts of waste and damages and had

converted the room and the adjacent road into a shop room without the consent of the Plaintiff and had thereby acted contrary to the provisions of

Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act and that the Defendant-tenant had converted the residential room into a

tailoring shop.

In F.A. No. 119 of 1987 (Ejectment Suit No. 270 of 1978) the Plaintiff-landlady's case was that the Defendant-tenant was a tenant in respect of

the two rooms on the first floor of the premises at a monthly rental of Rs. 50 per month. The other ground of ejectment was that the Defendant-

tenant was guilty of committing acts of waste and damages and had thereby acted contrary to the provisions of Clauses (m), (o) and (p) of Section

108 of the Transfer of Property Act.

In F.A. No. 10 of 1988 (Ejectment Suit No. 1285 of 1978) the Plaintiff-landlady's case was that the Defendant was a tenant in respect of one

room in the ground floor and one room on the 1st floor of the premises at a monthly rental of Rs. 43 per month. The other ground of ejectment

was that the Defendant-tenant was guilty of committing acts of waste and damages and had thereby acted contrary to the provisions of Clauses

(m), (o) and (p) of Section 108 of the Transfer of Property Act.

In F.A. No. 117 of 1987 (Ejectment Suit No. 1290 of 1978) the Plaintiff-landlady's case was that the Defendant therein was a tenant in respect

of two rooms and one kitchen on the 1st floor of the premises at a monthly rental of Rs. 30 per month. The other ground of ejectment was that the

Defendant-tenant was guilty of committing acts of waste and damages and as such had acted contrary to the provisions of Clauses (m), (o) and (p)

of Section 108 of the Transfer of Property Act.

In F.A. No. 220 of 1986 (Ejectment Suit No. 1295 of 1978) the Plaintiff-landlady's case was that the Defendant therein was a tenant in respect

of one room on the 2nd floor of the premises at a monthly rental of Rs. 25 per month. The other grounds of ejectment were that the Defendant-

tenant was guilty of committing acts of waste and damages and as such had acted contrary to the provisions of Clauses (m), (o) and (p) of Section

108 of the Transfer of Property Act and that the Defendant-tenant had constructed a kitchen without the consent of the Plaintiff-landlady.

In F.A. No. 118 of 1987 (Ejectment Suit No. 1303 of 1975) the Plaintiff-landlady's case was that the Defendant therein was a tenant in respect

of one room in the ground floor of the premises at a monthly rental of Rs. 24 per month. The other ground of ejectment was that the Defendant-

tenant was guilty of committing acts of waste and damages and as such had acted contrary to the provisions of Clauses (m), (o) and (p) of Section

108 of the Transfer of Property Act.

In F.A. No. 221 of 1987 (Ejectment Suit No. 788 of 1979) the Plaintiff-landlady's case was that the Defendant therein was a tenant in respect of

one room in the ground floor of the premises at a monthly rental of Rs. 16 per month. The other grounds of ejectment were that the Defendant-

tenant had defaulted in payment of rent since July 1979 that the Defendant had converted the residential room into a shop-room without the

consent (sic) Plaintiff landlady and that the Defendant was guilty (sic) committing acts of waste and damages and as such had acted contrary to the

provisions of Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act.

2. The Defendants-tenants contested the suits for ejectment by filing written statements. The Defendant-tenants in some of the suits had denied the

Plaintiff-landlady's ownership in the premises No. 10B Baranashi Ghosh Street. According to them, the Plaintiff-landlady's father purchased the

said premises in the benami of the Plaintiff. All the Defendants-tenants denied the Plaintiff-landlady's reasonable requirement of the suit premises

for her use and occupation and her family members. They had also denied that the Plaintiff-landlady's present accommodation in the rented flat

was not suitable and sufficient for the occupation of her and her family members. In this case, at the time of filing of the ejectment suits, the petition

was amended incorporating additional ground of eviction, namely, the ground of reasonable requirement of the Plaintiff and her family members for

their use and occupation of the premises in question. Such an amendment was made on November 30, 1979, and the said amendment was

allowed by the Court below on April 15, 1980. It was the common contention of all the Defendants-tenants in these appeals who are the

Appellants in some cases that in view of the provisions of Section 13(3A) of the West Bengal Premises Tenancy Act, 1956, no suit could be

instituted by any landlord within a period of three years from the date of purchase of the property of the ground of reasonable requirement of the

new landlord and that in the instant case, suits were filed within the prohibited period of three years and that even though the amendments were

allowed for incorporating the ground on April 15, 1980, but the said ground on the basis of the amendment could not be available to the landlord

in view of the express provisions of Sub-section (3A) of Section 13 of the West Bengal Premises Tenancy Act.

