

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 1148 of 1999
With
R/CIVIL REVISION APPLICATION NO. 1408 of 1999
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2019
In R/CIVIL REVISION APPLICATION NO. 1408 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Approved for Reporting	Yes	No
	Yes	

FIDAHUSEIN MAHMEDALI BALDIWALA & ORS.

Versus

GANGARAM SANKALCHAND PRAJAPATIDCD. THRO' HEIRS & L.R. &
 ORS.

Appearance:

MR SAMIR AFZAL KHAN(3733) for the Applicant(s) No.

1.1,1.2,1.3.1,1.3.2,1.3.3,1.4,1.5

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES
 for the Opponent(s) No. 1.1

MR DC DAVE(249) for the Opponent(s) No.

2.1,2.2,3.1,3.2,3.3,4.1,4.3,4.4,5,6,7,8

MR NV GANDHI(1693) for the Opponent(s) No.

1.1.1,1.1.2,1.1.3,1.2,1.3,2,4.2.1,4.2.2,4.2.3

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 01/09/2025

ORAL JUDGMENT

1. Both the Civil Revision Applications are under Section 29(2) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act), arising out of the judgment and decree passed in Civil Appeal No.2 of 1993, whereby the said Civil Appeal was partly allowed and the judgment and decree for ejection under Section 13(1)(g) of the Bombay Rent Act, passed by the Small Causes Judge, against the tenant in respect of the suit premises, described in paragraph No.1(B) & 1(C) of the plaint, in HRP Suit No.57 of 1976, are quashed and set aside and the

said judgment and decree, quashing the ejection, under Section 13(1) (g) of the Bombay Rent Act, with respect to property described in paragraph No.1(B) & 1(C) of the plaint are challenged by way of Civil Revision Application No.1408 of 2019, by the landlord and the judgment and decree for ejection under Section 13(1)(I) of the Bombay Rent Act, in respect of suit premises, described in paragraph No.1(A), of the plaint whereby the trial Court had granted ejection of the property described in paragraph No.1(A), of the plaint, has been confirmed by the appellate Court and the tenant has challenged the same by filing Civil Revision Application No.1148 of 1999.

2. For the sake of convenience, the parties are referred to as per their original status as that in the suit.

3. The brief facts arising in the present Civil Revision Applications are that the plaintiff has filed the suit for eviction against the tenant with respect to three properties. The same are described as under:-

“(1A) Open land of survey no.1933/1 and M.C. No.662/2 over which defendant has put his shet and boundar are as under:

West: Survey no.1932 is situed and there is also survey no.1935 belonging to other owner.

East: To some extect, there is building of Dandi Swami

Math and to some extent, there is property of Haranwali Pole.

North: Survey no.1937 of Dandi Swami Math building.

South: Survey no.1933.

Thus, land is situated within above boundaries, on which defendants put kachcha shed on iron sheet for his business.

(1B) Pucca Shed constructed by the plaintiff bearing survey no.1933/1 and M.C. No.662/2 Paiki, boundaries where of are as under:-

East: Property of Haranwali Pole.

West: Plaintiffs' property meant for passage bearing survey no.1933.

North: Open shed having survey no.1933/1 over which defendant has put up shed at his own costs.

South: Property bearing survey no.56.

(1C) Premises bearing survey no.1931 and M.C. No.662/4 of Kalapur ward-1, boundaries of which are as under:-

East: Plaintiffs' property bearing survey no.1933.

West: Main road.

North: Plaintiffs' survey no.1933, which is meant for passage.

South: Survey no.1933, the property of plaintiff no.1, wherein hotel is situated.

Thus, within these four boundaries, property is used as office and factory shop.

[The above referred properties are described as property No.1(A), 1(B) & 1(C) for the sake of brevity.]

4. The trial Court had decreed the suit and directed the defendant to evict the suit property i.e. property No.1(A)(B) & (C) and after reappreciating the evidence the first appellate Court had affirmed the decree with respect to property No.1(A) and had quashed and set aside the judgment and decree of the trial Court with respect to the property No.1(B) & (C).

