

(2011) 05 GUJ CK 0031

In the Gujarat High Court

Case No : Civil Revision Application No. 1600 of 1992

Parsi Panchayat

APPELLANT

Vs

Hamirbhai Bachubhai and Others

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 96

Citation : (2011) 05 GUJ CK 0031

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : P.V. Hathi, for the Appellant; A.R. Majmudar, for Opponents 1, 1.3.2, 1.3.4, 1.3.6, 1.3.8 - 2, 2.2.3 - 3 and N.K. Majmudar, for Opponents 1.3.2, for the Respondent

Judgement

Rajesh H. Shukla, J.—Present revision application has been filed by the applicant-original Plaintiff for the prayer that the judgment and order passed by the lower appellate Court in Regular Civil Appeal No. 2 of 1984 dated 20th April, 1991 confirming the judgment of the trial Court in Regular Civil Suit No. 12 of 1980 dated 30.8.1983 may be quashed and set aside on the grounds set out in the memo revision application inter-alia that both the Courts below have erred in not taking into consideration the principles laid down in judgment passed by this Court in the case of Nanumal Rijumal Vs. Lilaram Vensimal and Another, while considering the issue regarding transmission of the tenant on death of the original tenant. It is also contended that both the Courts below misconstrued the documents on record for coming to the conclusion that the Plaintiff-Panchayat might have given the rooms as well as the whole compound to the Defendant on rent and thereby, seriously erred in drawing inference on the basis of preponderance of probabilities which cannot be invoked in the case where an interest in the property is created. It is also contended that lower appellate Court has failed to appreciate that the subject matter of leasehold rights of the immovable property cannot be decided on the basis of inferences and surmises dehor of the authentic documents on record and show that the deceased was a

tenant of the one room only.

2. The facts of the case briefly stated are that the Petitioner, original Plaintiff, Parsi Panchayat filed a Civil Suit No. 12 of 1980 before Civil Judge (J.D.), Bharuch for the possession of the one room which has let out to the Defendant and also the compound which was used by the Defendant-tenant by making a shed for the cattle. The said suit was dismissed by the trial Court after considering the evidence and the rival submissions by the parties vide judgment and order dated 30th August, 1983. Therefore, Regular Civil Appeal No. 2 of 1984 was preferred before the lower appellate Court (District Court) which also dismissed the appeal confirming the judgment and order passed in Regular Civil Suit No. 12 of 1980. Therefore, the present revision application has been filed by the Petitioner, original Plaintiff, on the grounds as set out herein above.

3. Learned Counsel, Mr. Hathi, referred to the judgment of both the Courts below and submitted that both the Courts below have erred in appreciating the evidence and construing the documents as well as provisions of law. Learned Counsel, Mr. Hathi, submitted that, as could be seen from the material evidence, what was let out to the deceased-Defendant was only one room and not the compound. However, both the Courts below have misdirected while appreciating the evidence and made the inferences without any basis and even the compound was let out which has resulted in miscarriage of justice. He pointedly referred to discussion on this aspect by both the Courts, particularly, lower appellate Court. Learned Counsel, Mr. Hathi, pointedly referred to the observations made by the lower appellate Court that "it is not possible for Plaintiff to give such a big premises at a nominal rent of Rs. 2.50 p.m.". "From the evidence as a whole, it can be said that Plaintiff had rented one room and compound for use of Defendant's cattle for the Defendant. There is no written rent note and since there is variance in the evidence and the pleadings, the say of Defendant is more probable".... "It was possible and probable that the Plaintiff might have given the room as well as compound to the Defendant on rent. The preponderance of probability looking to the evidence is in favour of the Defendants". Therefore, learned Counsel, Mr. Hathi, submitted that the Court below have totally failed to consider the material evidence on record. He submitted that as per the judgment in the case of Nanumal Rijumal v. Lilaram Vensimal and Anr. reported in Volume 18 1977 GLR 858 held that deceased tenant who have a right qua the residential premises as it is observed that they would be entitled to transmission of tenancy for the premises used for the residential purpose. Learned Counsel Mr. Hathi referred to the papers, material and evidence and submitted that all the receipts produced on record only referred to one room and there is no reference to any other part nor it is stated that room has surrounding land. In-fact, learned Counsel, Mr. Hathi, referred to the details as regards to the discussion to the situation and submitted that it was a matrimonial hospital and only one room was given on rent and therefore, it cannot be said that entire compound was let out. Learned Counsel Mr. Hathi, therefore, submitted that it is contrary to even logic and common sense. Learned Counsel Mr. Hathi submitted that though the

scope of revision u/s 29(2) of the Rent Act could be limited, however, as it is a specious statute as there is no appeal provided, a specific provision is made. He pointedly referred to Section 29(2) of the Rent Act, which is as under:

29(2) No further appeal shall lie against any decision in appeal under Sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit.