3. In support of this contention reliance was placed on the Division Bench judgment of this Court in the case of Smt. Sudha Mukherjee Vs. Sankar

Chatterjee, which was followed in another Division Bench judgment of this Court in the case of Inder Sengupta Vs. Sm. Prova Rani Chakraborty

and Another, and Division Bench judgment of this Court in the case of Geeta Bhose v. Machine Tools of India 1990 (1) C.L.J. 455. The later two

Division Bench followed the Division Bench judgment of this Court in which it was held that a suit for eviction filed by a purchaser landlord could

not be instituted by him within a period of three years from the date of purchase of the property and that the ground of reasonable requirement

could not also be taken by way of amendment and that such amendment could not be allowed on the ground that amendment is to take effect

from the date of the institution of the suit and if the institution of the suit is barred for this ground, in that event, by amendment the said ground

cannot be availed of. This case would be fraud upon the statute. A contrary view was taken by a learned Single Judge of this Court in the case of

Samir Kumar Sarkar v. Asit Kumar Sarkar 1990 (2) C.II.N/107 Lots of arguments had been advanced by the Counsels on the part of both sides

with regard to this ground and it was a contention of the learned Advocate appearing on behalf of the tenants-Defendants that the effect of

amendment relates back to the date of the institution of the suit and as such amendment which was allowed for incorporating the ground of eviction

on the ground of reasonable requirement of the landlady, could not be allowed and in a suit which was filed within the prohibited period of three

years, no such amendment could be made which would have the effect of relating back to the date of institution of the suit and as such the suit

would be barred and on the basis of the suit, a decree for eviction on the ground of reasonable requirement, cannot be availed of.

4. Now this question is set at rest by the judgment of the Supreme Court in the case of Sm. Prova Rani Chakraborty and Anr. v. Inder Sengupta

Unreported decision of Supreme Court in Civil Appeal No. 15218 judgment delivered on March 5, 1991. In this case, the Supreme Court

considered the issue in question. In this case, the Appellants Prova Rani Chakraborty and Anr. purchased the premises in question on June 5,

1973, and they instituted a suit for eviction against the tenant on February 9, 1976. The plaint was amended on April 28, 1977, as a result of

which the ground mentioned in Clause (ff) of Sub-section (1) of Section 13 of the West Bengal Premises Tenancy Act, 1956, was specifically

pleaded. The amendment was necessary because at the time of institution of the suit on February 9, 1976, three years from the date of purchase of

the premises had not expired, as required by Sub-section (3A) of Section 13 of the Act, for seeking eviction on the ground mentioned under

Clause (ff) of Sub-section (1) of Section 13 of the said Act. On the expiry of the said period, the aforesaid ground of eviction under Clause (ff) of

Sub-section (1) of Section 13 was added as additional reason for seeking eviction.

5. After the rival contention of the parties it was held that the said amendment of the plaint for incorporating the new ground of eviction under

Clause (ff) of Sub-section (1) of Section 13, which was brought on record, was validly made. In that case, the Division Bench of this Court held

that the question of reasonable requirement cannot be considered on the basis of amendment when the suit was filed within the prohibited period of

three years. Supreme Court reversed the judgment of the Division Bench of this Court and directed the High Court to rehear the case with

reference to the facts and law concerning the question of bona fide requirement of the landlord in accordance with law. In other words, in short, it

is the view of the Supreme Court that such a course of action is permissible and that even though the suit was filed within the prohibited period of

three years as contemplated in Section 13(3A) of the said Act, after the expiry of three years, amendment could be made in the petition for

incorporating the ground mentioned in Clause (ff) of Sub-section (1) of Section 13 of the said Act. In view of the judgment of the Supreme Court

on this point, it cannot be contended that in the instant case, the ground of eviction as mentioned in Clause (ff) of Sub-section (1) of Section 13 of

the said Act cannot be invoked on the basis of the amendment as sought to be argued on behalf of the tenants-Defendants.