5. The landlord had also sought for eviction for property No.1(A) under Section 13(1)(I) i.e. erection of a new building and had sought for eviction of the tenant with respect to property No.1(B) & (C) on the ground that the plaintiff required the suit property for its own bonfide requirement i.e. Section 13(1)(g) and in view of the fact that the first appellate Court has confirmed the judgment and decree with respect to property 1(A). The tenant has filed Civil Revision Application No.1148 of 1999.

6. Learned advocate for the original tenant has mainly argued that the property described as property No.1(A) has a kachcha shade in the suit premises and the said fact is very much in the knowledge of the plaintiff- landlord, and therefore, the said suit property i.e. property mentioned as property No.1(A) cannot be considered as an open land, and therefore, it will not fall under the provision of section 13(1)(I) of the Rent Act, and therefore, the appellate Court could not have granted the decree of eviction under the provision of Section 13(1)(I) of the Rent Act.

7. The learned advocate for the tenant has also argued that if the entire evidence is perused, the property No.1(A) is admeasuring 146.47 sq. yard, Property No.1(B) is admeasuring 120 sq. yard + 19 sq. yard.

8. Learned advocate for the tenant has also argued that there are different rent notes that have been executed between the parties and the tenant is occupying the premises since 1926. Learned advocate for the tenant has relied on the rent note produced vide Exhibit-140, 144, 182, 104 &186.

9. It has been argued by the learned advocate for the defendnat – tenant that the plaintiff landlord had sought for possession of the suit property No.1(A) under the provision of Secion13(1)(I) of the Bombay Rent Act, and had sought for possession for suit property

No.1(B) & 1(C) for his bonafide requirement. The trial Court had framed issues, vide Exhibit-31 which reads as under:-

1. *Do plaintiffs prove that defendant is tenant in arrears from 1-8-75?*
2. *Are plaintiffs entitled to decree for eviction unde sec.12?*
3. *Does plaintiff prove that premises described in parano.1/A is open land?*
4. *Do plaintiff prove that they require premises stated in para no.1/A, reasonably and bonfide for construction?*
5. *Do plaintiffs prove that they require premises described in para no.1/A 1/B and C reasonably and bonafide for personal use?*
6. *To whom greater hardship will be caused?*
7. *Is valid notice given?*
8. *What is the standard rent?*
- 8A. *Is suit barrd by delay, latches and estoppel and acquiance?*
- 8B. *Is suit bad for non-joinder and mis-joinder of parties and cause of action?*
- 8C. *Is suit not maintainable in present form?*
- 8D. *Is it shown that plaintiffs nos.3 to 8 have no interest in the suit property?*

8E. *Whether it is proved that M/s. Fidahuse in Mahmedali Baldiwala, is tenant of the premises?*

9. *What is due?*

10. *What order?*

10. The plaintiff was examined, vide Exhibit-36 and the witness of the plaintiff, vide Exhibit-136. The defendant was examined vide Exhibit-159 and the witness of the defendant, vide Exhibit-320. The broker was examined vide Exhibit-322 and 323. The other witnesses of the defendant were examined, vide Exhibit-322, 323, 341, 326, 353, 361, 362, 364 and 403 and after considering the oral evidence and the documentary evidence and giving findings on all the issues the trial Court had allowed the said suit and granted the possession of the suit premises to the plaintiff and directed the defendant to hand over vacant and peaceful possession of the premises i.e. property described as property No.1(A)(B) & (C) and also passed an order that the defendants are liable to pay an amount of Rs.2110/- found as arrears of rent and mesne profit and decided that the standard rate of the suit property, is fixed as Rs.125/ per month, exclusive of municipal tax and deduction cess.

11. The defendant had challenged the said judgment and decree before the first appellate Court by filing Regular Civil Appeal No.2 of 1998 and after reappreciating the evidence the first appellate Court had partly allowed the said appeal and judgment and decree of

the trial Court in respect of suit property i.e. property No.1(B) and (C) were set aside and the appeal against the judgment and decree for ejection under Section 13(1)(I) of the Bombay Rent Act in respect of said property described in property No.1(A) of the plaint, is dismissed and granted time to the defendant tenant to vacate and handover the possession of the premises to the plaintiffs up to 31.07.1999. Aggrieved by the judgment and decree whereby the trial Court and the first appellate Court has confirmed the decree of eviction with respect to property stated to be property No.1(A), the original tenant has filed Civil Revision Application No.1148 of 1999 and aggrieved by the judgment and decree whereby the first appellate Court has quashed and set aside the judgment and decree of the trial Court with respect to property No.1(B) and 1(C), the original landlord filed Civil Revision Application No.1408 of 1999.

