
(1994) 04 GUJ CK 0039
In the Gujarat High Court

Savitaben Ramanlal Shah (Since Deceased) through her
Heirs and Lrs.

APPELLANT

Vs

Landge Bal Krishna Mahadeo

RESPONDENT

Date of Decision : 30-04-1994

Acts Referred:

Citation : (1995) 1 GLR 555

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner-original landlord had sought eviction on the ground of alternative suitable accommodation u/s 13(1)(1).

2. Both the Courts have found against the petitioners-landlord on the ground that the acquisition of alternative suitable accommodation is by the wife and not by the tenant-husband. There is no difficulty about this finding of fact. The lower appellate Court, which refusing the decree, observed as under:

xxx xxx I am conscious of the injustice in this particular case. In this case, there is a bungalow in Ashutosh Society in Karelibaug and there are alternative premises acquired just apposite this premises in the same area, but they are with the wife and the husband and members of this family seem to be comfortable, using the premises in Kharchikar Khancha. But the fact remains that this cannot be regarded as tenant's premises.

xxx xxx xxx

The is not in any way to justify the refusal of the tenant to vacate this premises. In my view, once the tenant has two houses in Baroda city though they may belong to his wife, it would be normally wrong on his part to continue to hold on with this premises. But as often happens, what is normally wrong or ethically unjustified cannot be necessarily taken within the four corners of law. Such case is a case of failure of wirtten word against wide variety which is human life. Law sometimes is not able to provide for all contingencies and in such cases, strong

feelings or strong moral reward is no substitute for the hard position of law.

3. The trial Court also observed in paras 18 and 19 of the judgment as follows:

In the present case, it is clear that the house is fully equipped with all amenities. The defendant has got refrigerator, radio, two scooters and a motor car. Of course, the motor car is in the name of his wife. It is also an admitted fact that the defendant is staying with his wife Kamlaben and two sons and unmarried daughter and dines at one kitchen. There is evidence in this case, on the plaintiffs side, that the defendant is using the newly constructed house and not at all using the suit premises. Plaintiff has examined Chandulal Keshavlal Ex. 85, Chandubhai Ambalal at Ex. 87 and Meghraj Chunilal at Ex. 88, to say that the defendant is residing with his family in the newly constructed house RS/ 795. The defendant has also examined one Bhanudhar Manekdhar Desai at Ex. 96, to say that the defendant still resides in the suit premises with his family. It is clear that in the two cases of Mr. Bhanudhar, the defendant has given his deposition on behalf of the plaintiff and similarly in this case, the said Bhanudhar has come to depose as a witness of the defendant. Thus, evidence of Mr. Bhanudhar, Ex. 96 and looking to the fact that the full-fledged house has been constructed just opposite, I am not prepared to believe that still, the defendant resides in the suit property.

19. In view of all the above facts and that when there is no love lost between the defendant and his wife, the construction and the acquisition of building RS/ 795 must be construed as an acquisition by the defendant, in my humble view. However, as I am bound to follow the decision of Revatidevi (supra) of Delhi High Court, I decide that in view of the decision, the defendant has not acquired any suitable residence and the suit must fail. In view of the above discussion, I decide issue No. 1 in the negative and decide issue No. 1A that the wife is not a necessary party to the suit.

4. In view of the aforesaid findings, the judgment of this Court in the case of Hasmukhlal Raichand Shah Vs. Arvinbhai Mohanlal Kapadia, is directly attracted. In para 6, at page 127 (GLH), it is observed as under (at page No. 1446 of GLR):

xxxx If there is evidence on record that tenant and his family members are living together, one of them has acquired suitable residential accommodation and if there is no evidence to the effect that they had not been looking upon themselves as one unit or when the members of the family live together, mess together, then, acquisition of suitable residential accommodation by one of them would be considered to be the acquisition of suitable residential accommodation by the tenant. The position might be different in some cases. In the cases where the husband and wife are staying separately because of the dispute or for some other reason or where the son is staying in other premises because of the dispute or because after marriage, he might consider that he should reside separately and acquires other suitable residential accommodation, then in those

cases it can be said that the tenant has not acquired suitable residential accommodation. But while considering this question one cannot miss sight of the normal conditions obtaining in the Indian society where husband and wife with their children reside as one unit and mess together. In my view, if Section 13(1) (1) is interpreted only to mean that the tenant himself must have acquired suitable residential accommodation, then the said provision can be defeated by the tenant easily. This should not be permitted because that is not the intention of the Legislature. The object underlying this clause clearly appears that if the tenant acquires some premises, then he should be directed to vacate the tenanted premises. Even though the Rent Act is for the protection of the tenant, at the same time, under the protection of the said provision, the tenant cannot be permitted to do business out of the said protection.

5. In view of the aforesaid judgment of this Court and the concurrent findings of the two Courts below, the petitioners-plaintiffs have clearly and fully established their case for eviction u/s 13(1)(1) that the defendant has acquired alternative suitable accommodation. Hence, the revision application is allowed. The judgments and decrees of both the Courts below are set aside and the plaintiffs' suit for possession is decreed. The defendant-opponent do hand over peaceful and vacant possession of the suit premises to the petitioners by 31-10-1994. Rule is made absolute accordingly with costs throughout.