6. Accordingly, we hold that the Plaintiff-landlady was entitled to invoke the ground of eviction as mentioned in Clause (ff) Sub-section (1) of

Section 13 of the said Act by amendment in suit which was filed within the prohibited period mentioned in Sub-section (3A) of Section 13 of the

said Act and the decree was passed by the Court below on the basis of the additional ground for eviction as provided under Clause (ff) of Sub-

section (1) of Section 13 the same would have been valid and cannot be challenged on this ground.

7. Accordingly, we do not find any substance to this contention raised on behalf of the Defendants-tenants in this appeal.

8. In the said suits the following issues were framed:

(1) Have the notices of ejectment been served upon the Defendants of different suits? If so, are the same legal, valid and sufficient?

(2) Is the Plaintiff owner of premises No. 10/B, Baranshi Ghosh Street, Calcutta ? Does she reasonably require the said premises for the

occupation of her own and her family members? Is the Plaintiffs husbands brother a member of the Plaintiff's family? Is the Plaintiff in possession of

any reasonably suitable accommodation?

(3) Have the Defendants of different suits done any act contrary to the provisions of Clauses (m), (o) and (p) of Section 108 of the Transfer of

Property Act?

(4) Are the Defendants of different suits guilty of acts of waste and damages?

(5) Were the suit rooms let out to the Defendants of suits Nos. 932/76 and 788/79 for residential purpose? If so, have they been using the same as

shop rooms without the consent of the landlord?

(6) Are the Defendants of suits Nos. 932/76 and 788/79 defaulters in payments of rent as alleged?

(7) Is the suit for ejectment against the Defendant of suit No. 932/76 on the ground of reasonable requirement for the Plaintiff own occupation

maintainable u/s 13(3A) of the W.B.P.T. Act?

(8) Have the substituted Defendants of Suit No. 1290/78 inherited the tenancy on the death of their predecessors, namely the original Defendant?

(9) Is the Plaintiff entitled to decree for ejectment as prayed for?

(10) To what other relief or reliefs is the Plaintiff entitled?

9. The Plaintiff-landlady sought eviction against all the tenants in respect of the premises in question by filing several suits. In F.A. No. 120 of 1987

(Ejectment Suit No. 932/76) the Defendant-tenant was in occupation of one room measuring about 9'4" of 7'9", on the ground floor of the

premises at a monthly rental of Rs. 23. The ground of eviction initially was for default of payment of rent since March 1976 and also for committing

acts of waste and damages and for converting the room and the adjacent road into a shop room without the consent of the landlady. In F.A. No.

119 of 1987 (Ejectment Suit No. 1270/78) the Defendant-tenant was in occupation of two rooms on the first floor of the premises paying monthly

rent of Rs. 50. The ground of eviction was of committing acts of waste and damages and thereby acting contrary to the provisions of Clauses (m),

(o) and (p) of Section 108 of the Transfer of Property Act. In F.A. No. 10 of 1988 (Ejectment Suit No. 1285/78) the Defendant-tenant was in

occupation of two rooms and one kitchen on the first floor of the said premises at a monthly rental of Rs. 30 and the ground of eviction was acting

contrary to the provisions of Clauses (m), (o) and (p) of Section 108 of the said Act. Similar was the ground of eviction in respect of the

Defendant-tenant in

F.A. No. 220 of 1986 (Ejectment Suit No. 1295/78) where the Defendant-tenant was in occupation of one room on the second floor of the

premises at a monthly rental of Rs. 25. Similar was the ground of eviction in respect of the Defendant-tenant in F.A. No. 118 of 1987 (Ejectment

Suit No. 1303/75) where the Defendant-tenant was in occupation of one room on the ground floor at a monthly rental of Rs. 24. In F.A. No.

(Ejectment Suit No. 788/79) the Defendant was a tenant in respect of one room on the ground floor of the premises at a monthly rental of Rs. 16.

