

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 90 of 2005

to

CIVIL REVISION APPLICATION No. 93 of 2005

And

CIVIL APPLICATION No.3410 of 2005

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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

VALLABHBHAI NANJIBHAI PUVAR

Versus

SATYAPRASAD PRABHASHANKER SHUKLA DIED THRO' HEIRS

Appearance:

1. Civil Revision Applications No. 90/2005 to 93/2005
MR PK PAREKH for Petitioner
MR NAVIN PAHWA for M/S THAKKAR ASSOC.
for Respondents No. 1-1/1
..... for Respondent No. 1/2-1/4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

COMMON ORAL JUDGEMENT

These four Revision Applications arise from the common judgement and order dated 18th February, 2005 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeals No. 173 of 1988; 186 of 1998; 187 of 1998 & 188 of 1998.

The petitioner has moved Civil Application No. 3140 of 2005 for production of additional evidence, being the orders made on Special Civil Application No. 9507 of 1996 and the electricity bill received by the petitioner for the electrical consumption for the months of July & August, 2004. Civil Application is allowed.

The premises in question is an open land appurtenant to the bungalow situated at Naranpura, Ahmedabad of the ownership of the respondent-plaintiff. A piece of land admeasuring 6' x 7' in the said open land was leased to the petitioner for placing a table to carry on the business of clothes ironing. The respondent instituted HRP Suit No. 3599 of 1988 against the petitioner in the court of Small Causes, Ahmedabad for eviction on the grounds of change of user and arrears of rent. The respondent also instituted HRP Suit No. 2142 of 1988 for permanent injunction restraining the petitioner from using the suit premises for residential purpose and HRP Suit No. 1714 of 1996 for permanent injunction restraining the petitioner from placing any wooden or iron cabin in the suit land. The petitioner instituted HRP Suit No. 2167 of 1988 for declaration that the petitioner was the lawful tenant in the land admeasuring 19' x 8' appurtenant to the bungalow in question. The said suits were consolidated. By a common judgment and order dated 30th September, 1998. The HRP Suits nos. 3599 of 1988 and 1714 of 1996 instituted by the respondent-landlord were dismissed. The HRP Suit No. 2167 of 1988 instituted by the petitioner-tenant was partly allowed to the extent that the landlord was restrained from taking possession of the suit cabin admeasuring 8' x 6' and also from causing any obstruction in its use by the tenant. The HRP Suit NO. 2142 of 1988 instituted by the landlord was partly allowed. Permanent injunction was issued against the petitioner-tenant restraining him from using the suit premises for residence or for any purpose other than for ironing work. Feeling aggrieved, the respondent-landlord preferred above referred Civil Appeal Nos. 173 of 1998 before the appellate bench, Small Causes Court, Ahmedabad in so far

as HRP Suit No. 3599 of 1988 was dismissed. The petitioner-tenant preferred Civil Appeals No. 186 of 1998 & 187 of 1998 in so far as partial decree was passed in HRP Suits No. 2142 of 1988 and 2167 of 1988. The tenant also preferred Civil Appeal No. 188 of 1998 in so far as standard rent of the suit land was fixed at Rs.55/= exclusive of municipal taxes and educational cess.

The lower appellate court, by common judgment and order dated 18th February, 2005, allowed the Civil Appeal No. 173 of 1998 and passed a decree for recovery of possession against the petitioner. The Civil Appeals no. 186 of 1998 to 188 of 1998 preferred by the petitioner were dismissed. Feeling aggrieved, the petitioner-tenant has preferred the present Revision Applications.

Learned advocate Mr. Parekh has appeared for the petitioner tenant. He has extensively read out the impugned judgment and the evidence on record. He has submitted that the lower appellate court has erred in holding that the land admeasuring 7' x 6' was leased to the petitioner for the purpose of carrying on the business of ironing clothes. He has submitted that the lower appellate court has erred in not believing that the petitioner was leased a larger piece of land including a wooden cabin for the purpose of his residence. He has submitted that the petitioner has produced electricity bills to prove that the petitioner had obtained electric connection for residence. He has submitted that such a connection could not have been obtained except with the permission of the landlord. Hence, it is proved that the petitioner was leased the suit land alongwith the wooden cabin for the purpose of his residence and the business.

I am unable to agree with Mr. Parekh. Mere electricity consumption bills would not prove that the petitioner had been leased the suit land for the purpose of residence as well as for business. I am of the opinion that the lower appellate court has rightly considered the evidence on record to hold that the petitioner was leased the land admeasuring 7' x 6' to carry on the business of clothes ironing and the petitioner had started using the adjoining land for his residence also. The petitioner has rightly been held liable for eviction on the ground of change of user. Besides, even if, on evidence on record any other view is possible this Court exercising revisional jurisdiction under Section 29 (2) of the Rent Act would not substitute the finding recorded by the lower appellate Courts by its own.

No other contention is raised before me. The Revision Applications are dismissed in limine.

At the request of the learned advocate Mr. Parekh, the execution of the eviction decree passed against the petitioner is ordered to be stayed upto 30th July, 2005 on usual terms.

{Miss R.M Doshit, J.}

Prakash*