

Regular Civil Appeal No.	137/2007
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Exhibit	45
Filed on	24/10/2007
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Decided on	20/04/2026
Duration	Y 18 M 05 D 27

IN THE COURT OF THE PRINCIPAL DISTRICT

JUDGE, AT : JAMNAGAR.

Regular Civil Appeal No.	137/2007
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Appellants / Original Plaintiff :-

Legal Heirs of Ansuyaben Amrutlal Mehta

- 1.1 Amrutlal Keshvlal Mehta,
Age about 79, Occupation : Business,
Resident of behind Grain Market,
Near Adarsh Petrol Pump,
Ta.Kalawad (Shitla),
District – Jamnagar.
- 1.2 Rajesh Amrutlal Mehta,
Age about 45, Occupation : Business,
Resident of behind Grain Market,
Near Adarsh Petrol Pump,
Ta.Kalawad (Shitla),
District – Jamnagar.
- 1.3 Nitaben D/o. Amrutlal Mehta,
W/o. Viraj Mehta,
Age about 43 years, Occupation : Homemaker,

Resident of Santok Park,
Block No.3, Street No.4,
Rajkot.

- 1.4 Namrataben D/o. Amrutlal Mehta,
W/o. Ashishkumar Bhayani,
Age about 38, Occupation : Homemaker,
Resident of B-6, Flat No.203,
Sadguru Society, Kalawad Road,
Rajkot.

**[Appellant No.1.1 as Power-of-Attorney Holder on behalf of
Appellant Nos.1.2 to 1.4]**

[Legal Hairs are joined as per order passed below Exh.13]

V E R S U S

Respondent / Original Defendant :-

1. Ashvinbhai Muljibhai Limbani,
Age adult, Occupation : Service,
Resident of LIC of India office,
Porbandar.

Subject : - Appeal Under Section 29 of the Bombay Rent Act read with Section 96 as well as Order XLI of the Code of Civil Procedure to set aside judgment and decree passed in Regular Civil Suit No.468 of 2002 on 29/08/2007 passed by the Court of Principal Civil Judge, Kalawad, District- Jamnagar by which suit

of the plaintiff was dismissed to recover the possession of suit premises.

Appearance:-

Mr.H.I.Bhatt, learned Advocate for Appellants.

Mr.D.R.Pandya, learned Advocate for Respondent.

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::: J U D G M E N T :::

1. Present regular civil appeal has been preferred by legal heir of original plaintiff under Section 29 of the Bombay Rent Act read with Section 96 read with order XLI of Code of Civil Procedure, 1908 being aggrieved and dissatisfied by judgment and decree dated 29/08/2007 passed by the Court of Principal Civil Judge, Kalawad, District- Jamnagar in Regular Civil Suit No.468 of 2002 by which suit of plaintiff to recover the possession of rented premises was dismissed. For the sake of brevity and convenience, the parties are hereinafter referred by their original nomenclature. i.e. appellants shall be referred as “plaintiffs ” and respondent shall be referred as “defendant”.

2. Briefly stated, the plaintiffs' case is that the suit property, that is, east facing shop, situated at Grain Market, near Petrol Pump, Kalawad (Shitla) District- Jamnagar is owned by plaintiff Ansuyaben and was rented to the defendant on 15/07/1991 through a written rent note at a monthly rent of Rs. 400/-. Subsequently, on 01/10/1998, the defendant requested for the installation of a shutter and a utility meter. The plaintiffs

complied, by installing the shutter and setting up the meter in the defendant's name.

The plaintiffs have further pleaded that, due to the use of additional facilities, the monthly rent was increased from Rs. 400/- to Rs.450/-. The original rent agreement remains in the defendant's possession. The defendant filed Civil Miscellaneous Application No. 6 of 2002 to determine a "standard rent," but as per say of plaintiffs that was done solely to avoid paying the outstanding rent of Rs.450/- per month for the period from 01/08/1999 to 31/08/2002, totaling Rs. 16,650/-.

The plaintiffs further contended that the defendant was employed with LIC for over six years and was no longer conducting business on the premises. It is submitted that disputed shop is sub-letted to Ashokbhai Golariya without prior permission of him. Consequently, the plaintiffs prayed for the recovery of vacant possession of the suit premises, along with arrears of rent and mesne profits at the rate of Rs.450/- per month until possession is restored.

3. In reply of the pleadings, defendant has submitted written statement of his defence, wherein averments made in the plaint were denied in toto.

It is further contended that the plaintiffs' suit is barred by the principles of delay, laches, and acquiescence, as well as the Law of Limitation. The suit, in its present form, is not maintainable. While it is admitted that the suit premises were

taken on lease, the defendant denies the allegations regarding additional facilities raised by the plaintiff.

The plaintiff rented the property to the defendant at a monthly rent of Rs.225/-, however, the plaintiff has failed to issue rent receipts. The defendant further denies any allegation of sub-letting the shop to any third party. In fact, the shop is managed by the defendant's elder brother, Pravinbhai and his family members. At no point of time, the tenancy rights of the shop were transferred or assigned to Ashok Golariya. Under these circumstances, plaintiff is not entitled to recover the suit premises as requested, so it is prayed to dismiss the suit with costs.