The ground of eviction was for default in payment of rent since July 1979 and the other allegation was that the Defendant-tenant converted the

residential room into a shop-room without the consent of the landlady and the Defendant-tenant was also guilty of committing acts contrary to the

provisions of Clauses (m) (o) and (p) of Section 108 of the said Act.

10. After hearing the parties and on the basis of the evidence on record, the Court below had decided the issue No. 1 regarding service of notice

of ejectment in the following ground:

(a) In all ejectment suits the Court held that there had been valid service of the notice of ejectment as provided u/s 13(6) of the West Bengal

Premises Tenancy Act and that not only the service was made, according to law, the notice was also held to be valid and sufficient.

11. With regard to issue No. 2 relating to the reasonable requirement of the landlady's own use and occupation and for her family members is

concerned, the Court below held that having regard to the evidence on record, the Plaintiff-landlady became the owner of the suit premises by

purchase and that the Plaintiff-landlady reasonably requires one room as chamber to attend her clients one room as chamber for her husband to

attend his clients, one room for keeping books and documents, one room for typist and clerks of her and her husband, one bed-room, one study-

room, one drawing room, one store-room for keeping the food materials, one dining room, one room for keeping miscellaneous things of the family

and one Thakur Ghar besides privy-cum-bath-room and that the Plaintiff-landlady also stated that she requires one room for garage of her car and

there are two road-side rooms in the premises in question and the Plaintiff-landlady stated that she requires a road-side room for garaging her car.

The Court below also held that the Plaintiff-landlady's suit for eviction in respect of Ejectment Suit No. 932/76 u/s 13(1)(ff) of the said Act was hit

by Section 13(3A) of the West Bengal Premises Tenancy Act, 1956. The Court below further held that there were 12 rooms and the Plaintiff-

landlady was already in possession of one room where 11 rooms were in occupation of the tenants. The Court below further held that the Plaintiff-

landlady was not entitled to decree in respect of the Defendant in F.A. No. 120/87 in Ejectment Suit No. 932/76, but the Plaintiff-landlady had

been able to prove that she reasonably requires the remaining 10 rooms occupied by other tenants in the premises in question which was the

subject-matter of the other ejectment suits The Court below also held that the Plaintiff-landlady had been paying a sum of Rs. 300 in respect of the

tenanted flat while she is receiving only a sum of Rs. 226 per month from the Defendant-tenants and as such the Plaintiff-landlady will be

economically benefited if she comes in the suit premises.

12. With regard to issues Nos. 3 and 4 relating to acts contrary to the provisions of Clauses (m), (o) and (p) of Section 108 of the Transfer of

Property Act and guilty of acts of waste and damages is concerned, the Court held that the Plaintiff-landlady failed to substantiate her case of acts

of waste and damages against the Defendants-tenants.

13. Issue No. 5 has been decided against the Plaintiff-landlady.

14. Issue No. 6 has also been decided against the Plaintiff-landlady on the ground that even though the payment of rent for the months of March

and April 1976 was not made but as the tenant had complied with the provisions of Section 17(1) of the West Bengal Premises Tenancy Act, no

decree for ejectment on the ground of default should be passed against the said tenants. The Court below also held that the Defendant tenant in

Ejectment Suit No. 788/79 defaulted in payment of rent since July 1979 and as the Defendant-tenant had been once given protection u/s 17(4) in

the earlier ejectment suit, the said Defendant tenant was not entitled to further protection in this suit.

15. With regard to issue No. 7 is concerned, the Court below held that the suit for ejectment in F.A. No. 120/87 in Ejectment Suit No. 932/76 on

the ground mentioned u/s 13(i)(ff) of the said Act was clearly hit by Sub-section (3A) of Section 13 of the said Act.

16. With regard to issue No. 8 is concerned, the Court below held that though the substituted Defendants did not actually reside in the suit

premises, they were still in possession thereof after the death of the original Defendant and as such they were the tenants within the meaning of

Section 2(h) of the West Bengal Premises Tenancy Act.

