

(2010) 05 GUJ CK 0046

In the Gujarat High Court

Case No : Civil Revision Application No. 792 of 2000

Narendra Kalidas Shah

APPELLANT

Vs

Hansaben Narandas Mahant decd. thr. heirs-Respnt. No. 3
and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 115

Citation : (2010) 05 GUJ CK 0046

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : M.C. Bhatt, for the Appellant; N.K. Majmudar, for Opponent(s) 2.2.1, 2.2.2, 2.2.3 and 3, for the Respondent

Judgement

M.R. Shah, J.—Present Civil Revision Application u/s 115 of the CPC has been preferred by the petitioner herein original appellant/defendant to quash and set aside the impugned order dtd. 27/6/2000 passed by the learned Joint District Judge, Vadodara below Ex.21 in Regular Civil Appeal No. 135 of 1985.

2. Against the Judgment and decree of eviction passed by the learned trial court, the petitioner herein original defendant has preferred Regular Civil Appeal No. 135 of 1985 before the District Court, Vadodara. After a period of almost 12 years from the date of preferring the appeal, the petitioner herein original appellant submitted an application below Ex.21 under Order 41 Rule 27 of the CPC permitting the petitioner to produce subsequent notice issued by one of the plaintiffs claiming rent exclusively by him from the tenant. The said application came to be rejected by the appellate court by the impugned order dtd.27/6/2000, hence the petitioner has preferred the present Civil Revision Application u/s 115 of the Code of Civil Procedure.

3. Heard Mr. Jigar Raval, learned advocate appearing on behalf of the petitioner and considered the reasoning given by the learned appellate court in para 6 of the impugned order, which reads as under:

[6]. I am of the opinion after hearing arguments of both the parties that it is true that appellant or respondent may be permitted to lead evidence in appellate stage also if there is a substantial cause and if the document is necessary to adjudicate the real dispute between the parties. So far law is concerned, it is admitted facts that any party is entitled to lead the evidence at appellate stage. But in this appeal this Yogendra prasad Narayan das Mahant, Pushpaben Yogendra prasad Mahant, minor Vimal kumar Yogendra kumar, minor Ragvendra prasad Yogendra prasad Mahant, residing at Laheripura, Ramgalola Mandir, Vadodara issued a notice to the appellant and asked to pay the rent to them. But on other side it is admitted facts that there is a dispute amongst the respondents. So notice is issued to the appellant but thereafter there is a compromise amongst the respondents and also they informed to the relevant parties regarding the compromise made in their family and in original suit trial court relied upon the Will Exh.127 and the trial court also passed its judgment on suit notice and decided issue No. 5 in favour of the respondents and that notice is produced in the trial court at Exh.16 and the trial court also not believed the contentions of Exh.16 a suit notice and the same facts reveal in this notice. Therefore, I am of the opinion that it is not necessary to permit the appellant to produce that notice on record and to lead the evidence regarding the contentions of the notice. So there is no substance in submissions made by the appellant or his learned advocate Shri J.H. Mehta. So I do not permit the appellant to produce the notice on record and to lead the evidence.

Having heard the learned advocate for the petitioner and considering the reasoning given by the learned appellate court in para 6 as reproduced hereinabove, it cannot be said that the appellate court has committed any error in rejecting the application submitted by the petitioner for producing additional evidence, which calls for interference of this Court in exercise of powers u/s 115 of the Code of Civil Procedure.

4. It is to be noted that even the Civil Appeal is of the year 1985 and still pending for final hearing before the appellate court because of the pendency of the present Civil Revision Application before this Court even after a period of 25 years. Be that it may, as stated above, the impugned order cannot be said to be illegal and/or without jurisdiction which calls for interference of this Court.

5. In view of the above and for the reasons stated above, present Civil Revision Application deserves to be dismissed and is accordingly dismissed. Rule is discharged. Interim relief granted earlier, if any, stands vacated forthwith.

6. Considering the fact the Regular Civil Appeal is of the year 1985, the learned appellate court is hereby directed to decide and dispose of the Regular Civil Appeal No. 135 of 1985 at the earliest but not later than 31/12/2010. The learned Principal District Judge, Vadodara is hereby directed to see that the said appeal is decided and disposed by the learned appellate court at the earliest but not later than 31/12/2010, failing which appropriate proceedings shall be initiated. All the concerned are directed to co-operate the learned appellate court

in early disposal of the aforesaid appeal and within stipulated time stated hereinabove. Registry is directed to send writ of this order to the learned Principal District Judge, Vadodara and return the R & P to the appellate Court, at the earliest but not later than 11/5/2010.