Evidence produced before the Trial Court :-

4. Plaintiff in support of her case has relied upon following oral as well as documentary evidences.

Issues framed by learned Trial Court with finding thereon :-

5. Learned Trial Court framed following issued and gave finding thereon as mentioned below.

Sr.No.	<u>ISSUES</u>	<u>FINDING</u>
1	Whether plaintiff proves that defendant is tenant of her shop at monthly rent of Rs.450/- ?	In Negative
2	Whether plaintiff proves that defendant is in arrears of rent for last six months ?	In Negative
3	Whether plaintiff proves that defendant has transferred the disputed shop in the	In Negative

	name of third party without any consent ?	
4	Whether plaintiff proves that she is entitled to get mesne profit ?	In Negative
5	What is the standard rent of disputed shop ?	Monthly rent of Rs.225/-
6	Whether plaintiff is entitled to get relief as prayed for ?	In Negative
7	What order and decree ?	As per final order

Evidence produced before the concerned Court :-

6. Plaintiff in support of her case has examined following witnesses and relied upon the following documentary evidences.

(A) :-: ORAL EVIDENCE :-:

Sr. No.	Name of Witness	Exhibit
1	Affidavit of evidence of PW-1 Amrutlal Keshavjibhai Mehta	30
2	Affidavit of evidence of plaintiff - Ansuyaben Amrutlal Mehta	37
3	Deposition of PW-3 Nilesh Mahendrabhai Vora	42
4	Deposition of PW-4 Chhaganbhai Nathabhai Makwana	51
5	Deposition of PW-5 Pradhumanbhai Durlabhbbhai Nimavat	55

(B) :-: DOCUMENTARY EVIDENCE :-:

Sr. No.	Document	Exh.
1	Copy of notice dated 31/08/2002	34
2	Copy of reply of notice	35
3	Copy of Power-of-Attorney	36
4	Copy of account (Rojmel)	39
5	Copy of Tax of Kalawad Municipal Borough	40
6	Copy of receipt of Postal Department	41
7	Photographs, Negative and Bill of Famous Studio	43 to 45

7. Defendant in support of his defence has examined following witnesses and relied upon the following documentary evidences.

(A) :-: ORAL EVIDENCE :-:

Sr. No.	Name of Witness	Exhibit
1	Affidavit of evidence of defendant Ashvinbhai Muljibhai Limbani	61
2	Deposition of DW-2 Rameshbhai Girdharbhai Ashar	81
3	Deposition of DW-3 Gordhanbhai Shamjibhai	86
4	Deposition of DW-4- Ashokbhai Harjivanbhai	89

(B) :-: DOCUMENTARY EVIDENCE :-:

Sr. No.	Document	Exh.
1	Copy of money order and slips	65 to 70
2	Diaries	71 to 74
3	Copy of registration of institution, Form B of Kalawad Nagar Panchayat	82
4	Copy of Form A	83/A
5	Copy of Form A	83
6	Copy of rent-receipt	84
7	Rent Receipt	87

Grounds of appeal :-

7. The trial Court has dismissed suit of plaintiff for recovery of suit premises on the ground of arrears of rent as well as tenancy rights of the shop transferred or assigned to third party. Being aggrieved and dissatisfied by impugned judgment and decree, appellants-legal heirs of original plaintiff have preferred this appeal on various grounds set out in memo of appeal.

8. The notice was issued to the respondent and he appeared through his learned advocate Mr.D.R.Pandya.

Argument of Appellants :-

9. Learned advocate Mr.H.I.Bhatt for appellants has submitted written argument at Exh.39. Sum and substance of the argument is that the The Appellant, being the original Plaintiff/Landlord, and the Respondent, being the original Defendant/Tenant, are parties to this matter. Ownership of the

rented premises by the Appellant is undisputed. The Respondent occupied the premises as a tenant at an initial monthly rent of Rs. 400/-. As per the factual pleadings set forth in Paragraph 3 of the Plaint, the tenant was liable to pay the monthly rent exclusive of municipal taxes. Subsequently, the rent was enhanced by Rs. 50/- in consideration of additional facilities, specifically the installation of a rolling shutter, thereby fixing the monthly rent at Rs. 450/-

The defendant has denied that the monthly rent is Rs. 450/-, and contended that it is Rs.225/-, however, rent receipts are not supporting his contention. The respondent is a permanent employee of the Life Insurance Corporation of India (L.I.C.) and was posted at Veraval and Dhoraji before filing of the suit. At the respondent's request, the appellant installed a shutter and an electric meter in the demised premises at her own expense. The respondent was habitually negligent and irregular in the payment of rent, with arrears amounting to Rs. 17,550/- at the time of filing the suit. Despite the service of a demand notice (Exh. 34), the respondent issued a vague and evasive reply (Exh. 35) and subsequently filed Civil Application No. 6/02 for the fixation of standard rent. This application was later consolidated with the original Suit No. 468/2002.

It is further argued that the respondent, a permanent employee of the Life Insurance Corporation (LIC), is not utilizing the demised premises for his own business and in support of this contention, the petitioner has placed on record photographs (Exh. 43 and Exh. 44) sign board supporting his say.

It is an admitted fact that the said third party is conducting business within the rented premises while the respondent is employed elsewhere, out of station. Consequently, as the respondent is not in personal occupation or use of the tenanted shop, the present suit was instituted seeking his eviction therefrom.