17. With regard to issues Nos. 9 and 10 are concerned, the Court below held that the Plaintiff was entitled to khas possession of the rooms

excepting the room occupied by the tenant in Ejectment Suit No. 932/76.

18. In view of the decision of the Supreme Court in the case of Prova Rani Chakraborty v. Inder Sengupta (Supra) the decision of the Court

below is liable to be reversed, inasmuch as, in view of the above decision of the Supreme Court, it is permissible on the part of a landlady who has

purchased the property and who has instituted a suit for eviction within a period of three years on other grounds to apply for amendment and ask

for relief on the ground of eviction mentioned in Clause (ff) of Sub-section (1) of Section 13 of the West Bengal Premises Tenancy Act. A

purposive construction has to be given to the provisions of Sub-section (3A) of Section 13 of the said Act, inasmuch as, the Legislature has put an

embargo on the right of a transferee-landlady to institute a suit within a period of three years. It was the view taken by three Division Bench judgments

of this Court that in respect of the suit for eviction instituted within a period of three years from the date of the purchase, the ground mentioned in

Clause (ff) of Sub-section (1) of Section 13 could not be invoked as that would amount to fraud on the statute, inasmuch as, the amendment could

relate back to the date of the institution of the suit and that if the institution of the suit is barred, the amendment is also barred. The principle does

not held good in view of the above decision of the Supreme Court and further the legislative intent could not be extended beyond what was

contemplated by the Legislature. The whole object of incorporating the provision of Sub-section (3A) of Section 13 of the said Act is that a

transferee-landlady cannot file a suit within a period of three years. But if a suit is pending for 12 years and if a suit is pending for 10 years as

because the suit was instituted within a period of three years from the date of purchase of the property, the landlady cannot be prevented from

amending the plaint for taking benefit of grounds mentioned in Clause (ff) of Sub-section (1) of Section 13 of the said Act, inasmuch as, this would

result in unworkable, impracticable, inconvenient and illegal result. If a suit for eviction is instituted that would take 10/15 years to get a decree for

eviction and/or to execute a decree for eviction on any grounds whatsoever. The purpose of the Legislature was to give the tenant three years

protection against the eviction on the ground of reasonable requirement of a transferee-landlord, but in the facts and circumstances of the case the

Court has to give a purposive construction. A construction which promotes the remedy provided by the law to cure a particular mischief, is known

as purposive construction. The purposive construction must obviously be in all cases, a construction which gives effect to the legislative intent. The

contention that if a suit is filed by a transferee-landlady within a period of three years, she is debarred from taking help on the ground mentioned in

Section 13(1)(ff) of the said Act for all time to come in that suit, that would result disproportionate counter-mischief. It is the ordinal principle of

rules of interpretation that the Court seeks to avoid a construction that cures mischief, the enactment was designed to remedy only at the cost of

setting up a disproportionate counter-mischief since this is unlikely to have been intended by the Legislature. (See para 326 at p. 705 in Statutory

Interpretation by Francis Beanion). The Court is usually concerned to decide between opposing constructions of the enactment which are

advanced by the parties in relation to the facts of the instant case. Consequential construction requires the consequences of adopting each of the

constructions to be assessed. The position was thus described by Romer L.J. in *Fry v. I.R.C.* (1959) Chap. 86, p. 105:

It seems to us that on the language of the section neither the view of the Defendant nor that of the Plaintiff can be said to be obviously wrong. The

Court, then, when faced with two possible constructions of legislative language, is entitled to look at the results of adopting each of the alternatives

respectively in its quest for the true intention of Parliament. Applying this principle under the provisions of the Act in this case, it would be evident

that if the construction sought to be put forth by the Defendants-tenants that the landlady is debarred from availing the ground mentioned in Clause

(ff) of Sub-section (1) of Section 13 of the said Act for all times to come on the ground that the suit was instituted by the transferee-landlady within

a period of three years from the date of purchase of the property is accepted that would be contrary to the intention of the Legislature. The

legislature sought to protect the tenant from eviction for a period of three years and by this construction it would mean that three years protection

would run upto 30 years. If the transferee-landlord is to file a fresh suit abandoning this suit that would inevitably extend the protection of three

years even to 30 years. A construction of a provision in an Act cannot be given literal meaning on the language used in a statute.