Submission of the petitioner-tenant of CRA No.1148 of 1999

12. Learned advocate for the original tenant has mainly argued that the trial Court and the first appellate Court could not have granted the judgment and decree with respect to property situated at property No.1(A) as it is an admitted position that kachcha shade has been constructed in the suit premises property No.1(A) to the knowledge of the plaintiff landlord, and therefore, the said property cannot be considered as land, and therefore, the trial Court could not have passed a judgment and decree under Section 13(1)(I) of the

Act, as the suit property was not an open land.

13. The learned advocate for the defendant has argued that all the properties i.e. property No.1(A)(B) & (C) cannot be divided and it is only in the plaint that this property has been divided by the original landlord. Moreover, the relief that has been sought by the plaintiff also could not have been granted by the trial Court and confirmed by the first appellate Court, in view of the fact that all three properties, i.e. property No.1(A)(B) & (C), are interconnected and all the three properties could not have been divided.

14. Moreover, it has been argued by the learned advocate for the defendant-tenant that the plaintiff has sought for eviction with respect to property No.1(A), on the ground that the said premises is reasonable and bonafidely required by the landlord for erection of new building, if the documentary evidence produced by the plaintiff are perused, the plaintiff has placed the plans for construction of property No.1(A), somewhere in the year 1965, and the plans were approved in the year 1967. The said plans had expired in the year 1968 and the suit that has been filed by the plaintiff is filed on 23.11.1996, therefore, it has been argued that even during the time when the said plans which have been given to Ahmedabad Municipal Corporation were in existence, the plaintiff landlord have not filed any suit and had not taken any steps for eviction of the tenant from the suit premises on the ground that, the plans have been

approved by Ahmedabad Municipal Corporation.

15. Moreover, it has also been argued that the suit that has been filed is approximately after 9 years of approval of the plans from the Ahmedabad Municipal Corporation, and therefore, also the plaintiff could not have filed suit at a belated stage for seeking possession on the ground that the plaintiff intends to make a new building in the suit premises, and therefore, the said requirement to make new construction in the said premises cannot be believed and only on the ground of delay and laches the trial Court and the appellate Court shall have rejected the said claim qua the property situated at property No.1(A).

16. Moreover, from the expert's reports produced vide Exhibit-326, wherein the said expert had stated that new building that the plaintiff intends to construct, the defendant could have been given the premises on rent in the newly constructed premises, and therefore, also on the ground of comparative hardship the trial Court and the appellate Court could not have granted decree of eviction of the property No.1(A).

17. The learned advocate for the defendant tenant has also argued that at the time when the suit was filed i.e. in the year 1976 neither there were any plan that were approved by the Ahmedabad Municipal Corporation, for making any kind of new building in the

allotted open land, and therefore also, the plaintiff has miserably failed to prove that the plaintiff has intention to make any construction in the suit premises. Moreover, it has been argued that after the judgment and decree passed by the trial Court and confirmed by the appellate Court, the plaintiffs have not made any new building in open land, and therefore, the said claim of the plaintiff seeking possession of the open land is only to vacate the tenant from the said land.

18. Moreover, it has been argued that if the judgment passed in HRP Suit No.1042 of 1947, dated 06.01.1948 is perused, vide Exhibit-46, the said judgment also clearly states that there is kachchaa shed in the suit property which cannot be considered as an open land, within the perview of Section 13(1)(I) of the Bombay Rent Act, and therefore, it has also been argued that the trial Court and the first appellate Court could not have granted decree of eviction, in view of the fact that the suit property is individual and the Court cannot split the properties. Moreover, it has also been argued that the suit property was first given on rent in the year 1925 and the crucial date of ascertaining the nature of the use of the land in question was that date when the right on the basis of the Rent Act is exercised and in view of the fact that, on the date when the said right has been exercised the suit property was used there was kachchaa shed in the suit property, and therefore, the said property cannot be stated and considered as an open land and the trial Court

and the appellate Court could not have granted any decree under Section 13(1)(I) of the Bombay Rent Act.