It is further submitted that the impugned judgment passed by the learned Trial Court is patently erroneous and contrary to well-settled principles of law, as such, the same is liable to be set aside. The findings recorded therein are inconsistent with the facts on record and the applicable legal provisions. Furthermore, the Trial Court committed a grave error in answering Issue No. 1 in the negative, rendering the judgment unsustainable.

It is further submitted that the rent note (Mark 5/1), executed by the respondent in favour of the appellant on 15/07/1992, is self-explanatory. Notwithstanding this, the learned Trial Court failed to accord due consideration to the said document. Furthermore, the respondent's own ledger entry dated 16/07/1992 explicitly states: "Today the shop has been taken on rent at Rs. 200..." This admission, recorded in the respondent's own hand, reflects a rent payment for a half-month period, thereby establishing the agreed monthly rent at Rs. 400/-.

It is further submitted that the diary produced by the Defendant, marked as Exh. 73, fails to substantiate the claim that the standard rent was fixed at Rs.225/-. The Defendant has failed to discharge the burden of proof in this regard. Furthermore, the

Defendant has admitted that the Plaintiff has refused to accept the money order on the grounds that it was for a lesser amount than what was legally due. It is pertinent to note that the Defendant failed to produce the rent-note (marked as Exhibit 83/A) during the proceedings of Civil Miscellaneous Application No. 6 of 2002, asserting at that time that no such document existed. Given this prior statement, the Defendant must explain the source of the rent-note subsequently produced before licence authority under the Gumasta Dhara (Shops and Establishments Act).

It is further submitted that the Trial Court has made a serious mistake in not deciding the issue no. 3 in favour of plaintiff. In the original suit, it is an accepted fact that the respondent is employed in an institution like LIC and from time to time the respondent was being transferred to different places and at the time of filing the suit the respondent was working in the LIC office at Porbandar. The Trial Court has not taken this accepted fact into consideration. How can a person who is outside the city run a business himself? This self-evident fact on record has been disregarded by the Trial Court without any reasonable cause and it also appears that the evidence placed before the court regarding sub-tenancy has not been evaluated by the trial court in the manner it should have been. It is clear that the respondent's brother's name was added later-on at Exh. 82 and Exh.83/A and also at Exh.84. The trial Court should compare the handwriting as per provision section 73 of the

Evidence Act. But, the Trial Court has only looked at and examined the arguments and grounds of the respondent.

It is contended that Pravinbhai is not a tenant of the appellant, a fact corroborated by the respondent's own testimony under oath at Exh. 61. As in his cross-examination, the respondent admitted that Pravinbhai conducts business in a shop near the Kalavad bus stand. This material admission was overlooked by the Trial Court. Additionally, evidence from the respondent's witnesses (Exh. 86 and Exh. 89) confirms that the respondent was employed by LIC. The witness Ashokbhai at Exh. 89 admitted during cross-examination that the demised premises contains only two chairs for customers. Crucially, the witness further stated that when Pravinbhai, Ashwinbhai, and he remained present in the shop, Ashwinbhai was used to stand outside the shop while the others two would conduct the business. This admission implies that actual possession has been parted with in favour of a third party, namely the sub-tenant Ashok Golariya, and is no longer with the respondent. Under these circumstances, the impugned judgment and decree are required to be quashed and set-aside by allowing present appeal.

Arguments of respondent :-

10. Learned advocate for the respondent has submitted written argument at Exh.44. The crux of the argument is that the evidence suggests an arbitrary rent increase of Rs. 50/- under the pretext of installing electrical fittings and meters. This assertion is further falsified by the G.E.B. report at Exh.99, which

confirms that the electrical connection was provided to the suit premises on 18-08-1993. Consequently, the plaintiff's testimony —averring that the connection was provided in 1998, proven to be baseless and fabricated.

It is further submitted that the appellant/plaintiff issued a false notice alleging that rent for the amount of Rs. 450/- was due and owing as of August 1, 1999, and has further pleaded false facts in the suit. To the contrary, the plaintiff's own account books (Exh. 39), covering the period from April 1, 1999, to March 31, 2000, it reflects an entry of Rs. 3,600/- for the eight-month period between August 1, 1999, and March 31, 2000, purportedly representing rent received from Ashwin Mulji. And there is no sub-letting or no handing over exclusive possession. The defendant- original tenant is daily visiting the shop, he is having the key of shop.

It is further argued that trial Court has not committed any illegality or error and therefore, decree does not require any interference and requested to confirm the impugned Judgment and decree by dismissing present appeal.

11. Having, gone through the pleading of appellant, grounds of appeal and submission advanced on behalf of appellant and respondent. following points emerges for the consideration.

Sr.No.	POINTS
1	Whether appellants prove that respondent/tenant is in arrears of rent for last six months ?

2	Whether appellants prove that respondent/tenant has transferred the tenancy rights of disputed shop in the name of third party without any consent ?
3	Whether appellants prove that impugned Judgment and decree passed in Regular Civil Suit bearing No.468 of 2002 by the Court of Principal Civil Judge, Kalawad, District- Jamnagar dated 29/08/2007 is bad in law and against provisions of law and requires to be quashed & set aside ?
4	What order ?

12. My findings on the above points are as under for the following reasons:-

Sr.No.	POINTS
1	In Negative.
2	In Affirmative.
3	In Partly Affirmative.
4	As per final order.

