

(1979) 07 GUJ CK 0016
In the Gujarat High Court

Case No : First Appeal No's. 891 to 893 of 1973

Jagannath Govind Shetty

APPELLANT

Vs

Javantilal Purshottamdas Patel

RESPONDENT

Date of Decision : 09-07-1979

Acts Referred:

Easements Act, 1882 — Section 52, 60

Citation : AIR 1980 Guj 41 : (1980) 21 GLR 216

Hon'ble Judges : M.K. Shah, J;K.H. Bhatt, J

Bench : Division Bench

Advocate : S. Qureshi, for the Appellant; V.P. Shah, for the Respondent

Judgement

Bhatt, J.

Paras 1 to 8 (xxxxxxx)

9. The next and moot question that arises for our consideration is whether the license in question was lawfully terminated by Jayantilal. At this stage we would like to resolve the belated controversy half-heartedly sought to be raised by Mr. Qureshi regarding the correct nature of the relationship between the parties. Mr. Qureshi read Section 52 of the Indian Easements Act, 1882 before us and urged that under, Section 52 of the Act, Jayantilal was not the owner of the immovable property viz. the suit premises and, therefore, he could not grant license of the same to Jagannath. Section 52 reads as follows:-

"52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license".

Mr. Qureshi emphasised the phrase "of the grantor" occurring in the above-quoted section and urged that Jayantilal who himself was a tenant and not the

owner could not license out the premises. Mr. Qureshi reads in the section more than what it expresses or necessarily implies. Even the tenancy rights are immovable property of the tenant. In order to grant license a man need not be its owner. The tenancy rights of an immovable property are also the immovable property of the tenant and, therefore, he can well grant the license. But by virtue of Section 53 of the Act he can obviously grant license subject to the limitation and the extent to which he may be able to transfer his Interest viz. the tenancy rights. Relying on the provisions of Section 15(1) of the Bombay Rent, Act, Mr. Qureshi said that there was an absolute ban against the transfer of his interest by the tenant. A tenant is able to transfer his tenancy rights to sub-lessee or an assignee if the landlord does not object or assent to it. Secondly, the Bombay Rent Act is a piece of transitory operation. A tenant ordinarily is entitled to transfer his interest but he cannot do so beyond the term of his lease. We, therefore, do not subscribe to the view put forth by Mr. Qureshi that the licensing by a tenant is something obnoxious to the concept of law. As we shall repeat, this is a belated and half-hearted departure sought to be made by Mr. Qureshi in the face of his initial concession and in the face of the concession made before the learned trial Judge by the advocate of Jagannath, viz. the relationship between them was of a licensor and a licensee.

10. Mr. Qureshi then urged that such a license could not be revoked because of clauses (a) and (b) of Section 60 of the Easements Act. Said Section 60 is reproduced below:-

"60. A license may be revoked by the grantor, unless:-

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of permanent character and incurred expenses in the execution".

Mr. Qureshi urged that here was the transfer of property along with license of the hotel premises and this transfer of possession to a licensee was accompanied by the transfer of the property viz. the furniture and stock-in-trade belonging to Jayantilal. It cannot be gainsaid that Jayantilal as evidenced by exhibit 29 had not only put Jagannath into possession of the property but had also put him in charge of the furniture and stock-in-trade and also Rood-will. However, this does not amount to transfer of an interest in the "property". A transfer of property in terms of Chapter VI of the Indian Easements Act necessarily refers to transfer of interest in Immovable property. Moreover, giving a right to use the furniture and stock-in-trade does not amount to transfer. At the most it would be a permission or license to use the furniture and stock-in-trade. Viewed from any angle, the submission of Mr. Qureshi with reference to clause (a) of Section 60 of the Act does not stand in good stead. Reference to clause (b) is absolutely uncalled for because nowhere Jagannath had pleaded in any of the three suits that he had executed a work and that too of a permanent character by incurring expenses in execution of that work. For want of any pleading on the score, this

belated plea raised by Mr. Qurpshi cannot be entertained. No doubt in the agreement Exh. 29 there is a reference to the renovation of the hotel premises and making them attractive and pleasant to the customers and it is referred to as required to be carried out by Jagannath at his costs but this cannot amount to execution of any work of permanent character. The words "of a permanent character" speak of a clear connotation of the words "executing the work" in the context of the execution of work, would mean putting up some permanent structures in the premises, for example, a bath-room or a loft of permanent duration or some such things. The word "work", therefore, is to be necessarily interpreted to have connection with the construction on some structure on the land and bringing of some additional moveable assets for the purpose of running a business of hotel, cannot be said to be execution of work of a permanent character.