Defendant case with respect to property No.1(B) & (C)

19. With respect to the property that has been stated to be property No.1(B) & (C) and for which the plaintiffs have sought for eviction on the ground that the plaintiff required the suit property for his own bonafide requirement, under Section 13(1)(g) of the Bombay Rent Act, the plaintiff has examined two witnesses plaintiff No.6, Pramodbhai, vide Exhibit-36 and plaintiff No.5 Popatbhai, vide Exhibit-136. It has been argued that the suit property i.e. property No.1(B) & (C), are ancestral properties and running in the name of plaintiff Nos.1 & 2 since 1932, in the City Survey Record and vide Exhibit-62 there was a partition deed, whereby the properties have been divided in equal parts and plaintiff No.1 and plaintiff No.2, being real brothers, the plaintiff had prepared a plan and after the said division and after partition, the property described as property No.1(B) & (C), have gone to the share of plaintiff No.1 – Gangaram and neither Gangaram nor legal heirs of Gangaram have entered the witness box and examined themselves to prove the fact of bonafide requirement. Moreover, it has also been argued that the appellate Court is last Court for adjudication of facts, and therefore, on the said factual aspect, this Court cannot interfere with the findings of the first appellate Court on the ground of bonafide requirement.

20. Learned advocate for the tenant has also argued that the trial Court passed the decree of eviction against the defendant holding that the requirement of plaintiff Nos.4 to 8 can be considered in respect of property described as property No.1(B) & (C). Moreover, in view of the fact that after partition vide Exhibit-62, the joint interest of plaintiff Nos.4 to 8 have gone to the share of Gangaram, i.e. plaintiff No.1 and properties were an ancestral property, Plaintiff Nos.3 to 8 have signed the partition deed Exhibit-62, therefore, in view of the fact that the plaintiffs have miserably failed to prove that bonafide requirement, with respect to property, stated at property No.1(B) & (C), the appellate Court has rightly rejected the said claim of bonafide requirement of the plaintiffs with respect to property No.1(B) & (C).

21. In view of the aforesaid fact, learned advocate for the defendant has argued that the judgment and decree passed by the trial Court and confirmed by the first appellate Court qua property No.1(A) is required to be quashed and set aside and the judgment and decree passed by the first appellate Court qua property No.1(B) & (C) is required to be confirmed.

**Submission of learned advocate for the plaintiff-landlord -
Arguments with respect to property No.1(A)**

22. Learned advocate for the plaintiff has mainly argued that there are concurrent findings of the trial Court and the appellate Court

with respect to property stated as property No.1(A), all throughout the said property has been described as an open land, the property was given on rent also as an open land. Moreover, alleged kachcha construction that has been made by the defendant in the said property No.1(A), is also not approved by the Ahmedabad Municipal Corporation, and therefore, also the said property would be an open land.

23. Moreover, it has been argued that from the entire evidence produced by the plaintiff, it can be clearly established that the property described in property No.1(A) of the plaint is an open land. It is the case of the plaintiff that after open land was given on rent the tenant has constructed in the said open land. The plaintiff, vide Exhibit-52, have produced the plan prepared by the plaintiff No.6, who was examined vide Exhibit-36 and who is diploma in Civil Engineering and the shed that has been constructed is shown under the red line, in the plan on the basis of Ahmedabad Municipal Corporation record and Ahmedabad Municipal Corporation does not give permission for any construction in portion which is under red line.

24. Moreover, even from the rent note executed with respect to the suit property, produced vide Exhibit-146 to 151, the suit property i.e. property No.1(A) is rented to the defendant as an open land. Moreover, the witness of the plaintiff examined vide Exhibit-136 who is an Officer of Ahmedabad Municipal Corporation, has also

deposed that the suit property i.e. property No.1(A) is in red line and the said witness has served in Ahmedabad Municipal Corporation, as Draftman in State Department and according to him on the date, when he had deposed before the Court the red line, still has not been executed.