::: REASONS :::

POINT NOS.1 TO 3 :-

13. Heard, both the parties. Perused record. It is pertinent to note that original plaintiff, that is, appellant has filed the suit under the provision of Bombay Rent Act against the tenant for the purpose of eviction from disputed premises on the grounds of arrears of rent for the period from 01/08/1999 to 31/08/2002, that is, 37 months to the rate of Rs.450/- per month and also on the ground of sub-letting without consent of the landlord.

13. Learned advocate Mr.H.I.Bhatt has relied upon the rent-note produced by him before the trial Court at Mark 5/1. According to him, that is the original rent-note and tenant was required to pay Rs.450/- per month as per terms and conditions mentioned therein. However, it may be noted that document is not exhibited before the trial Court and plaintiff has not taken any care for getting the said document exhibited. Hence, that document was not taken into consideration by the trial Court and rightly so. Further, looking to the evidence on record, defendant has produced a rent-note at Exh.84.

14. New rent-note is produced by defendant is exhibited vide Exh.84 and as per terms and conditions mentioned therein, the monthly rent of Rs.225/- and that to prove the document, defendant has cross-examined the witness namely Gordhanbhai Shamjibhai at Exh.86, who has stated that said rent-note was executed in his presence and original plaintiff had given respective premises on rent to the defendant namely Ashvinbhai Muljibhai Limbani. It may be pertinent to note that he has denied that rent of disputed premises is Rs.450/- per month. Further, he has deposed before trial Court that at the time of execution of

rent-note, Ashvinbhai had brought two stamps and in both the stamp-papers writings were made.

15. Further defendant has also examined Rameshbhai Girdharbhai, who is clerk in Kalawad Municipal Borough at Exh.81 and he has produced records of the shop of ‘ New Limbani Hair Cutting’, which is in the name of Ashvin Muljibhai and Pravinbhai Muljibhai. He has also produced rent note produced before him, which is at Exh.84 as discussed earlier. It is required to note that said witness has given deposition on the basis of documents available in his office. Hence, he did not have any personal knowledge with regards to rent-note, however, fact remains that document produced by defendant is exhibited and rent-note produced by original plaintiff at Mark 5/1 is not exhibited.

16. Further, looking to the evidence on record, plaintiffs have heavily relied upon the diaries produced by the defendant himself before the trial Court vide Exh.71 to Exh.74. Learned advocate Mr.Bhatt has draw attention of this Court towards cross-examination of the defendant, dated 26/10/2005, on which date question was put and defendant has admitted that in Exh.71, various entries were made in the year 1996, however, there is no mention of Rs.225/- paid per month in respect of premises in question. Now, looking to the documents and diaries produced by the defendant vide Exh.71 to Exh.74, these are hand-written diaries and it is true that rent is not mentioned at the rate of Rs.225/- per month, but at many places, rent is shown as Rs.250/- or Rs.300/- in all these diaries, but no single entry is made of

Rs.400/- rent per month. It is required to note that it is not case of the plaintiff is that rent is more than Rs. 225/- per month. Only contention is raised by plaintiff that rent is Rs.400/- per month in pleading as well as deposition at Exh.30 and Exh.37. Exh.30 is Power-of-Attorney of landlord, and at Exh.37 landlord's own deposition is on record.

17. It may be noted that trial Court has observed in the findings at Para-17 and came to the conclusion that plaintiff has not been able to prove that rent was Rs.450/- per month and further the rent-note produced by the plaintiff at Mark 5/1 is xerox copy and plaintiffs have failed to prove their case and rent-note was not exhibited. Further, at the Para-19 also, trial Court has observed and discussed in findings the various evidence produced on record such as Exh.81 and also discussed the deposition of witness Gordhanbhai and as per said evidence, rent is Rs.225 per month. Trial Court has also observed that plaintiff at Exh.30 in cross-examination admitted that they have never given any valid or legitimate receipt. Thus, in absence of any evidence of rent of Rs.450/- per month, the rent to be believed at rate of Rs.250/- per month, in view of foregoing evidence and discussion.

Now, it may be noted that as per oral evidence in Exh.30, in cross-examination, Plaintiff has admitted that they have received a money order of Rs.225/- per month. Even during the course of argument, Mr.Bhatt has not denied that rent is regularly being paid by the defendant at the rate of Rs.225/- per month. Hence, the contention as regards to the arrears of rent can not be

believed. Even, trial Court has rightly observed in Para-21 that plaintiff had not accepted the money order because according to him the money order was sent for the lesser amount of rent against the rent of RS.450/-. Exh.65 to Exh.70, documents are produced on record with regards to slips of money order of post-office, which shows that rent was being paid. Plaintiff himself accepted this fact in his cross-examination. Therefore, contention with regards to arrears of rent is not to be entertained and findings of trial Court is not required to be disturbed to that extent.