19. Accordingly, even though the Supreme Court, in the case mentioned above had not obviously given a detailed reason, but what was the reason

for which the Supreme Court has taken this view, is not difficult to find it out. Accordingly, in this case, even though the property was purchased by

the Plaintiff-landlady on August 11, 1975, and the Plaintiff-landlady filed a suit for eviction on other ground on August 18, 1976, the Plaintiff-

landlady was entitled" to make an application for amendment on April 15, 1980, for the purpose of taking advantage of the ground mentioned in

Section 13(1)(ff) of the said Act. Accordingly, the Ejectment Suit No. 932/76 must be decreed for the Plaintiff-landlady and for the members of

her family under the provisions of Section 13(1)(ff) of the said Act and, accordingly, the First Appeal No. 120 of 1987 must be allowed.

20. In F.A. No. 119 of 1987 (Ejectment Suit No. 1270/78) it was submitted by the learned Counsel appearing on behalf of the Defendant-tenant

that there was non-service of notice of eviction and that there was no finding that the landlady had no suitable accommodation elsewhere. It is on

evidence that notice of eviction was sent by registered post as well as under certificate of posting and that the Defendant-tenant received the notice

by signing the acknowledgement card. The notice was also served through special messenger. Postal receipt was produced. In view of this

evidence on record, we do not find any substance to the submission that there was no service of notice. In the facts and circumstances of the case

when the Court below found that the Plaintiff-landlady requires all the rooms in the premises excepting one room on the ground which is reversed

in F.A. No. 120/87, there was no scope for consideration of a partial eviction. The question of partial eviction could only arise where there is a

scope for meeting with the requirement of Plaintiff-landlady by partial eviction. In the instant case, when the Court below has made conclusive

finding that the Plaintiff-landlady requires all rooms in the premises in question, in our view, there is no substance in this contention. The question of

partial eviction was not agitated and there is no scope for consideration of the question of partial eviction in the facts and circumstances of the case.

The learned Counsel appearing on behalf of the tenants-Defendants also cannot show from the facts and circumstances of the case, how the partial

eviction would satisfy the need of the landlady in the facts and circumstances of the case when the tenant was in occupation of two rooms on the

first floor of the premises and it is on record that the Plaintiff-landlady requires 12 rooms in the premises in question. It is also on record that the

landlady had no other suitable accommodation and that the landlady was staying in a three-roomed rented flat, whereas the landlady"s requirement

of 12 rooms was found by the Court below. In that view of the matter, we do not find any substance to the submission. When on the basis of the

evidence on record it is crystal clear that the landlady had no other alternative accommodation, we do not find any reason for making such

submission before this Court on this ground.

21. In the instant case, both the Plaintiff-landlady and her husband are practising lawyers, and for practising lawyers it is the requirement for

practice in chamber separately and for the purpose of carrying work and spaces for the clients to sit and spaces for the typist clerk for performing

their jobs and spaces for keeping their books, records and documents which are essential. Undisputedly the family of the Plaintiff-landlady includes

herself, her husband and a son Anurag who is now 17-18 years old. For the purpose of prosecuting his studies, it is necessary for a room for his

teacher. The Plaintiff-landlady's husband's brother is also residing with them. According to the Plaintiff-landlady, her requirement was one room as

chamber to attend her clients, one room as chamber for her husband to attend his clients, one room for keeping books and documents, one room

for typists and clerks of both her and her husband, one bed-room for her and her husband and their son who at the relevant time was a minor, but

by now he has attained majority. But she at the relevant time considering the age of their son did not ask for any separate bed-room for their son.

She also requires one room for study of their son, one drawing room for the entire family, one dining room, one store-room for keeping articles of

food, one room for keeping miscellaneous articles of the family, one room for taking rest of the members of the family falling sick, one kitchen and

one Thakur Ghar. She also stated that she has got a deity of Gopal which is worshipped by her everyday and she also performs "hom" every night.

She also requires two privy cum bathroom and one bed-room for her brother-in-law, namely the husband's brother.