25. It is also argued that the rent note produced vide Exhibit-146, on 12.04.1935 in which all the three properties are separately described, property No.1(A) is stated to be open land as stated in paragraph No.2 of the said rent note, and therefore, it can be clearly established that, an open land stated to be property No.1(A) is given on rent to the defendant. Moreover, even in the certified copy of the decree, passed in, HRP Suit No.1042 of 1947, three properties are separately mentioned and the property stated to be property No.1(A), is described as an open land, and therefore, an open land was given on rent to the defendant.

26. With respect to the fact that there was a delay on the part of the plaintiff for seeking a suit of eviction on the ground that the plaintiff required the suit property for making a new building, the said fact was never argued before the trial Court and the appellate Court. Moreover, the said fact cannot be considered in view of the fact that the trial Court and the appellate Court have given findings of facts and the said fact cannot be reversed as the trial Court and the appellate Court have given proper reasons to adjudicate the said

issue.

27. With respect to the fact that, the plans for new constructions were approved in the year 1967 and had expired in the year 1968, learned advocate for the plaintiff stated that nothing has come on record that if, new plans are placed, the same will be rejected by Ahmedabad Municipal Corporation, and therefore, also on the said ground the judgment and decree of the trial Court and confirmed by the appellate Court cannot be quashed and set aside, and therefore, in view of the said fact there is no perversity in the judgment and decree passed by the trial Court and appellate Court. Present Civil Revision Application with respect to property stated as property No.1(A) is required to be dismissed.

Argument of plaintiff – landlord with respect to property No.1(B) & (C)

28. With respect to the facts that the plaintiff has filed the suit for possession of the property with respect to property described as property No.1(B) & (C), the learned advocate for the plaintiff has mainly argued that the trial Court had rightly decided the same in view of the fact that plaintiff's family was in need of property. The appellate Court has not considered the oral evidence and the documentary evidence with respect to said contention made by the plaintiff before the trial Court and moreover on the issue of

comparative hardship also, the appellate Court has not taken into consideration the findings of the trial Court and in view of the said fact, just because partition had taken place between the plaintiffs the appellate Court could not have reversed the judgment and decree of the trial Court .

Analysis

29. Having heard learned advocate for the parties. This Court will first take into consideration the findings with respect to property No.1(A), the plaintiffs have filed the suit on the ground that they required the suit property and sought eviction of the defendant, on the ground that the plaintiff required the suit property, which is an open land reasonably and bonafide is required by landlord for erection of the new building.

30. The first contention that has been raised by the defendant that the suit property is not an open land, due to the fact that kachcha shed has been made in the said open land, but the fact remains that neither any permission of the competent authority, has been taken, for making the said construction, nor any evidence has been produced by the defendant, to show that the said kachcha construction is made, after the approval of Ahmedabad Municipal Corporation. Moreover, the defendant has also not produced any documentary proof to suggest that at the time suit property No.1(A)

was given on rent to the defendant, Kachchaa shed was constructed and that the property No.1(A) was given on rent, the fact remains that even from the first rent note produced vide Exhibit-156, dated 12.04.1935, the suit property was described as an open land and there is clear reference about property No.1(A) as an open land, in the said rent note.

31. Moreover, even if the certified copy of the judgment and decree in HRP Suit No.1042 of 1947, is taken into consideration, the property described as property No.1(A), is described in the decree as an open land, therefore, it is very clear that open land was given on rent to the tenant. Moreover, if the rent note produced vide Exhibit-54, dated 10.01.1940, is perused the property prescribed as property No.1(A), is an open land, even in the written statement, produced vide Exhibit-189, the defendant has taken contention that rent of open land fixed to Rs.40/-, therefore, there is clear admission on the part of the tenant that, open land is given on rent to the defendant and the shop that has been constructed in the said open land is constructed by the tenant. Even in the rent note produced vide Exhibit-182 dated 06.06.1946, the suit property I.e. property No.1(A), is described as an open land. In the rent note produced vide Exhibit-140 and the rent note produced vide Exhibit-144, also described property No.1(A) as an open land, therefore, there is a clear evidence that the suit property which was given on rent i.e. property No.1(A), is an open land, and therefore, the fact that the suit

property cannot be considered as an open land in view of the kachchaa shed that has been constructed by the defendant cannot be considered in view of the aforesaid facts. Therefore, the said property No.1(A) was always given on rent as an open land.