18. Now, it is required to consider and observe about the issue of sub-letting. As per say of the plaintiff, defendant has given disputed premises to Ashok Golariya as sub-tenant without his permission. As per say of the plaintiff Amrutlal, who is also Power-of-Attorney Holder of the original landlord -Ansuyaben, who is the wife of Power-of-Attorney Holder. He deposed that defendant is doing service since last 4 to 5 years and he is not running the shop. It may be noted that Power-of-Attorney is produced on record vide Exh.36 by virtue of that landlord Ansuyaben given Power-of-Attorney to her husband to represent her before the Court and take necessary steps. Ansuyaben examined herself at Exh.37 and she has confirmed the Power-of-Attorney in favour of her husband. She has stated that defendant had taken the shop on rent. According to her, defendant was doing job since last 4 to 5 years and another person is running the shop. In cross-examination, she has stated that she has not seen the defendant since last six years and denied the fact that

Ashvinbhai is coming every Sunday at shop for running a business of hair cutting.

19. The plaintiffs have examined witness Nileshbhai at Exh.42, who has produced the negative and photographs vide Exh.42 to Exh.45 and also produced the copy of the bill for the same. In the bill date is mentioned as 30th October-2002. In cross-examination, he has stated that on the same date, he had visited the shop and taken photographs. His deposition suggests that he is not aware about surroundings of the same shop and he had never visited shop earlier prior of taking of the photographs. Now, looking to the photographs, it appears that the on sign board name of shop is 'Lim bani Hair Art' and name of proprietor is mentioned as Ashok Golariya and Ashvin Limbani. The only dispute raised by defendant side is that such sign board does not belong to his shop.

Then, plaintiff has examined witness Pradhumanbhai Durlabhbhai Nimavat at Exh.55. He deposed that he is working in Post-office at Kalawad situated at Grain Market and rented the plaintiff's house. He further stated that he is acquainted with the defendant, who frequently visited the Post Office to fetch water and he has not seen said Ashvinbhai at his shop since last 8 years. Further stated that the shop of the defendant is just besides Post-office and he was used to visit the shop, hence he knew him by face. He has stated that at present, another person is working in the shop whose name is Ashokbhai. He has stated that the day before on which he came for deposition, plaintiff had met him on the road and discussed with him. For the deposition before the

Court. At that time, he had said that he would depose as per his knowledge. He was not aware about the terms and conditions of the tenancy of the defendant. He has clarified that whenever he visited the shop, Ashvinbhai would not be available at the shop.

Thus, as per said witness Ashokbhai is in possession of disputed premises.

20. Now, Defendant Ashvinbhai has examined himself at the Exh.61. He has stated that he and his brother have jointly started the business of hair cutting. According to him, his father was also running the business of hair cutting. He has stated that whenever, he got free, he would visit the shop and helped in the business.

He produced the documents at Exh.83/A and Exh.82, that is the licence under 'Gumastadhara' before Kalawad Municipal Borough. He has stated that apart from his brother Pravinbhai, the another person Ashokbhai, is also working as staff who is also brother-in-law. Further, he has denied the photographs of the sign board are of the shop.

In cross-examination, he has stated that at present he is serving at Post-office at Jamnagar. He has denied that in the application for licence, he had inserted the name of Pravinbhai as a afterthought. He has admitted that Ashokbhai is running the shop since last 9 to 10 years. He has admitted that later-on Pravinbhai joined the shop. Ashokbhai is working in shop last 9 to 10 years. The shop of Pravinbhai was demolished during the last year which was near Bus-stand. He has admitted that Ashok

Golariya is not his family member or relative but he is brother-in-law of his elder brother and also cousin. Thereafter, when asked he stated that at present Ashokbhai is working in the shop and as per work, he take-away the earning. He denied that Pravinbhai is also taking money from the shop as per his work. Further he has stated that Pravinbhai is not staff but partner.

21. Thereafter, Gordhanbhai Shamjibhai examined at Exh.86. As per his say, he is having the shop just besides the disputed shop and he is familiar with Ansuyaben as she is his landlord and he has taken a shop on rent from her. According to him, Ashvinbhai, his staff and his brother are running the disputed shop. At present, he was doing agricultural work. He has also admitted that Ashvinbhai is working in LIC Department at Jamnagar. Further, he has stated that in said shop, there are only two chairs for customers. He is familiar with Ashokbhai and at present he is doing the business. He has also stated that Pravinbhai is also doing the business in said shop.

Thereafter, Ashok Golariya was examined as witness of defendant at Exh.89. He has stated that Pravinbhai is in his relation. Ashvinbhai and Pravinbhai are brothers and he has stated that he is not sub-tenant of the disputed premises.

In cross-examination, he has stated that Pravinbhai is doing business of hair cutting since last 20 years. Ashvinbhai had taken the disputed premises on rent and he is no aware about the terms and conditions of the rent. He has further stated that Ashvinbhai is working in LIC Department since last 5 to 6 years

and there are two chairs for customers in disputed shop. Ashvinbhai was used to stand outside the shop and he would attend the customers. He is also shown the photographs of sign board, he denied the facts narrated therein. He has stated that he is taking the commission for his work. The Pravinbhai is not taking any charge for his work. Pravinbhai is keeping accounts, and he is not aware how much money is earned by Pravinbhai on daily basis. It is true that Ashvinbhai is serving at Jamnagar and seldomly come to Kalawad, where the shop is situated. He has further stated that Ashokbhai was used to come at the shop during the morning and evening hours and Pravinbhai and Ashvinbhai are having keys of the shop. At present, he and Pravinbhai are doing business under the name and style of 'Limbani Hair Art'. Further he has stated that early in the morning, Ashvibhai will open the shop and in evening, after finishing of work, he would to come and denied that Ashvinbhai is not involved in the business.

