

(1977) 07 GUJ CK 0011

In the Gujarat High Court

Case No : Civil Revision Application No. 651 of 1977

Gram Panchayat, Manekwada

APPELLANT

Vs

Patel Bhura Ramji Bhensania

RESPONDENT

Date of Decision : 13-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1(2), 115

Citation : AIR 1977 Guj 206 : (1978) 19 GLR 308

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Advocate : D.D. Vyas, for the Appellant;

Judgement

1. This is a revision application filed by the plaintiff of the Regular Civil Suit No. 110 of 1975 in the Court of the Civil Judge (Junior Division), Bagasra-Vadia. The plaintiff Panchayat has filed the said suit for the declaration of its title to a piece of the land and for an injunction restraining the opponent defendant from putting up any structure thereon. The suit was fixed on April 6, 1977 for "being proceeded with. The examination in chief of the defendant was recorded and cross-examination had just commenced. Then there was recess intervening. The learned Advocate for the plaintiff thereafter did not feel well and, therefore, went to his house and found that he had caught fever. Finding that a part-heard suit was there before the Court, he in that feverish condition went to the learned Judge and filed his sick note and orally prayed for adjournment of the case. The learned Judge, by his order below Ext. 92, rejected the said application on the ground that O. XVII, R. 1 (2) (d) came in his way. Thereafter, the advocate of the plaintiff gave Application No. 93 requesting the Court to give time to the plaintiff to engage another advocate. That application was also rejected under the very provision. In the absence of the advocate for the plaintiff the cross-examination was closed and the case was adjourned to April 28, 1977. On that day, the application Ext. 95 was given on behalf of the plaintiff to the Court seeking permission to cross-examine the defendant. The said application was rejected by

the learned trial Judge. On April 6, 1977, it seems, one application - Ext. 94 had also been given by the very advocate to the Court to adjourn the matter so that his client could move the High Court in revision against the orders below Exts. 93 and 94. However, on April 28, 1977, it was declared to the Court that the revision application was not sought to be filed and that the plaintiff should be given an opportunity to cross-examine the defendant. The learned Judge, in view of that back-ground and perhaps because of the annoyance at the disinclination of the learned Advocate of the plaintiff to approach the High Court, rejected the application, Ext. 95

2. The present application is preferred under S. 115(c) of the Civil P. C. The O. XVII, R. 1(2) (b) has been unfortunately misread by the learned Judge, with the result that he had rejected the motion for adjournment and other applications directly flowing from it. The O. XVII R. I says that the Court may, if sufficient cause is shown, grant time to the parties or to any one of them and may from time to time adjourn the hearing of the suit. This is an enabling provision. Sub-rule (2) of this rule makes provision for costs of adjournment and to that sub-r. (2) a proviso is annexed which lays down that once the hearing of the suit commences, it has to go on from day to day and that thereafter no adjournment has to be given at the request of a party except where the circumstances are beyond the control of that party. Clause (c) of the proviso states that the engagement of the lawyer in another Court is not a ground for adjournment. Then comes important Clause (it) which deals with the illness of a pleader or his inability to, conduct the case for any reason other than the one of his being engaged in another Court. This Clause (it) is couched in negative language and says when the ground like illness of the pleader also shall be ignored by the Court. The only conceivable circumstance in which the illness of a pleader or his inability referred to above is to be ignored by the Court is the possibility of engaging any other pleader in time. In other words, if the illness is sudden, the Court "by virtue of the O. XVII, R. 1 (1) of the Civil P. C., is bound to adjourn the matter as the Clause (d) of the proviso says that if there is the circumstance beyond the control of the party, the adjournment has to be granted. Unfortunately, the learned trial Judge failed to note the spirit of the law explicit in the Cls. (b) and (d) of the proviso to sub-r, (2) of R. 1 of O. XVII of the Civil P. C. The learned trial Judge nowhere says that the advocate, as a matter of fact, had not fallen sick. All that the learned Judge, says is that "sick note" cannot be granted ed in view of the Clause (d) of the proviso, which, as interpreted by me above clearly, provides for adjournment of the case on the ground of illness of the advocate except in the situation in which the parties whose advocate he is, had" enough notice of the illness and there, was enough opportunity for that party to engage another advocate. The advocate had already commenced the cross-examination before the recess and after recess the advocate seems to have developed ill disposition all of sudden. Despite that illness he personally went to the Court and sought an adjournment. Under the erroneous conception of law the learned trial Judge turned down the request and brought about an

unpleasant situation in which the subsequent applications also came to be rejected. The application Ext. 95 is rejected on extraneous ground. The presumption regarding moving the High Court against the order below the Exts. 92 and 93 had nothing to do with the granting or rejecting of the Application Ext. 95, dated April 28, 1977. Thus, the learned trial Judge has committed the illegality and irregularity of procedure in the matter of the exercise of his jurisdiction. The case clearly falls under S. 115(c) of the Civil P. C. The revision application is, therefore, allowed and the orders below Exts. 92, 93 and 95 are set aside and the matter is directed to be resumed from the stage it was at the beginning of the second session of the day on April 6, 1977. There will no order as to the costs of this revision application in the facts and circumstances of the case, particularly, the non-contesting of this application from the side of the original defendant.

3. Revision allowed.