

(1999) 12 GUJ CK 0008
In the Gujarat High Court

Case No : Civil Revision Application No. 1186 of 1999

Nathabhai Mavjibhai Mer

APPELLANT

Vs

Ratilal Amarshibhai

RESPONDENT

Date of Decision : 10-12-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 12 GUJ CK 0008

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; Sandeep N. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—This is the plaintiff's revision application u/s 115, C.P.C. arises from the order of the 2nd Joint District Judge, Rajkot dated 26th July, 1999 in Civil Misc. Appeal No. 168 of 1998 under which the same was dismissed and the order of the trial court below Ex. 5 in regular civil suit No. 92 of 1998 was made absolute.

2. The plaintiff- petitioner is the landlord and the defendant - respondent is the tenant in the suit premises. The defendant - respondent is the tenant since 1964. The premises are admittedly very old and the Commissioner of Rajkot Municipal Corporation issued a notice to the defendant - respondent to repair the cracks of the walls of the suit premises as the walls are slanting and appears to be hazardous for the public at large. In these facts and circumstances, the defendant petitioner took the repairs of the suit premises. The plaintiff who was the landlord has filed the civil suit in the trial court. Along with the suit, he filed an application Ex. 5 and prayed therein for restraining the defendant - tenant not to construct any new construction without his permission. Though initially ex-parte status -quo order was granted to the parties but the learned trial court under its order dated 12th October, 1998 rejected the application. The appeal filed by the petitioner was also dismissed. Hence, this revision application before

this court.

3. Learned counsel for the petitioner contended that the tenant has no right to make any construction in the suit premises which materially alters the same. Notice of the Municipal Corporation is only a concocted document. In the garb of repairs, the defendant respondent wants to make permanent structure or permanent construction.

4. Learned counsel for the respondent supported the orders of the courts below.

5. Both the courts have concurrently held against the petitioner. The Municipal Corporation has also given notice to the defendant - respondent to carry out the repairs in the premises as there are cracks in the wall and the walls are slanting and appears to be hazardous to the public at large. Both the courts have concurrently held that the defendant - respondent is only undertaking the repairs of the premises and not raising any construction of permanent nature or making any alteration or addition in the existing structure. The trial court as well as the first appellate court relying on material produced on the record i.e. photographs produced at mark 12/1 and 12/11, notice of Rajkot Municipal Corporation and panchnama prepared by the Court Commissioner produced at mark 3/9 has recorded a finding of fact that the suit premises require urgent repairs and repairing work which the defendant- respondent is carrying on can not be said to be of permanent structure nor it amounts to putting any permanent structure or adding any permanent structure to existing structure of the premises. The premises is old enough otherwise also I fail to see any justification in the objection of the plaintiff petitioner against the repairs which he wants to undertake. He is occupying the premises and if the premises is old enough, the plaintiff - petitioner should have voluntarily permitted the defendant respondent to undertake the repairs. It is the property of the plaintiff - petitioner and if it is properly maintained it is also in his own interest. In such a case where the property is very old and needs urgent repairs, if such suit is filed by the landlord it prima-facie appears to be a suit with oblique motives and purposes. It is not unknown that the landlords seldom favours the continuation of the old tenants in the suit premises.

6. It is a case where both the courts concurrently found that the defendant - respondent is undertaking the repairs and as such the courts below have not committed any material irregularity in exercise of its jurisdiction in declining to grant interim relief in favour of the petitioner.

7. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.