22. Further, looking to the deposition of witnesses examined by the defendant, that is, Ashokbhai and Pravinbhai. It appears that Ashok Golariya is brother-in-law of defendant's brother and Pravinbhai were attending the business and defendant was doing the job in the LIC office. It may be noted that Pravinbhai is not examined by the defendant for best reasons known to him, had he been examined, then lots of facts regarding the business might have come on the record. It is undisputed that Ashvinbhai is doing service in L.I.C. and rent-note produced at Exh.84 is in the name of Ashvinbhai Muljibhai Limbani. It is required to note that

to prove the sub-letting, plaintiff is required to show that the exclusively possession was handed over to others and that he has no control.

Here witnesses of defendant have tried to say that Ashvinbhai is having the key and having the control and possession of the shop and he is coming to the shop during the morning hours and evening hours. It is required to note that Ashokbhai is not the real brother of defendant. Now, Pravinbhai has not given any deposition to support the version that he is in business. According to defendant, Ashokbhai is the staff of Ashvinbhai being brother-in-law and as the shop of the Pravinbhai was demolished, hence he has joined the shop of defendant. At the time of filing of suit, whether he is involved in the business or not, that is not coming on record, except merely words of Ashokbhai and Ashvinbhai. However, defendant has admitted in written reply at Exh.12, that before filing of suit, he serving at Kalawadd, Dhoraji in Post-office Department. And after filing of suit as per oral deposition of defendant witness, Ashokbhai was serving at Jamnagar, whereas shop is situated at Kalawad town.

23. The witness of the plaintiff, that is, Pradhumanbhai at Exh.55 has stated that he has never seen Ashvinbhai in disputed shop. He is not aware with regards to any other person and he stated that Ashvinbhai is not attending the business of hair cutting. Further, as per say of the defendant Ashvinbhai himself Ashokbhai is sitting in the disputed shop since last 9 to 10 years and he has also admitted that before last one and half year, shop

of Pravinbhai, which was near Bus-stand had been demolished. Thus, it seems that Pravinbhai was also doing business separately but after demolition of his shop, he joined the shop of defendant but it shows that Ashokbhai was not running that shop prior that to.

24. It may be pertinent to note that looking to the Exh.83/A, document – which is form No.A. The said application was given by Ashvinbhai on 18/02/1992 and name of the Pravinbhai was also entered as partner. Now, at Exh.82, which is extracts of record of registration of shops maintained by Kalawad Nagar Panchayat, there are two entries bearing serial No.429 and Registration No.1794, dated 01/11/1992, in which name of Ashvinbhai and Pravinbhai are shown for the shop under the name of “ New Limbani Hair Art” and entry at serial No.430 registered at No.1795, that is, also dated 01/11/1992 in name of Pravinchandra Muljibhai, that is also for hair cutting. The witness Rameshbhai Ashar was examined at Exh.81 by defendant for entries of the register. He has stated that he is not aware whether the Sr.No.429, Registration No.1794 entry was done on 01/11/1992 or 1993 as there is some alteration. He is not personally aware about the said entries in the record. It may be pertinent to note that whether entry No.429 is dated 01/11/1992 or 1993, that is not clear by oral evidence but looking to the entry at Sr.No. No.430/ and Registration No.1795 of another person that is of 01/11/1992 and hence naturally entry No.429, which is subsequent can also be of dated 01/11/1992. So, on the same day, that is, 01/11/1992, the name of Pravinbhai entered into two

separate shops. The Gordhanbhai Shamji who is defendant witness has stated that in the disputed shop, Ashvinbhai's brother and other person were doing the business. Further, Ashvinbhai was doing job at LIC Department and that is also confirmed by himself. As per say of defendant, Ashokbhai and Pravinbhai are doing business in the shop. Ashokbhai himself has admitted that he is doing business but he is earning commission and the business was handled by Pravinbhai, however, Pravinbhai is not examined by defendant. Deposition of defendant himself and document at Exh.82, itself shows that Pravinbhai is having two businesses and hence it is evident that third person, that is, Ashokbhai is in possession of the shop and is doing business there. The shop is at Kalawad, Ashvinbhai having job at Jamnagar and prior of filing of suit he was being posted at Veraval and Dhoraji. Hence, it is not believable that he was daily used to come to shop during morning and evening hours. Further, Pravinbhai is having his own separate shop running simultaneously and he could not have organized himself both shops at same time. Hence, necessary conclusion would be that Ashokbhai is who is presently connected and not having blood relation, running the business exclusively by himself.