11. Mr. Qureshi, however, urged that here was the license coupled with the specific agreement that as long as the licensee went on paying the license fee regularly every month the alleged partnership was not dissoluble.. "Such a specific term is there in the latter part of paragraph 11 of the agreement. In place of word "partnership", we have to read the word "license" as a real relationship contemplated by the parties. There is therefore, no difficulty in concluding ;; the basis of exhibit 29 that the parties had agreed that as long as Jagannath went on paying regularly the amount of fixed consideration, the license was not revocable. Leaning heavily on this specific and experts agreement between the parties Mr. Qureshi urged that the license was not revocable and any attempt on the/part of Jayantilal to revoke this license should not be entertained. On the other hand,. Miss Shah for Jayantilal submitted that wherever there is a relationship of licensor -or licensee, the license is revocable irrespective of such an agreement to the contrary and the Irrevocability is confined to clauses (a) and (b) of Section 60 alone and that such an agreement even though express and explicit is not to be given any weight. We frankly say that this is a question on which there is no uniform opinion of various High Courts. However, as far as this High Court is concerned, the Division Bench of this Court consisting of Miabhoy, J. (as he then was) and Modi, J. has concluded the controversy. The question has been clinched and the view submitted by Miss Shah is the one laid down by the said Division Bench of this Court in the case of Bai Hanifa Jusab Vs. Memon Dadu A. Gani, Sardharia, . There was in the field the Judgment of the Single Judge of the Bombay High Court in the case of M.F. De Souza Vs. Childrens Education Uplift Society, . Supporting the contention of Mr. Qureshi before us the matter was referred to the Division Bench by the learned Single Judge before whom the question had cropped up and the Division Bench after " examining the divergent views of various High Courts, viz, Allahabad and Calcutta High Courts and the earlier decision of the single Judge of the Bombay High Court, concluded as follows:-

"(iv) The Easements Act is exhaustive in connection with matters which it deals with, it deals with licences exhaustively and as such, as far as licences are

concerned, it defines the law in relation to licenses. The savings contained in Section 2 do not touch licences. The grant of a licence may be (i) a grant simpliciter or (ii) the grant may be coupled with an agreement. As far as any grant simpliciter is concerned, under the first part of Section 60, any licence may be revoked by the grantor and as such such a grant can be revoked. As far as any grant coupled with a transfer is concerned, that is specifically dealt with in Section 60(a) and it makes any grant coupled with a transfer of property irrevocable. As far as grants coupled with agreements are concerned, they may be of two types (1) grant and agreement acting upon which a license may carry out work of a permanent nature and incur expenses thereon, (2) grants with some other agreements such as relating to time for subsistence of the licence. As far as (1) is concerned, such a licence is made irrevocable u/s 60(b). A grant coupled with an agreement other than of the type mentioned in (1) is always revocable at the will of the grantor. That this was the intention of the Legislature is amply shown by Section 64. If there is an agreement (which would postulate consideration) and the grantor evicts a grantee before the term of the agreement has expired, the only right that the grantee would have is to recover compensation from the grantor. The Legislature in terms contemplated the revocability of all licenses other than the licenses mentioned in Section 60 by providing for compensation for its breach. This section can leave no doubt that any licence with an agreement, say for a term of years, would always be revocable at the volition of the grantor."

We are appreciative of the contention of Mr. Qureshi that this is a substantial question of law of general public importance and we also concede that the position, generally speaking, cannot be said to be free from doubt on first principles. However, as far as this High Court is concerned, the earlier Division Bench has expressed itself categorically. Sitting in the Division Bench we are bound to follow the said view respectfully. We, therefore, do not uphold the contention of Mr. Qureshi that the above-mentioned specific agreement makes the license in question irrevocable. Mr. Qureshi's submission that the ratio of Division Bench's judgment is not applicable to the facts of the present case, is difficult to be accepted. Mr. Qureshi is not right in his submission that the license in the case of Bai Hanifa's case was a license simpliciter. It was a case of license with specific condition to continue the license till the specified contingencies took place. Those contingencies in that case had not come up and still the license was revoked. Bai Hanifa's defence in terms was that the license was irrevocable till either of the two contingencies and the Division Bench held that there were only two cases set out in clauses (a) and (b) of Section 60 of the Easements Act that made a license irrevocable and that in all other cases it was not irrevocable. The ratio of that case squarely applies to the facts of the case on hand.

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12. Appeal dismissed.