

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 179 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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UJAMBEN MEGHJIBHAI VACHHANI

Versus

AMBAVI MOHANBHAI VACHHANI  
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Appearance:

1. Civil Revision Application No. 179 of 2004  
MR SURESH M SHAH for Petitioner No. 1-3  
MR MEHUL S SHAH for Petitioner No. 1-3  
MR ANSHIN H DESAI for Respondent No. 1  
MR KL PANDYA, ASST. GOVT. PLEADER for Respondent No. 2  
NOTICE SERVED for Respondent No. 3-4
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/09/2004

ORAL JUDGEMENT

1. Mr. Shah, learned advocate for the petitioner seeks permission to delete the respondent No.4 from this Revision Application as she is not a necessary party inasmuch as, according to him, she was a co-defendant and she has not defended the suit also, and the trial Court has not passed any order in her favour. Permission to delete respondent No. 4 in this Revision is granted.

2, Rule. Mr. Anshin H Desai waives service of rule on behalf of the respondent No.1. Mr. K.L. Pandya, learned Assistant Government Pleader waives service on respondent No.2 and 3.

3. With the consent of the learned advocate, this matter is taken up for final hearing.

4. The petitioners are original defendants No. 1, 2 and 3 against whom the present respondent No. 1 has filed the suit, being Regular Civil Suit No. 410 of 2000, for a permanent injunction restraining the defendants No. 1,2 and 3 from entering the suit land, and from disturbing the possession of the plaintiff regarding the suit land. The relief is also prayed against the Government officers to the effect that they may make appropriate entries in the Revenue records. In the said suit, the plaintiff had preferred an application for injunction. The trial Court partly allowed the said application and granted injunction in favour of the plaintiff, and defendants No. 1, 2 and 3 were restrained from disturbing the possession of the plaintiff. Against the said order, the petitioners herein, who are defendants No. 1,2 and 3 preferred an appeal before the District Court. However, since there was a delay of about 4 months and 20 days, a separate application was preferred for condonation of delay, being Misc. Civil Application No. 80 of 2001. The learned appellate Judge came to the conclusion that satisfactory reasons have not been given. The learned appellate Judge therefore rejected the application, against which the present Revision Application is filed by the original defendants No. 1, 2 and 3.

5. At the time of hearing the Revision, Mr. Desai submitted that the petitioners have not given satisfactory reasons for delay and the appellate Judge was justified in rejecting the application for condonation of delay. He, however, submitted that in order to see that the appeal of the petitioner may not be thrown out at the threshold, he has no objection if delay is condoned, but cost may be awarded to the original

plaintiffs. He also requested that the hearing of the suit may be expedited as it is of the year 2000, and since the suit is for injunction, the same is required to be heard expeditiously. Learned AGP has stated that he has no objection if delay is condoned as the respondents No. 2 and 3 herein are the formal parties.

6. Considering the aforesaid aspect, the Revision is allowed. Delay in preferring the appeal before the lower appellate Court against the order passed below Exh. 5 in R.C.S. No. 410/00, is condoned. The appellate Court shall now proceed with the hearing of the appeal filed by the present petitioner on merits and shall decide the same as expeditiously as possible.

7. However, the petitioners herein are directed to pay cost of Rs.2500/- to the original plaintiffs as they are required to defend this Revision Application and they were required to spend amount for defending this Revision Application eventhough they were not at fault. The said amount of costs shall be deposited by the petitioners herein in the trial Court within a period of two months from today, and the trial Court shall, permit the plaintiff to withdraw the said amount unconditionally.

8. In the facts and circumstances of the case, the suit is also expedited, and the trial Court is directed to proceed with the suit, being Regular Civil Suit No. 410 of 2000, and the same may be disposed of as expeditiously as possible preferably within a period of two years from today.

9. The Revision is allowed to the aforesaid extent.  
Rule made absolute.

mathew [P.B.MAJMUDAR, J.]