25. At this juncture, it would be relevant to note that in case of family business, wherein brothers are jointly involved, it would become difficult to determine sub-letting. In case of **Santosh Devi And Ors. vs Vir Chand, reported in 1996 A I H C-1748**, wherein Hon'ble Punjab and Haryana High Court discussed

about the ejection on the ground of sub-letting and observed as follows ;

“4. So far as exclusive possession is concerned, appellate Authority has come to the conclusion that Ramesh Kumar is in exclusive possession of the shop. For coming to this finding, the appellate Authority has relied on the oral and documentary evidence on record. In answer to the allegation of the landlord that one Ramesh Kumar, younger brother of the tenants, is carrying on the business of preparing and selling sweets and tea and the tenants have assigned the shop to said Ramesh Kumar, the tenants in their written statement took up the plea that the business of the tenants is Joint Hindu Family business and Ramesh Kumar is one of the coparceners. They also took up the plea that Ramesh Kumar sits at the shop along with his other brothers. Ramesh Kumar, when appeared as A.W.8 admitted in this statement that he and his family, i.e. his wife and two children have a separate ration-card, whereas Hakam Rai is having his own separate ration-card. He further admitted that the ration-card of Hakam Rai is on the address of House No. 1609, Ward No. 4, Gidderbaha, whereas his other brother namely Mohinder Pal is residing in Mohalla Thakar Dass in Ward No. 1 his brothers namely Ramji Dass, Bhim Sain and Joginder Pal reside at Ratia and are separate in residence and mess, and his brother, Sham Lal is residing in Bantabad in Gidderbaha. The statement of Ramesh Kumar has been relied upon by the appellate Authority to come to the conclusion that the brothers are separate in residence and mess and the tenants have failed to prove that there is Joint Hindu Family Business. The statement of Hakam Rai who appeared as RW-1 has also been taken into consideration. In his statement, Hakam Rai admitted that Mohinder Pal is selling Pan - Beedi in a separate Khokha which is situated on one side of the road. Though he stated that his business is joint, but no evidence worth the name has been brought on record that the brothers have been pooling together the income from the business which they are carrying on in separate premises. It has also come on record that Hakam Rai has shifted to Ratia where he has been allotted a Khokha in which he is running his own business. As against this evidence, there is nothing to show that the possession of Ramesh Kumar is not exclusive. Therefore, the finding recorded by the appellate Authority in that behalf being a finding of fact, deserves to be accepted.

5. So far as valuable consideration is concerned, counsel for the petitioner has cited judgments in Krishnawanti v. Hans Raj, 1995 R.C.J. 164 and Ram Dhan Sharma v. Bishan Samp Mittal and Anr., 1994(1)106 P.L.R. 492 for the proposition that there cannot be sub-letting between the tenants and sub-tenant except for valuable consideration. There is no dispute with this proposition. The question then arises as to how the landlord can prove that parting of possession by the tenants is for valuable consideration in cases where the tenants and alleged subtenant happen to be close relations of brothers inter-se as in the present case. In such cases it is very difficult to prove the passing of valuable consideration because sub-letting is generally

a secret arrangement between the tenant and sub-tenant and that is why, onus is on the tenant to show as to in what capacity the alleged sub-tenant is in occupation of the premises. Therefore, where in a given case the existence of valuable consideration cannot be proved expressly, it can certainly be inferred from other circumstances. In the present case there is one strong fact which cannot be controverted. The plea taken by the tenants in their written statement was that they form Joint Hindu Family business and Ramesh Kumar is one of the coparceners, but it has come in evidence that the brothers do not form joint Hindu Family rather they are separate in residence and mess and they are carrying on separate business in separate premises. It is difficult to imagine that Hakam Rai and Mohinder Pal i.e. tenants who are carrying on separate business, one of them at Ratia and the other in a Khokha on the side of the shop in dispute, would have parted with possession without any consideration. In such like circumstances, this Court in Hans Raj and Anr. v. Naval Kishore and Ors., 1986(2) R.L.R. 90 ordered ejectment of the tenant as it found that the tenant had executed a rent note in his individual capacity and not on behalf of joint Hindu Family and was having separate residence mess and business.

Thus, it may be noted that in case of brother or brother-in-law, being in relation, it would be difficult for landlord to prove valuable consideration for sub-letting. But as discussed above, Pravinbhai is already having his own business running separately, and Ashokdbhai is brother-in-law, not having direct relation with original tenant, hence it can be presumed that there was sub-letting for valuable consideration. Thus, as per cited case, herein also, sub-tenant Ashokbhai is in exclusive possession of the tenanted premises and same can be said to be proved as per aforementioned discussion.

In the same vein, it would be required to refer the judgment in case of **Dudabhai Alias Dadubhai Karsandas ... vs Sulochanaben Gopaldas Kothari**, reported in AIR-1995 Gujarat-68, wherein Hon'ble Gujarat has discussed about the terminating the tenancy and handing over the suit premises on the ground of illegal transfer of suit premises and further observed as follows ;

“13. Mr. Pandya nextly submitted that even if it is held that petitioner No. 1 had parted, with both physical and legal possession of the suit shop in favour of petitioners Nos. 2 and 4, that parting is not proved to be for consideration and, therefore, there cannot be any sub-letting. This argument, in my opinion, has no merit. It is firstly required to be remembered that though petitioner No. 1 is the brother of petitioner No. 2 and petitioner No. 4 is the son of petitioner No. 2, this is not the case of a residential premises. This is the case of a shop or a business premises. Secondly, the premises were taken on lease by petitioner No. 1 in his own name. May be, thereafter, he might have started business in the firm name, and might have taken petitioner No. 2 as his partner. On the petitioners own showing, petitioner No. 4 was taken as a partner subsequently in 1959. As stated by petitioner No. 2 in his deposition, since the dissolution of the firm in 1975, not only that he and his son Bhanubhai (petitioner No. 4) are the tenants, but his other son Manubhai is also a tenant in the suit shop. This is indicative of the fact that whereas on one hand, petitioner No. 1 walked out of the firm consequent upon the dissolution thereof, petitioner No. 2 continued the business along with his two sons Bhanubhai and Manubhai in the suit shop. This is, therefore essentially a business venture, which has been carried on in the shop. This, is one aspect of the matter which is required to be borne in mind. Another aspect of the matter which is required to be borne in mind is that ordinarily the exact terms on which a tenant inducts a subtenant in the premises would not be within the knowledge of the landlord. Once it is proved that in relation to a business premises, the tenant has walked out of the premises leaving the premises to another person, (may be, that another person may be his brother) and that another person is in exclusive possession of the business premises, it would not be out of place to raise an inference that parting of possession by the tenant in favour of that another person must be for valid consideration and the burden would be upon the tenant or the sub-tenant, as the case may be, to prove that parting of possession -- both legal and physical – by the tenant in favour of that other person was without any valid consideration.”