4. Learned Counsel, Mr. Hathi, therefore, submitted that language of section clearly provide that High Court may for the purpose of satisfying itself with any such decision in appeal was according to law may call for record to satisfy itself and pass such an order as it thinks fit. Therefore, learned Counsel, Mr. Hathi, submitted that though there are concurrent findings of fact but when the Courts below have failed to appreciate the material and evidence on record and also failed to construed the provisions of law, resultantly, miscarriage of justice. The Court would be justified as to whether the Courts below have properly arrived at the decision in accordance with law or not. For that purpose, learned Counsel Mr. Hathi has referred to and relied upon the decision in the case of Ram Dass Vs. Ishwar Chander and Others, and submitted that the scope of revisional powers of the High Court, where the High Court is required to be satisfied that the decision is "according to law" is considered by Beaumont C.J. in Bell and Co. Ltd. Vs. Waman Hemraj, a case referred to with approval by this Court in Hari Shankar v. Girdhari Lal Chowdhuray reported in AIR 1963 SC 698.

5. Learned Counsel, Mr. Hathi, also referred to and relied upon the decision of this Court in the case of Manjulaben Chandrakant Doshi Vs. Punjabhai Polabhai Bharwad, and submitted that as observed in this judgment, the first appellate Court is required to consider and appreciate the evidence.

6. Learned Counsel, Mr. Hathi, has also referred to and relied upon the judgment in the case of Patel Chandulal Trikamlal and others Vs. Rabri Prabhat Harji and another, and submitted that facts of that case are merely similar to the facts of the present case. He referred to observations in the judgment and submitted that in that case also the issue was with regard to whether the land was given for the purpose of tethering the cattle or not. He submitted that it has been observed that it was an obligation on the tenant not to trespass upon the adjacent land. He, therefore, submitted that present revision application may be allowed.

7. Learned advocate, Mr. Majmudar, raised the contention with regard to the maintainability of the revision on the ground that original appeal before the lower Appellate Court was u/s 96 of the CPC and therefore, the present revision application would not lie and instead of Second Appeal would be maintainable and not the revision u/s 29(2) of the Rent Act. He submitted that as the first appeal was u/s 96 of Code of Civil Procedure, the judgment of the first appellate Court would be within assailable by way of Second Appeal and not the revision.

As the suit was not under the Rent Act but under the Code of Civil Procedure. He also referred to the details and discussion made by both the Courts below and submitted that there are concurrent findings of fact arrived at by both the Courts below which cannot be disturbed. Learned Counsel, Mr. Majmudar, submitted that scope of exercise of jurisdiction is limited even though Section 29(2) of the Rent Act may provide for the High Court to satisfy itself to the judgment of the first appellate Court then it was, according to law, called for the record but it cannot re-appreciate the evidence. He, therefore, submitted that merely because other view is possible on appreciation of evidence, revisional jurisdiction may not be exercised.

8. Another aspect to the contention raised by learned Counsel Mr. Majmudar that the revision would not maintainable and is misconceived as admittedly though appeal is stated to be before the lower appellate Court u/s 96 of the CPC virtually it was for the some controversy regarding the tenancy rights and therefore, revision has been preferred as provided u/s 29(2) which cannot be said to erroneous. It is also settled that it is not merely the contentions and substance of the litigation and the pleadings which are required to be considered. Therefore, present revision application cannot be said to be misconceived as sought to be canvassed.

9. In view of this rival submissions, it is required to consider that whether the present revision can be entertained or not.