22. The only contention as against this requirement of the Plaintiff-landlady made on behalf of the Defendants-tenants before the Court below was

that the Plaintiffs brother-in-law could not be regarded to be the member of the family and that in the absence of any evidence on record to show

that the Plaintiff's husband's brother was a member of the Plaintiffs family, the Court below accepted the contention and, ultimately, the Court

below found on the basis of the evidence that the Plaintiff requires one room as her chamber to attend her clients, one room for her husband to

attend his clients, one room for keeping books and documents, one room for the typists and clerks both of her and her husband, one bed-room,

one study-room, one drawing room, one dining room, one store room for keeping articles for food, one room for keeping miscellaneous articles of

her family, one kitchen, one Thakur Ghar besides privy cum bath-room. There were 12 rooms altogether in the entire premises out of one which

room was already in possession of the Plaintiff-landlady and that the evidence clearly shows which could not be disputed and has not been

disputed before us on behalf of the tenants-Defendants that the remaining 11 rooms were not required by the Plaintiff-landlady. The requirement as

found by the Court below as reasonable requirement for the landlady's own use and occupation had not been and could not be disputed before

us. It was sought to be argued that when the landlady was in occupation of a rented house consisting of three rooms and when the landlady could

accommodate her family in that three rooms, there is no requirement for a big house of so many rooms for her own use and occupation. We are of

the view that this is wholly out of the contest. The power of the Court is only to see whether the requirement was reasonable or not. The role of the

Court in such a case is not to play the guardian of the landlady. As the Plaintiff-landlady had no sufficient space in the rented flat, she had every

right to file an eviction suit on the ground of personal requirement and when on the basis of the evidence on record and considering the status and

the needs of the Plaintiff-landlady, it is found that the Plaintiff-landlady requires these rooms and the requirement is all reasonable, the Courts duty

is over and the Court cannot proceed any further in the matter and the Court is not competent to make any further review on any other grounds

whatsoever. Further, when a landlady is residing in a tenanted house, she is entitled to apply for eviction and that this cannot be said to be

unreasonable, fanciful or absurd. It is one thing to stay as a tenant and it is quite a different thing to live in his own house. Two things cannot be

equated. Accordingly, we are of the view that the landlady having a house which is under tenant, living in a tenanted house, certainly is entitled to

file a suit for eviction on the ground of reasonable requirement of the premises of which she is the owner. In such a case the Court cannot dismiss

the suit on the ground that as the landlady is residing as tenant in a tenanted house in different premises, she is debarred from coming to her own

residence. This submission cannot be accepted on any grounds whatsoever.

23. It is not necessary to go into the other questions raised in all suits, inasmuch as, when the Court has found that all rooms under the occupation

of the tenants, which is the subject-matter of different suits and different appeals, are reasonably required by the Plaintiff-landlady and that when the

Court found that the finding of the Court below is not perverse and further no attempt has been made to show that the findings are all perverse, we

are of the view that the decree passed by the Court below in Ejectment Suits Nos. 1270/78, 1285/78, 1290/78, 1295/78, 1303/78 and 788/79,

are affirmed. First Appeal No. 118 of 1987 filed by the Appellant Sm. Punia Devi, First Appeal No. 220 of 1986 filed by the Appellant Ram

Shankar Mishra, First Appeal No. 221 of 1988 filed by the Appellant Pannalal Jaiswal, First Appeal No. 10 of 1988 filed by the Appellant

Sudama Singh, First Appeal No. 119 of 1987 filed by the Appellant Pursottam Jaiswal and the First Appeal No. 117 of 1987 filed by the

Appellant Sakuntala Jaiswal, stand dismissed without any order as to costs. The First Appeal No. 120 of 1987 filed by the Plaintiff-Appellant-

landlady Uma Sanyal stands allowed and the Ejectment Suit No. 932 of 1976 is reversed and she is entitled to a decree for eviction against the

Defendant Respondent Monoranjana Sinha in respect of one room on the ground floor of the premises in question which is the subject-matter of the

title suit concerned. The First Appeal No. 120 of 1987 are allowed and all other appeals stand dismissed without any order as to costs.

A.K. Bhattacharjee, J.

I agree.

F.A. no 120 of 1987 allowed, other appeals dismissed.