Thus, the burden would be upon the tenant to show that parting with possession was without any valid consideration.

It may be noted that when landlord proves that possession has been parted by tenant, then onus to prove that it was not sub-letting shifts to tenant. It is also required to refer the judgment of **Kishan Chand vs Banarsi Dass And Others, reported in AIR-1990, Punjab and Haryana High Court-160**, wherein Hon'ble Punjab High and Haryana High Court as observed as follows ;

*“10. The question then arises whether the onus lies on the landlord to prove that the tenant had parted with the exclusive possession of the shop in dispute for a valuable consideration to the alleged sub-tenant. In this regard it is noteworthy that in cases where the tenant and alleged sub-tenant happens to be close relation or brother inter se, as in the case in hand, it is very difficult for the landlord to prove the secretive arrangement, between the brothers regarding the valuable consideration. Thus there is found logic in the argument of Mr. Sarin that once the landlord establishes the parting of exclusive possession of the premises by the tenant, the onus shifts upon the tenant to prove the arrangement between the tenant and alleged sub-tenant as to in which capacity the sub-tenants were occupying the premises i.e. whether they were occupying as licensees under the tenant or in the capacity of a member of the partnership concern formed by them with the tenants or simply helping their relation i.e. the tenant in running the business etc. A Division Bench of this High Court in *Dr. Ram Sarup v. Smt. Savitri Devi*, 1969 Rent CJ 97, has held that the onus to prove subletting shifts on the tenant if the landlord proves that the tenant had parted with the possession and actual control of the property in dispute. In para 5 of the judgment it was held as under :*

"Held that, a mere use of the premises by a person alleged to be a sub-tenant would not by itself prove subletting. The crux of subletting lies in this as to who is in actual control of the premises. If the sub-tenant is in actual possession of the premises, there would be sub-letting unless an arrangement is proved whereby the sub-tenant is merely a care-taker on behalf of the tenant during the period of the absence of the tenant. Whenever a landlord proves that there has been complete parting with possession, then it is for the tenant to establish that, that parting with the possession has been under some arrangement negating the passing of complete control of the premises to the so-called sub-tenant. If such an arrangement is alleged and is not proved, the finding must be returned in favour of the landlord."

*11. A single Bench of this Court in *Dharam Chand v. Kasturi Lal*, (1977) 2 Ren CJ 276, again took a similar view that the onus shifts to the tenant or sub-tenant to establish as to in what capacity the sub-tenant is in possession of the property. The landlord had discharged the onus that the tenant had exclusively parted with the possession of the rented premises."*

Applying the above ratio, the original tenant was working as peon in the L.I.C. at Veraval and Dhoraji since last five to six years, prior to filing the suit. He has parted with possession of

premises. Just by merely words and oral evidence, the tenant can not say and prove that Ashokbhai was only staff and care taker.

26. So, in view of foregoing reasons, this Court is of the view that, while the Court of Principal Civil Judge, Kalawad, District-Jamnagar has not committed any error in dismissing the prayer of plaintiff regarding arrears of rent, but at the same time, has misinterpreted the evidence available on record regarding transfer of tenancy rights and not believing the fact of transfer of tenancy rights by original tenant – Ashvinbhai Limbani in favour of third party, that is, Ashok Golariya. Therefore, present appeal filed against impugned judgment and decree is required to be partly allowed as discussed above and I answered point Nos.1 to 3 accordingly and for point No.4, following order is hereby passed ;

FINAL = ORDER

1. The present Regular Civil Appeal is hereby **partly allowed**.
2. The impugned judgment and decree dated 29/08/2007 passed by the Court of Principal Civil Judge, Kalawad, District-Jamnagar in Regular Civil Suit No.468 of 2002 is hereby **modified to the extent that legal heirs of original landlord are entitled to get vacant possession of suit premises on the ground of sub-letting**.
3. Respondents/defendant herein is directed to handover the peaceful and vacant possession of suit premises, that is, shop to the appellants/plaintiffs within a period of 30 days from the date of this order.

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4. Decree to be drawn up accordingly.
5. Defendant shall pay cost of plaintiff and shall bear his own.
6. The Record and proceedings of the Regular Civil Suit No.468 of 2002 be sent back to the Trial Court along with one true copy of this judgment & decree.

This order is pronounced and signed in the open Court on this 20th day of April-2026 under my hand and seal.

Date: -20/04/2026
Place: - Jamnagar.
A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
Principal District Judge, Jamnagar
Code No.: GJ01318