10. Therefore, the first aspect which is required to be considered is with regard to the scope of the exercise of revisional jurisdiction. Usually, reference can be made to observations made in the case of Patel Valmik Himatlal and Others Vs. Patel Mohanlal Muljibhai (Dead) Through L.Rs.,

5. The ambit and scope of the said section came up for consideration before this Court in Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others, and after referring to a catena of authorities, Sabyasachi Mukharji, J. drew a distinction between the appellate and the revisional jurisdictions of the Courts and opined that the distinction was a real one. It was held that the right to appeal carries with it the right of rehearing both on questions of law and fact, unless the statute conferring the right to appeal itself limits the rehearing in some way, while the power to hear a revision is generally given to a particular case is decided according to law. The Bench opined that although the High Court had wider powers than that which could be exercised u/s 115 of the Code of Civil Procedure, yet its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision under challenge before it is according to law. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the Courts below on reappraisal of evidence. Did the High Court exceed its jurisdiction?

6. The powers u/s 29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the

decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of evidence cannot be a ground for exercise of the revisional jurisdiction.

11. Wherein, it has been observed that thus, it is clearly laid down that when the error which make the decision contrary to the law or the errors which go to the root of the decision while empowering the High Court to satisfy itself in exercise of power u/s 29 of the Rent Act to satisfy itself about the propriety and illegality to the judgment of the lower appellate Court. At the same time, merely, different view is possible on appreciation of evidence would not justify the exercise of revisional jurisdiction. Thus, it clearly laid down that when the Court below have misdirected itself in its approach while construing, interpreting and considering the documents which goes to the root of the case. It would require scrutiny of such decision u/s 29(2) of the Act. Reference is made to the earlier judgment of the Hon'ble Apex Court in the case of *Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others*, which is also referred to in the judgment. It is also squarely observed that jurisdiction of High Court to correct all errors of law going to root of the decision which would, in such cases, include even perverse findings of facts, perverse in the the sense that no reasonable person, acting judicially and properly instructed in the relevant law could arrive at such a finding on the evidence on record. Therefore, the High Court is required to ensure that the principles of law which have been applied is properly appreciated while deciding the issue on the controversy is proper base on the correct principles of law. As it transpires from the material and evidence on record and the discussion in the judgment of both the Courts below which have been referred to, it clearly suggests that the rent note refers to only room which has been let out and there is no mention to the surrounding land. There is also a specific evidence that Panchayat is set up in the suit premises. There are different houses out of which one room had given to the deceased on rent. The evidence on behalf of the Plaintiff at Exhs.92, 98, 102 clearly suggests that the deceased-tenant had started using the open land for the purpose of grazing cattle and also constructed some shed making encroachment. However, there is a clear finding that there was no rent note and receipt was given only for the occupation of the room. There is also a road and after the said road, there is an open land. Therefore, considering the material and evidence when there is a specific receipt for the room only, the acquisition could not have been arrived at based on the inferences which has been referred to by learned Counsel, Mr. Hathi, which has been quoted herein above. The possible and probable inferences that Plaintiff might have given the room as well as compound to the Defendant is mainly inferences without any base and the foundation. Further, it is admitted that there is Maternity Home which has stopped functioning and different houses include the rooms, out of such room, only one room occupied by the deceased-tenant, for which, there is no even rent note but since rent was taken and receipt was given,

this aspect has not been properly appreciated by both the Courts below while drawing inferences with regard to the tenant's right qua the land also. Further, the evidence of the Plaintiff as well as the report of the Court Commissioner also clearly suggests that there was a dispensary or there was only one room which was given to the deceased-tenant and he constructed some shed for the cattle making encroachment. In fact, there was a specific contention in the written statement that the deceased was not even tenant by one room and he was allowed to stay with the cattle. This evidence has, therefore, not been properly appreciated and both the Courts below have misdirected in arriving at the conclusion without any basis or the foundation dehor the evidence on record. It is in these circumstances, though, normally, the Court would not in exercise of revisional jurisdiction interfere with the concurrent findings of fact arrived at by both the Courts below.

12. However, as discussed above, when both the Courts below have committed an error which goes to the root of the matter and they have totally misdirected in their approach. The Court would be justified in exercise of powers u/s 29(2) to specify itself as to the judgment of the Court below was according to law or not.

13. Therefore, in light of the discussion made herein above, the present revision application deserves to be allowed and accordingly, stands allowed. Impugned judgment and order passed by first appellate Court in Regular Civil Appeal No. 2 of 1984 dated 20th April, 1991 confirming the judgment of the trial Court in Regular Civil Suit No. 12 of 1980 dated 30.8.1983 is hereby quashed and set aside. Rule made absolute.