32. The next contention that has been taken with respect to property No.1(A) that in view of the fact that all the three properties have been given on rent, the same cannot be split and all the three properties were individual, and therefore, the trial Court and the appellate Court could not have split the properties and granted eviction.

33. The trial Court granted eviction with respect to property No.1(A) on the ground that the plaintiff proved the bonafide requirement of the said premises, for construction of a new building on the suit premises, i.e. property No.1(A), and the plaintiff requires properties No.1(B) & (C) for his own bonafide requirement.

34. To consider the fact that whether all the three properties were individual properties and could not be split there is rent note produced vide Exhibit-146, dated 12.04.1935, in which all the three properties have been described separately, even from the certified copy of the decree, passed in HRP Suit No.1042 of 1947, all three properties have been described as property No.1(A)(B)&(C), separately in the rent note that have been produced on record. All

three premises are shown separately, even in the written statement, filed, vide Exhibit-189. Each of the properties are described separately, and therefore, it cannot be said that all the three properties are same and cannot be split. Moreover, the judgment that has been relied by the defendant i.e. 1996 (0) AIJEL SC 18959 in the case of Nalanikant Ramadas Gujjar v. Tulsibhai (Dead) by LRS, in the said judgment also the Apex Court has held that the crucial date of ascertaining the nature of use of land in question is date when the rights under the aforesaid act are to be exercised and the fact remains that neither there is any permission for making any kuchha construction in the said premises, nor has the plaintiff given any consent for making any kuchha construction in the open land. Moreover, the suit property No.1(A), was given on rent as open land and the said fact can also be very clear from the rent notes that have been produced on record. The written statement that has been filed by the defendant and from the certified copy of the judgment and decree passed in HRP Suit No.1042 of 1947, therefore, the said judgment will not be applicable to the facts of the present case as it was the open land which was given on rent to the defendant.

35. With respect to the fact that there is delay in filing the suit in view of the fact that the plans were approved by the Ahmedabad Municipal Corporation in the year 1967 for the property No.1(A), and said plan expired in 1968 and the suit has filed in the year 1976, there is nothing on record to suggest that new plans cannot be

approved by Ahmedabad Municipal Corporation. The said fact that the suit is filed on the ground of delay and laches having not been argued before the trial Court and the appellate Court, and therefore, the same cannot be agitated in the present Revision Applications, therefore, the Revision Application for eviction with respect to property No.1(A) of the tenant is dismissed.

36. With respect to the contention of the plaintiff that the plaintiff is entitled for possession of property prescribed as property No.1(B) & (C) for its own bonafide requirement, at the time when the suit was filed the Court had taken into consideration, the requirement of two brothers i.e. Gangaram Sakalchand Prajapati and Veerchand Sakalchand Prajapati.

37. It is an admitted position that the suit property was an ancestral property, running in the name of original plaintiff Nos.1 and since 1932 and thereafter, the same was divided equally by partition vide Exhibit-62, dated 30.01.1973, i.e. before the filing of the suit and it is the case of the plaintiff that the plaintiffs are facing shortage of accommodation for their family members.

38. It is the plaintiff's case that there were eight couples in the family in the year 1968 and there was no sufficient accommodation for the couples and their children in the properties in their possession, and therefore, they got plans approved for construction

of new building on the open land given on rent to the defendant, which is mentioned in para-1(C) of the plaint and as the plaintiffs faced shortage of place to accommodate their family members, the suit was filed in the year 1976 for eviction of the tenant, with respect to the property No.1(B) & (C). The plaintiff required the said premises for its own bonafide and personal requirement. The trial Court passed decree of eviction against the defendant holding that defendant No.3 to 8 have been entrusted the suit property jointly and requirement of branch of defendant No.2 can be considered requirement of branch of plaintiff No.1, and therefore, the trial Court held that property described as property No.1(A) & 1(B) were required to be divided under Section 13(1)(g) of the Bombay Rent Act.

39. The fact remains that in view of the partition deed Exhibit-62, dated 30.01.1973, there was a division of the property between the plaintiff No.1 Gangaram and after the division, it was agreed that the properties that have been gone to the share of plaintiff No.1, the plaintiff No.2 shall not have right in the said premises and the plaintiff No.2 will have no share in the property. Moreover, even in the deposition at Exhibit-36 and 136 it has been clearly stated that, the plaintiff No.4 to 8 have no right, title, interest in the property of plaintiff No.2 after the partition in the year 1973 vide Exhibit-62 and as per the map attached to the partition deed and the map prepared by the plaintiff No.5, Exhibit-51 and 56, the property described in

property No.1(B) & (C) have gone to the share of plaintiff No.1 Gangaram. The fact is also very clear that neither Gangaram or his family members nor his legal heirs have entered the witness box and have proved the fact of Gangaram as a class-I legal heir as per Hindu Succession Act have any bonafide requirement of property described as property No.1(B) & (C). Therefore, no evidence is brought on record to examine from the branch of Gangaram to prove that any members of branch of Gangaram required the suit property mentioned in property No.1(B) & (C) of the plaint, though the said property has gone to the share of Gangaram, therefore, the appellate Court has rightly held that the family members of Veerchand cannot be considered for the properties which have owned and possessed by the Gangaram and their family.

40. Moreover, the plaintiffs have failed to prove that plaintiff No.3/1 Shardaben requires the premises described as property No.1(B) & (C). In view of the fact that plaintiff No.2, 4, 5, 6 & 8 have no right title, interest in the suit premises described as property No.1(B) & (C) after the execution of the partition deed produced vide Exhibit-62, the appellate Court has rightly not considered the requirement of plaintiff No.2 – Veerchand and the branch of veerchand. Moreover, even on the fact of comparative hardship, the trial Court has not given any findings as to how the comparative hardship, the landlord has proved comparative hardship in favour of the landlord and not in favour of the tenant.

41. In view of the same, the judgment and decree passed by the appellate Court in setting aside the judgment and decree of the trial Court with respect to property No.1(B) & (C) are on proper appreciation of facts and evidence and is not required any interference. Hence, the same is rejected. While exercising powers under Section 29(2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 this Court cannot interfere with the findings of facts recorded by the District Court, unless it can be shown that they disclose errors of law in arriving at conclusion and looking to the facts of the present case, there is no error of law with the findings of facts recorded by the District Court.

42. From the findings of fact rendered for reasonable and bonafide requirement, the suit property for his own use and occupation is clearly one of the fact in view of the same, Appellate Court has considered the evidence and arrived with the findings of fact rightly.

43. The revisional jurisdiction under Section 29(2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 can only be exercised for limited purpose with a view to satisfy its jurisdiction according to law. In the present case, this Court is satisfied that the decision taken by the first appellate Court is according to law. The findings of facts recorded by the first appellate Court are supportable on the evidence on record. This Court cannot embark and give independent reassessment of the evidence on record. The appellate

Court has considered entire arguments advanced by the parties and have come to the conclusion that the plaintiff has proved his case under Section 13(1)(I) with respect to property No.1(A) and the appellate Court has rightly come to the conclusion that the plaintiff has not been able to prove his case by evidence with respect to his bonafide requirement with respect to property No.1(B) & (C). There is no illegality in the order passed by the first appellate Court, nor has the first appellate Court erroneously exercised the discretion. The findings of the appellate Court decreeing the suit for eviction with respect to property No.1(A) and rejecting the claim of the plaintiff with respect to property No.1(B) & (C) are supported by evidence on record.

44. In view of the same, both the Revision Applications filed by the landlord and tenant are hereby dismissed. The tenant is hereby given one month time to vacate and handover peaceful possession of the premises to the defendant with respect to property No.1(A).

45. In view of the order passed in the main matters, Civil Application does not survive and stands disposed of accordingly.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai

Learned advocate for the appellants requests to stay the implementation and operation of the present judgment. In view of the fact that he wants to challenge the same.

Request is granted. The operation and implementation of the present judgment is stayed for a period of four weeks.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai