

GJJN010004232024



Received on : 11/03/2024
 Registered On : 11/03/2024
 Decided On : 31/07/2026
 Duration : YY MM DD
 02 04 20

**IN THE HON'BLE COURT OF
 PRINCIPAL DISTRICT JUDGE,
 JUNAGADH.**

Regular Civil Appeal No. 14 of 2024

Exh.:- _____

<u>Appellants (Original Plaintiff) :</u>			
Heirs of deceased Abdul Mahmad:			
Rasida Rafik	53	Household work	New Ghanchivada, Junagadh
<u>V E R S U S</u>			
<u>Respondent (Original Defendant) :</u>			
Ikbalmiya Jabbariya	Adult	Business	Luvarvada, Mangrol

Appearance :-

Ld. Advocate **Mr. S. A. Shekh** for appellant.

Ld. Advocate **Mr. K. B. Sanghavi** for respondent.

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

1. The facts of the case of the plaintiff :-

- 1.1** Herein, parties are referred as plaintiff or defendant as they stood in Regular Civil Suit No.156/2016.

- 1.2 It is pleaded that the plaintiff in the present suit is the nephew and legal heir of late Abdul Mahammad and the defendant is the landlord of the premises occupied by the plaintiff.
- 1.3 It is further pleaded that the defendant owns an old house situated in Nava Ghanchivada, Junagadh, consisting of two rooms, a verandah, a courtyard, and a toilet, with a traditional tiled roof. Approximately 80 years ago, the said house was let out on rent to the plaintiff's maternal grandfather, late Abdul Mahammad, at a monthly rent of ₹8/-. The suit premises comprise an old west-facing house with a closed entrance door. Late Abdul Mahammad resided therein as a tenant until his lifetime. During that period, the present plaintiff also resided in the said premises as the legal heir of Abdul Mahammad and as a member of his family.
- 1.4 It is further pleaded that the plaintiff's maternal uncle, namely, Sitarbhai, son of Abdul Mahammad, also resided in the same house along with the plaintiff. The plaintiff's ration card, voter identity card, Aadhaar card, and other documents bear the address of the said premises. The plaintiff herself was residing in the said house as a tenant under the defendant. At the time of the death of the plaintiff's maternal grandfather, Abdul Mahammad, on 01.10.1989, and even thereafter, the plaintiff continued to reside in the said premises. Subsequently, upon the death of Abdul Mahammad's son and the plaintiff's maternal uncle, Sitarbhai Abdul, on 13.02.2013, the plaintiff was

still residing in the said premises along with him.

- 1.5 It is further pleaded that Late Jabbarmiya Abdul Mahammad had let out the said premises to the plaintiff's maternal grandfather, Abdul Mahammad, at a monthly rent of ₹8/-. The present defendant is the son and legal heir of the said Jabbarmiya Abdul Mahammad. When the defendant stopped accepting rent from the plaintiff, the plaintiff regularly remitted the rent to the defendant by money order. The defendant accepted some of such money orders, but for the last about one year, the defendant has stopped accepting the rent.
- 1.6 It is further pleaded that the tenanted premises are very old. Since the toilet had become damaged, the plaintiff got it repaired at her own expense and made it usable. The plaintiff resides in the said premises along with her family. The plaintiff's husband is engaged in the business of fishing and, therefore, has to remain at sea for long periods, usually 15 to 20 days at a time. The plaintiff's daughter is married and resides with her husband at Kodinar. Consequently, the plaintiff alone resides in the rented premises at Junagadh.
- 1.7 It is further pleaded that recently, due to the substantial increase in the value of land on which old houses stand and because apartments and other buildings have been constructed in the surrounding area, the defendant started harassing the plaintiff. The defendant sent hired persons to intimidate and threaten the plaintiff with the intention of forcibly evicting her from the premises. As part of such

acts, on or about 02.08.2015, the defendant's hired persons entered the plaintiff's house, forcibly threw some of the plaintiff's belongings outside, caught hold of the plaintiff by the arm, pushed her out of the house, and locked the entrance door of the premises.

- 1.8** It is further pleaded that the sudden assault left the plaintiff shocked and frightened. Nevertheless, she gathered courage and reported the incident to the police station. However, since the police officials were acting in collusion with the defendant, they did not take any immediate action. Thereafter, when the defendant came to know that the plaintiff had lodged a police complaint, the lock placed by them was removed, and the plaintiff resumed residing in the said premises as a tenant.
- 1.9** It is further pleaded that while the plaintiff was residing in the said premises, the defendant's men frequently harassed her. As the plaintiff feared for her life and personal safety, she is presently residing with her daughter at Kodinar. However, the possession of the tenanted premises continues to remain with the plaintiff, and her household articles and belongings are still kept in the said premises.
- 1.10** It is further pleaded that the defendant cannot take possession of the tenanted premises by force without following the due process of law. Although the plaintiff, her maternal uncle, and her maternal grandfather had remained in possession of the said premises for more than 80 years, the defendant has never filed any suit for eviction, nor obtained any decree or order from any

competent court directing the plaintiff to vacate the premises. The defendant has also never served any legal notice terminating the tenancy. Instead, the defendant is attempting to evict the plaintiff forcibly by use of force.

1.11 It is further pleaded that the plaintiff has been residing in the said premises for many years. Under the law, where members of the tenant's family reside with the original tenant, upon the death of the original tenant, such family members acquire the status of tenants. The plaintiff is a family member of the original tenant, Abdul Mahammad, as well as of his son, Sitarbhai. Having continuously resided in the suit premises as a member of their family, the plaintiff is also a tenant of the premises. Accordingly, the plaintiff's possession is lawful and permissive possession, and such possession cannot be disturbed or taken away by force.

1.12 It is further pleaded that in the records of the Municipal Corporation, the house tax register reflects the name of the plaintiff's maternal grandfather as the tenant, and the tenant's share of the house tax has been paid accordingly. The electricity connection in respect of the suit premises also stands in the name of the plaintiff's maternal grandfather, and the electricity bills are being paid by the plaintiff. The plaintiff's voter identity card, identity documents, and Aadhaar card also bear the address of the said premises.

1.13 It is further pleaded that the defendant resides at Mangrol and has no personal requirement for the said premises.

However, due to the increase in the value of the land, the defendant, through hired musclemen, is threatening and intimidating the plaintiff and is attempting to obtain possession of the premises by force and without recourse to law.

- 1.14 Thus, the plaintiff has sought the relief more specifically prayed in para 12 of the suit plaint wherein plaintiff has sought the relief to declare that the plaintiff has been residing as a tenant in the defendant's house situated at Nava Ghanchivada, Junagadh City, since the time of her maternal grandfather, at a monthly rent of ₹8/-. Consequently, the defendant, his family members, power of attorney holder, agents, or any other person claiming through or under him have no right or authority to evict the plaintiff from the said tenanted premises or to dispossess her therefrom without following the due process of law and without obtaining a decree or order from a competent Court. Additionally, the plaintiff has also prayed to pass a decree of permanent injunction restraining the defendant, his family members, relatives, power of attorney holder, agents, servants, or any other persons acting on his behalf from dispossessing the plaintiff from the tenanted premises situated at Nava Ghanchivada, Junagadh City, or from interfering with the plaintiff's possession or occupation thereof, or from preventing the plaintiff from residing therein, except by following the due process of law and after obtaining a decree or order from a competent Court and also prayed for costs of the suit and also sought for any other relief which deems fit.

2. Defense of the defendant:

- 2.1 The defendant, represented by his lawyer, has filed a written statement cum objections (**Exh. 11**) denying most of the facts stated in the plaint.
- 2.2 It is contended that the suit property originally belonged to the father of the present defendant and the defendant's father passed away many years ago. Although there are several legal heirs of the deceased, the plaintiff has filed the present suit only against the present defendant. Therefore, the suit suffers from misjoinder/non-joinder of necessary parties and is liable to be dismissed on that ground alone.
- 2.3 It is contended that the plaintiff has never been, nor is she presently, a tenant of the suit premises under the defendant and the possession of the suit property is with the defendant and not with the plaintiff. Nevertheless, the plaintiff has falsely instituted the present suit and has also wrongly sought an injunction regarding possession. Therefore, the suit is not maintainable and deserves to be dismissed.
- 2.4 It is admitted that the defendant is the son and legal heir of the owner of the suit property.
- 2.5 It is contended that the true facts are that the vacant and actual physical possession of the suit property is presently with the defendant. Neither the present plaintiff, nor her maternal grandfather, nor her maternal uncle was ever a tenant under the defendant, nor were they ever in possession of the suit property. The defendant alone is in possession of the suit property. The defendant occasionally

comes from Mangrol to Junagadh and stays in the said house. The defendant does not know the present plaintiff and has never seen her before.

2.6 It is contended that the house tax receipts produced by the plaintiff have been tampered with by the plaintiff herself by fraudulently inserting her own name in handwriting. In the records of the Junagadh Municipal Corporation relating to house tax, the plaintiff's name does not appear in respect of the suit property. Thus, the plaintiff has produced before this Hon'ble Court house tax receipts after inserting her own name therein in her own handwriting. Since the plaintiff has produced fabricated and forged documents before this Hon'ble Court, this Hon'ble Court has ample jurisdiction to direct initiation of criminal proceedings against her, and the defendant respectfully requests that appropriate criminal action be initiated.

2.7 It is contended that the plaintiff has never resided in the defendant's house, nor has she ever been in possession of the suit property. The plaintiff has never lodged any criminal complaint against the defendant. The defendant has never broken open the lock of the house, never engaged any hired musclemen, and never removed any lock out of fear of a police complaint. Since the possession of the house has always remained with the defendant, the question of breaking open the lock or removing it does not arise. Even at present, the possession of the suit property remains with the defendant. None of the plaintiff's household articles or belongings are lying in the premises, and the defendant has never caught hold of the plaintiff by

the arm or forcibly pushed her out of the house.

- 2.8** It is contended that the plaintiff has filed the present suit on the basis of false and fabricated facts with the intention of extracting a substantial amount of money from the defendant. If the injunction sought by the plaintiff is granted, the defendant would suffer irreparable loss and injury, and the defendant's proprietary rights over the suit property would be seriously prejudiced.
- 3.** In a nut shell, prayed to dismiss the suit of the plaintiff with costs.

4. Evidence of the parties :

- 4.1** The following evidence has been presented by the plaintiff in both oral and documentary forms:-

4.2 Oral evidence of the plaintiff :

Exh.41	Deposition of plaintiff – Rasida Rafik
Exh.77	Deposition of plaintiff's witness – Rafikbhai Sidibhai Khalifa Husband of Rasidaben i.e. plaintiff

4.3 Documentary evidence of plaintiff :-

Exh.45	Copy of Tax Payment receipt dated 22.04.2013 issued by Municipal Corporation, Junagadh
Exh.46	True copy of Tax Payment receipt dated 10.04.2015 issued by Municipal Corporation, Junagadh
Exh.47	Copy of details of Electoral Card of Chauhan Abdul Sitar and Khatija Rashidabhen i.e. plaintiff
Tentative Exh.48	True copy of Ration Card of Chauhan Sitarbhai Abdulla (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.49	Copy of Tax bill for the year 2012-13 issued by Junagadh Municipal Corporation (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Exh.50	Copy of Voter ID Card of Khatija Rashida i.e. plaintiff

Exh.51	True copy of Acknowledgment dated 15.09.2014 for Aadhar Card in the name of Kahlifa Rasahida Rafikbhai
Tentative Exh.52	Copy of application addressed to PSI, A-Division Police Station, Junagadh (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Exh.53	True copy of Death Certificate of deceased Sitarbhai showing date of death as 13.02.2013
Exh.54	True copy of Death Certificate of deceased Abdulla showing date of death as 01.10.1989
Exh.55	True copy of Death Certificate of deceased Halima showing date of death as 24.04.1992
Exh.56	True copy of Electricity Bill for the month of November, December
Tentative Exh.57	True copy of Electricity Bill for the month of November, December, 2015 in the name of Abdulla Mamad (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Exh.58	True copy of Tax payment receipt issued by Municipal Corporation, Junagadh for the year 2016-17 in the name of Jabbar Miya
Tentative Exh.59	Copy of Electricity Bill and payment receipt in the name of Abdulla Mamad for the month of November, December, 2015 (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.60	Copy of Tax Payment receipt dated 10.04.2015 issued by Municipal Corporation, Junagadh for the year 2014/2015 (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.61	Copy of money order dated 24.09.2003 (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.62	Copy of Judgment dated 27.02.2015 of Civil Misc. Appeal No.12/2014 (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.63	Copy of order dated 10.03.2015 passed below Exh.5 (Said document has not been referred by the Trial Court in the Documentary List at para 6)
Tentative Exh.64	Copy payment receipt dated 27.02.2017 for depositing rent amount of Rs.576/- for six years in the Court (Said document has not been referred by the Trial Court in the Documentary List at para 6)

Exh.65	True copy of Tax payment receipt dated 04.12.2017 issued by Municipal Corporation, Junagadh
Exh.66	Copy of payment receipt dated 04.12.2017 issued by PGVCL
Exh.67	Paper showing the electoral details of Khalifa Rashida i.e. plaintiff
Tentative Exh.68	Copy of Caveat Application
Tentative Exh.69	Postal acknowledgment card of RPAD
Tentative Exh.70	Copy of application dated 18.03.2017 written by Rasidaben Rafikbhai i.e. plaintiff addressed upon (1) IG, Junagadh, (2), Superintendent of Police, Junagadh, (3) PI, A-Division Police Station, Junagadh in respect to offence punishable u/ss.447, 448, 392 114 etc. of IPC
Exh.71	Copy of FIR No.I-37/2017 registered with A-Division Police Station, Junagadh lodged by Rasidaben W/o.Rafikbhai Sidikbhai Khalifa i.e. plaintiff against Ikbalmiya Jabarmiya i.e. defendant and others
Exh.72 Exh.73	Two photographs (Said photographs have not been referred by the Trial Court in the Documentary List at para 6)
Exh.86	Payment receipt dated 12.09.2019 issued by PGVCL
Exh.79	Closing purshis

4.4 Evidence of the defendant :

Oral evidence of the defendant :

Exh.83	Deposition of defendant – Ikbalmiya Jabbarmiya
Exh.87	Deposition of defendant's witness – Ezaz Abdulkadar Mahida Neighbour of Defendant
Exh.88	Deposition of defendant's witness – Hanif Nurmahad Mahida Neighbour of Defendant
Exh.92	Deposition of defendant's witness – Husen Abdula Ghoghari Neighbour of Defendant
Exh.93	Deposition of defendant's witness – Munirbhai Hasanbhai Padaya

	Neighbour of Defendant
--	------------------------

Right of the defendant to lead further evidence was closed by passing an order below Exh.1 on 09.08.2021.

5. Issues framed by the court below.

5.1 After considering the material proposition of facts as well as law and at where parties are at variance following issues have been framed vide **Exh.40** under the Order 14 of the Code of Civil Procedure Code, 1908 (*hereinafter be referred as 'the Code'*).

૧. શું વાદી સાબીત કરે છે કે, વાદી દાવાવાળા મકાનના માસીક રૂ.૮/- ના ભાડાથી ભાડુઆત છે અને તેનો કબ્જો તેઓ ધરાવે છે?
૨. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
૩. શું વાદી સાબીત કરે છે કે, દાવો દાખલ કરતા સમયે વાદી પાસે દાવાવાળા મકાનનો કબ્જો હતો અને નામદાર કોર્ટ દ્વારા મનાઈહુકમ આપ્યા બાદ ચાલુ દાવાએ પ્રતિવાદીએ સદર કબ્જો બળજબરીપુર્વક મેળવી લીધલ છે અને નામદાર કોર્ટ ના હુકનો અનાદર કરેલ છે?
૪. શું વાદી આંક-૩૦ ની અરજીમાં માંગ્યા મુજબની દાદા (અ), (બ) અને (ક) મેળવવા હકકદાર છે?
૫. શું હુકમ અને હુકમનામું?

5.2 Findings of the Ld. Trial Court on above issues are as under.

1. In Negative.
2. In Negative.
3. In Negative.
4. In Negative.

5. As per final order.
6. After considering the materials available on record, the **3rd Additional Senior Civil Judge, Junagadh** (hereinafter referred to as “**Ld. Trial Judge**”) has **rejected** the plaintiff’s suit. Aggrieved by this judgment and decree, the plaintiff has filed this appeal.
7. Since the appeal was not dismissed under Order 41, Rule 11 of the Code of Civil Procedure, notice as contemplated under Order 41, Rule 14 of the Code has been issued to the respondents, who have appeared before this Court.
8. **Point for determination :-**

I have perused the entire record of the court below, heard arguments of Ld. Advocates of the parties and considering the matter, following points under Order 41, Rule 31 of the Code of Civil Procedure, 1908 are arose to decide present appeal.

- 8.1 Whether the judgment & decree of Regular Civil Suit No.156/2016 which is in question is arbitrary, capricious, perverse and illegal, and judgment & decree required to be interfered ?
- 8.2 Whether the trial court failed to decide the issues in the proper perspective?
- 8.3 Whether the trial court failed to consider the documentary evidence in the proper perspective?
- 8.4 Whether the Trial Court failed to provide adequate reasoning while discussing the issues?
- 8.5 Whether the Trial Court misinterpreted the evidence concerning the Indian Evidence Act, 1872, the Gujarat Rents, Hotel and Lodging House Rates

Control Act, 1947 (in short “Rent Act”) ?

8.6 What order should be passed in this matter?

9. Reply of the said points under Order 41, Rule 31 of Code of Civil Procedure, 1908.

- (1) In Negative, as discussed.
- (2) In Negative, as discussed.
- (3) In Negative, as discussed.
- (4) In Negative, as discussed.
- (5) In Negative, as discussed.
- (6) As per final order.

As to maintainability of appeal :

10. Herein, the decree of Civil Court has been challenged and for that Section 29 of The Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (now it is referred as '**Rent Act**') comes into way and it says that :-

“**Appeal.**--(1) Notwithstanding anything contained in any law, an appeal shall lie

[(a) in the City of Ahmedabad, from a decree or order made by the Court of Small Causes, Ahmedabad, exercising jurisdiction under section 28 to a bench of two judges of the said court which shall not include the judge who made such decree or order;]

(b) [elsewhere from a decree] or order made by 144[a Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, 145[or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c)of sub-section (2) of section 28] or by] a Civil Judge exercising such jurisdiction, to the District Court:

[Provided that no such appeal shall lie from—

(I) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908;

(II) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent and the

amount or value of the subject matter of which does not exceed-

[(i) where such suit or proceeding is instituted in the City of Ahmedabad, two thousand rupees, and]

(ii) [where such suit or proceeding is instituted elsewhere the amount upto] which the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;

(iii) an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies;

(iv) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.]

[(1A) Every appeal under sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be :

Provided that in computing the period of limitation prescribed by this sub-section the provisions contained in sections 4, 5 and 12 of the Indian Limitation Act, 1908 * shall, so far as may be, apply.]

[(2) No further appeal shall lie against any decision in appeal under subsection (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.]

[(3) Where no appeal lies under this section from a decree or order in any suit or proceeding [in the City of Ahmedabad the bench of two judges, specified in clause (a) of sub-section (1) and elsewhere] the District Court, may for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit.]”

Therefore, in suit relief as to possession of the suit premises is sought and therefore, under said Section this appeal is maintainable.

10.1 Further neither decree under challenge has not been passed by the consent of the parties nor it is decree of suit of the

nature cognizable by the Courts of Small Cause prescribed in sub-section (2) and (3) of the Section 96 of the Code of Civil Procedure, 1908, and therefore the present appeal is maintainable and under the Gujarat Civil Court Act, 2005 this court is empowered to hear first appeal in present case.

THE POWER OF APPELLATE COURT AS PROVIDED UNDER THE ORDER 41 RULE 33 OF THE CODE OF CIVIL PROCEDURE, 1908:-

Under O-41 Rule-33 of the Code of civil procedure, 1908, the power of court of appeal has been provided and it is reproduced herein as under-

" 33:Power of Court of Appeal-

The Appellate Court shall have power to pass any decree and make any the order which ought to have been passed or made and to pass or-make such further or other decree or the order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection 1.1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977). [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] : ”

- 10.2** Therefore, by reading said provision then it is quite clear that the court of appeal can pass any order or decree which ought to have been passed and such power can be exercised against any party to the proceedings.

Arguments of the appellants side : (original plaintiff)

- 11.** The learned advocate for the appellants/original plaintiff has filed arguments encircling the facts stated in the appeal

memo as well as stand taken in the suit before the Trial Court.

- 11.1 It is argued out that though there was a strong prima facie case of the appellant/plaintiff, the Trial Court has failed to allow the suit of the plaintiff.
- 11.2 It is further argued out that the trial Court has not properly appreciated the evidence on record and has also not considered the earlier order passed in the matter by the previous Officer.
- 11.3 It is further argued out that the interim injunction application of the plaintiff was allowed and upon breach of the said order by the respondent, it was ordered to decide the contempt petition along with the suit but the Trial Court has failed to pass any such order regarding the said contempt of Court application.
- 11.4 It is further argued out that though the documents adduced on record were favouring the plaintiff, the Trial Court has failed to consider the same and erred in passing the impugned Judgment and Decree.
- 11.5 Thus, it is prayed to allow the appeal and suit of the plaintiff and thereby quash and set aside the impugned Judgment and Decree of the Trial Court.

12. Arguments of the respondent : (original defendant)

- 12.1 Learned Advocate for the respondent has filed his written arguments vide **Exh.7** wherein he has re-iterated the stand taken before the Trial Court in the written statement.
- 12.2 It is argued out that an application alleging breach of the

injunction order was filed under Order XXXIX Rule 2(A) of the Code of Civil Procedure, 1908 (in short “CPC”), and the same was decided along with the suit. Therefore, if a party is aggrieved by an order passed on an application under Order XXXIX Rule 2(A) of the CPC, such party ought to have preferred an appeal under Order XLIII Rule 1(r) of the CPC, which the present plaintiff has not done. Hence, the issue relating to the alleged breach of the injunction order cannot be raised in the present appeal. Nevertheless, as a matter of abundant caution, the defendant has also made submissions regarding the application for breach of the injunction order, which came to be rejected against the plaintiff. However, principal contention remains unchanged, namely that in a regular appeal under Section 96 of the CPC, an order passed under Order XXXIX Rule 2(A) of the CPC is, in fact, appealable under Order XLIII Rule 1(r) of the CPC. Since no such appeal has been preferred, the present appeal is only an appeal under Section 96 of the CPC, and it should be treated accordingly.

12.3 It is further argued out that the present plaintiff has also relied upon Order XLI Rule 23 of the CPC. In fact, Order XLI Rule 23 merely confers upon the appellate court the power to remand a case. Nowhere in the memorandum of the present appeal has it been stated that the case ought to be remanded. Therefore, the present appeal cannot be treated as one under Order XLI Rule 23 of the CPC, and for the same reason, the appeal deserves to be dismissed.

12.4 It is further argued out that the application alleging breach

of the injunction order cannot be entertained in the present appeal because an appeal under Section 96 of the CPC does not include such a challenge. Nevertheless, since the present plaintiff has preferred an appeal under Section 96 of the CPC and has also referred therein to the application regarding the alleged breach of the injunction order, the defendant has made submissions on the said application as well. However, while maintaining contention that an appeal against an order under Order XXXIX Rule 2(A) lies only under Order XLIII Rule 1(r) of the CPC and that such an issue cannot be considered in the present appeal, without prejudice to said contention of the defendant, the defendant has replied to the allegations relating to the application for breach of the injunction order.

- 12.5** It is further argued out in respect to the application alleging breach of the injunction order that in the present case, paragraph 4 of the interim injunction application (Exhibit 5) sought the following two reliefs: (a) That the plaintiff should not be dispossessed except by following due process of law. (b) That the plaintiff should not be obstructed from residing in the rented premises.
- 12.6** It is argued out that according to paragraph 6 of the plaint, on 02/08/2015, the plaintiff alleged that the defendants forcibly threw out belongings of the plaintiff and locked the premises. Thereafter, upon a police complaint being lodged, the lock was opened, and the plaintiff resumed residing in the premises as a tenant.
- 12.7** It is further argued out that the present suit was instituted on 11/08/2016. Thus, according to the plaintiff herself, she

was residing in the premises on the date of the suit. The learned Trial Court did not pass any mandatory injunction directing that the plaintiff should not be prevented from entering the rented premises. Rather, the injunction merely restrained the defendants from obstructing the plaintiff while she was residing in the premises. This necessarily implies that the injunction would apply only if the plaintiff was actually residing in the premises on the date of the suit and on the date of the injunction application.

12.8 It is further argued out that there is no definite evidence as to when the defendants allegedly obstructed or dispossessed the plaintiff. Therefore, in the plaintiff's application at Exhibit 30 alleging breach of the injunction order, the issue was framed: "શું વાદી સાબીત કરે છે કે દાવો દાખલ કરતા સમયે વાદી પાસે દાવાવાળા મકાનનો કબજો હતો અને નામ.કોર્ટ દ્વારા મનાઈ હુકમ આપ્યા બાદ ચાલુ દાવાએ પ્રતિવાદીએ સદર કબજો બળજબરી પુર્વક લીધેલ છે અને નામ.કોર્ટના હુકમનો અનાદર કરેલ છે ?"

12.9 It is further argued out that therefore, the plaintiff is required to prove whether she was in possession of the suit property at the time of filing the suit. In this regard, in paragraph 13 of the examination-in-chief at Exhibit 41, the plaintiff states that: " દાવો દાખલ કર્યા પહેલા અને દાવો દાખલ કર્યો ત્યારે મનાઈ હુકમની અરજીનો નિર્ણય થયો ત્યારે અને ત્યાર બાદ હું આ મકાનમાં રહેતી હતી."

12.10 It is further argued out that however, during her cross-examination the witness states: " એ વાત ખરી છે કે દાવો દાખલ કર્યો ત્યારે આ વાદગ્રસ્ત મકાનમાં રહેતી ન હતી પરંતુ મનાઈ હુકમની અરજીનો ઠરાવ આવ્યો ત્યારે હું તે મકાનમાં રહેવા ગયેલ"

- 12.11** It is further argued out that this clearly implies that the plaintiff was not residing in the suit premises on the date of institution of the suit, i.e., 11/08/2016, and that she started residing there only after the order on the injunction application was passed on 09/03/2017.
- 12.12** It is further argued out that now, if Exhibit 60, namely the application made to the police dated 18/03/2017, is considered, it is alleged therein that on the night of 14/03/2017, the defendant, Ikbalmiya Jabbarmiya, along with three women wearing burkhas, broke the lock and took forcible possession of the premises.
- 12.13** It is further argued out that in respect of the said incident, an FIR being A-Division Police Station C.R. First No. 37/2017 was registered for the offences punishable under Sections 447, 506(2), 504 and 114 of the Indian Penal Code, and after filing of the charge-sheet, Criminal Case No. 2584 of 2017 came to be instituted.
- 12.14** It is further argued out that in the said criminal case, the deposition of Rashidaben Rafikbhai Khalifa was recorded at Exhibit 14. In her examination-in-chief, she states: "બનાવના દિવસે ઈકબાલમીયાએ માણસો મોકલેલા અને માણસોએ મારા ઘર માંથી ઘરવખરી કેડી દિધેલી અને ઘર ખાલી કરી નાખો નહીતર મારી નાખીશ તેવી ધમકી આપેલી"
- 12.15** It is further argued out that however, in her cross-examination, the said witness states that she does not remember the incident alleged to have occurred on 02/08/2015. She further states that she does not presently remember what had happened on 16/03/2017. She further states that when she says that unknown persons had come,

about 30 to 35 persons from the neighbourhood had gathered there, but she did not know any of those 30 to 35 persons. She further admits: "આ કામમાં આરોપીઓ બનાવ સમયે ત્યાં આવ્યા હોય અને આ ઘર છોડીને જતા રહો તેવી ધમકી આપી હોય અને ઘર છોડીને નહીં જાઉં તો મારી નાખીશુ તેવી ધમકી આપી હોય તેમજ ગાળાગાળી કરેલ હોય તેવું કાંઈ બનેલ નથી."

12.16 It is further argued out that from the above, it is evident that there is no definite evidence whatsoever to establish that the plaintiff was obstructed or dispossessed. On the contrary, the plaintiff herself admits that she was not residing in the suit premises on the date of filing of the suit. The witness is also unable to specify when she was allegedly obstructed. In this regard, the answers given by the plaintiff in her cross-examination at Exhibit 41 are reproduced as: (a) "મને કઈ તારીખ થી પ્રતિવાદીએ આ મકાનમાં અટકાયત કરેલી તે તારીખ યાદ નથી મે પોલીસ ફરીયાદ કરેલી તેના કેટલા દિવસ પહેલા પ્રતિવાદીએ અટકાયત કરી તે સમય મને યાદ નથી." (b) "મને પ્રતિવાદીએ મકાનમાં આવવા દિધેલ નહીં તે તારીખ પણ યાદ નથી."

12.17 She further states: "એ વાત ખરી નથી કે અટકાયત કરી તે પહેલા હું બે ત્રણ દિવસ કોડીનાર ગયેલી હતી"

12.18 She also states: "આ અટકાયત થયાના આશરે બે વર્ષ બાદ દાવો કરેલો હવે કહું છું કે મને કેટલા સમય બાદ દાવો કરેલો તે યાદ નથી"

12.19 She further states: "અટકાયત પ્રતિવાદી દ્વારા થયા બાદ મને ઘરમાં ન આવવા દિધેલ તેથી હું કોડીનાર ચાલી ગયેલ મને ઘરમાં ન આવવા દિધેલ જેથી હાલનો દાવો થયેલ છે."

12.20 She further states: "હું કોડીનાર ગઈ પછી આશરે ૧૨ મહીના પછી દાવો દાખલ કરેલો."

12.21 She further states: "પોલીસ ધ્યાન ન આપતી તેથી મે ૧૨ માસ મોડો દાવો દાખલ કરેલો." "આઝાદ ચોક પોલીસ સ્ટેશન માંથી પોલીસ મારા ભેગા આવેલ વાદગ્રસ્ત મકાનમાં જતા તે મકાન ખોલેલ નહી આથી અમો પોલીસ ચોકીએ પાછા આવી ગયેલ ત્યાર બાદ અઠવાડીયા ૧૫ દિવસ બાદ અમો ફરી આઝાદ ચોક પોલીસ સ્ટેશને ગયેલ ફરી પોલીસ મારી સાથે વાદગ્રસ્ત મકાને આવેલા તેમાથી ઘરની મહીલાઓ એ નીચેથી પત્ર આપેલ પરંતુ પોલીસે તે પત્ર લીધેલ નહી."

12.22 Finally, she states: "મને વાદ ગ્રસ્ત મકાનમાં આવતા પ્રતિવાદીએ અટકાયત કરી અનેજે ફરીયાદ કરી તે સમયગાળો આશરે ૧૫ દિવસનો હતો."

12.23 She further states: "એ વાત ખરી છે કે દાવો દાખલ કર્યો ત્યારે આ વાદગ્રસ્ત મકાનમાં રહેતી ન હતી પરંતુ મનાઈ હુકમની અરજીનો ઠરાવ આવ્યો ત્યારે તે મકાનમાં રહેવા ગયેલ અને તે જ દિવસે સાંજના ૬:૩૦ થી ૭ ની વચ્ચે કોડીનાર જવા નીકળેલ તે તારીખ મને યાદ નથી હું કોડીનાર ગયેલ જ નહી પરંતુ રસ્તામાં કેશોદ આવી ત્યારે ફોન આવેલ તે અજાણ્યા નંબર માંથી ફોન હતો આથી બસ માંથી ઉતરી હું જુનાગઢ આવી રાત્રીના ૮:૩૦ હુ વાદગ્રસ્ત મકાને આવી ત્યારે મને અંદર આવવા દિધેલ નહી."

12.24 She further states: "સીતારભાઈના અવસાન પછી પ્રતિવાદીએ બે વર્ષ બાદ અટકાયત કરેલી."

12.25 She further states: "હવે હું જણાવુ છુ કે આજ થી બે વર્ષ પહેલા પ્રતિવાદીએ અટકાયત કરેલી. આજ થી બે વર્ષ પહેલા અટકાયત કરેલી તેનો મહીનો અને તારીખ મને યાદ નથી."

12.26 It is further argued out that the deposition of the plaintiff's husband, Rafikbhai Khalifa, was recorded at Exhibit 77. The relevant portions of his cross-examination are reproduced below:

12.27 The witness himself states: "પ્રતિવાદીએ મારી સાથે સમાધાન

કરી આ સમાધાનમાં એવું નહિક થયેલ કે તમને કોઈ પ્રકારે ત્રાસ કરીશું નહીં તમે આ મકાનમાં રહો આ સમાધાન થયા પછી રસીદાબેન બે-ત્રણ મહીના આ મકાનમાં રહેલા."

12.28 He further admits: "એ વાત ખરી છે કે આ દાવો દાખલ થયા પછી વાદી આ મકાનમાં પ્રવેસેલ નથી સાહેદ જાતે જણાવે છે કે પ્રતિવાદીએ પ્રવેશવા દિધેલ નથી."

12.29 It is further argued out that thus, both the plaintiff and her husband have made statements that are wholly self-contradictory. The plaintiff has admitted that she was not residing in the suit premises on the date of institution of the suit. There is also no definite evidence as to who allegedly obstructed or dispossessed her. Even in the criminal case, it has been alleged that unknown persons threatened her and compelled her to vacate the premises.

12.30 It is further argued out that in these circumstances, there is absolutely no evidence to establish that the plaintiff was residing in the suit premises either on the date of filing of the suit or on the date of the injunction application. Furthermore, none of the witnesses examined on behalf of the defendants have stated that the plaintiff was residing in the premises. The plaintiff has not examined any independent witness, nor has any neighbour been examined. Therefore, no question of breach of the injunction order under Order XXXIX Rule 2(A) of the Code of Civil Procedure arises. It is, therefore, respectfully prayed that the application alleging breach of the injunction order be dismissed.

12.31 It is further argued out that on the merits of the case that in the present suit, the plaintiff has pleaded that she is

residing in the suit premises as a tenant and that she should not be dispossessed except by following due process of law. In these circumstances, the legal as well as factual position may be examined on the basis of the oral and documentary evidence.

12.32 It is further argued out that at the outset, it is submitted that under no circumstances can the plaintiff claim the status of a tenant. It is an admitted position that, approximately 85 years ago, Abdul Mahmad was the tenant, and thereafter his son, Abdul Satar, became the tenant. Abdul Satar died on 13/02/2013, and he was unmarried.

12.33 It is further argued out that the present plaintiff, Rashidaben, now claims tenancy rights as the legal heir of Abdul Satar. However, Rashidaben is the daughter of Rehemabu, who was the daughter of the original tenant, Abdul Mahmad. There is no case whatsoever that Rehemabu was ever residing in the suit premises as a tenant. Abdul Mahmad died on 01/10/1989.

12.34 It is further argued out that according to paragraph 2 of the affidavit at Exhibit 41, the plaintiff states that she was residing with Abdul Mahmad so long as he remained alive.

12.35 It is further argued out that this would imply that the plaintiff has been residing in the suit premises since her birth. If she has indeed been residing there since birth, then her mother, Rehemabu, must also have been residing there with her. Further, since Rashidaben was born to Rehemabu, Rehemabu's husband, i.e., Rashidaben's father, must also have been residing in the same premises. Alternatively, even if it is assumed that Rashidaben's

mother, Rehemabu, and her father were residing elsewhere, it would mean that immediately after Rashidaben's birth, she was left in the care of her maternal grandfather. Such a proposition is wholly improbable.

12.36 It is further argued out that if it is assumed that Rashidaben had been residing in the tenanted premises since her birth or from a young age (the original tenant, Abdul Mahmad, having died in 1989, Rashidaben would have been about 18 years old at that time), then it would have to be accepted that she continued residing in the tenanted premises with her maternal uncle, Abdul Satar, who was unmarried. It is wholly inconceivable that in a conservative and orthodox Muslim family, an unmarried maternal uncle would keep an 18-year-old unmarried niece residing alone with him in the premises.

12.37 It is further argued out that therefore, the plaintiff's version that she was residing in the premises as a tenant is wholly illogical. Moreover, all the documentary evidence produced by Rashidaben before the learned Trial Court pertains only to the period after 2015. If she had in fact been residing in the premises since birth or since the age of 18 years, there ought to have been documentary evidence to that effect. Not only that, but there are also contradictory depositions given by Rashidaben (Exhibit 41) and her husband, Rafikbhai (Exhibit 77), regarding the birth of their children. The same is discussed in the henceforth.

12.38 It is further argued out that one thing is certain: it is wholly unbelievable that, after marriage, a Muslim woman would

continue residing with her maternal uncle at Junagadh instead of living at her matrimonial home. Therefore, the claim that Rashidaben was residing with Satarbhai is patently false.

12.39 It is further argued out that if the depositions of the plaintiff and her witness are examined, it becomes apparent that both have made false and self-contradictory statements. Consequently, neither the testimony of Rashidaben nor that of her husband, Rafikbhai, deserves to be believed.

12.40 It is further argued out that the material portions of cross-examination of Rashidaben at Exh.41 are as : "મારા કહેવા મુજબ હુ આ મકાનમાં જન્મ થી જ રહેતી હતી મારી ઉંમર ૪૫ વર્ષની છે મારા કહેવા મુજબ હુ આ મકાનમાં ૪૫ વર્ષ થી રહુ છું."

12.41 She further states: " એ વાત ખરી છે કે મારા સંતાનોનો જન્મ કોડીનાર માં થયેલ છે મારી મોટી દિકરી-૮ ધોરણ સુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ છે મારી નાની દિકરી ૬ ધોરણસુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ છે"

12.42 Thereafter, in her further cross-examination dated 26/06/2018, the witness states: "ત્યાર બાદ ફરી તા.૨૬/૦૬/૨૦૧૮ ની ઉલટ તપાસમાં આ સાહેબ જણાવે છે કે મારે ચાર બાળકો છે પહેલા જુનાગઢ ભણતા હતા પછી કોડીનાર ભણવા ગયા બે દિકરીઓ જુનાગઢમાં ભણેલ નથી તેઓ ભણેલ જ નથી બે દિકરાઓ આવેશ અને આદીલ, જુનાગઢની પાંજરાપોળમાં ભણતા આદેશ જુનાગઢની પાંજરાપોળ શાળામાં ચોથા કે પાંચમા ધોરણ સુધી ભણેલ આદીલ પાંચ ધોરણ સુધી જુનાગઢની પાંજરાપોળમાં ભણેલ. * * * * મારા બંને દિકરાઓ જુનાગઢમાં અભ્યાસ કરતા તે બતાવતા કોઈ દસ્તાવેજો મારી પાસે નથી. મારો દિકરો અવેશ જુનાગઢ સરકારી હોસ્પિટલમાં જન્મેલ હતો. બાકીના

ત્રણ બાળકોનો જન્મ કોડીનાર ખાતે થયેલ છે અવેશ નો જન્મ જૂનાગઢ હોસ્પિટલમાં થયો હતો તેનો કોઈ દાખલો મારી પાસે નથી. લગ્ન પછી હું સાસરે ગયેલ જ નથી અને જુનાગઢ રહેતી હતી.”

12.43 It is further argued out that the deposition of Rashidaben's husband, Rafikbhai, was recorded at Exhibit 77. The relevant portion of his cross-examination regarding their children is reproduced as: "મારા દિકરા દિકરી નો જન્મ કોડીનાર ખાતે થયેલો મારી મોટી દિકરી કોડીનાર ખાતે ૮ ધોરણ સુધી ભણેલી છે જે સરકારી સ્કુલનું નામ યાદ નથી તે વાત ખરી નથી કે મારો દિકરો આવેશ ૧૧ ધોરણ સુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ છે સાહેદ જાતે જણાવે છે કે આવેશ ૬ ધોરણ સુધી સરકારી સ્કુલમાં ભણેલ છે. x x x xx સાહેદ જાતે જણાવે છે કે મારો દિકરો આદીલ ૩-૪ ધોરણ સુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ"

12.44 It is further argued out that thereafter, in his further cross-examination, the witness at Exhibit 77 states: " મારે ચારેય છોકરાનો જન્મ ઘરે થયેલો જે માંથી બે છોકરાના જન્મ જુનાગઢ અને બાકીના કોડીનાર મુકામે થયેલા હું ચારેય છોકરાના જન્મના દાખલા રજૂ કરી શકું.”

12.45 It is further argued out in respect to legal position that from the legal standpoint, the definition of a "tenant" is provided under Section 5(11)(1) of the Bombay Rent Act.

12.46 It is further argued out that thus, upon the death of the tenant, the landlord must accept the legal heir as the tenant. In the present case, the parties are Muslims, and under Muslim law, no right accrues by birth. At the time of the death of the original tenant, Abdul Mahmad, only two legal heirs survived him, namely Rehemabu (the mother of Rashidaben) and Abdul Satar. If Abdul Satar alone came to be recognized as the tenant at that point of time, then

Rehemabu had no tenancy rights whatsoever and could not have been regarded as a tenant, because she had never resided in the suit premises along with the tenant. Consequently, she does not fall within the definition of "tenant" under Section 5(11)(1) of the Bombay Rent Act.

12.47 It is further argued out that if Rehemabu herself was never a tenant, then her daughter, Rashidaben, could never acquire the status of a tenant. Similarly, after the death of Abdul Satar, his sister's daughter could not succeed to the tenancy.

12.48 It is further argued out that there is no material on record showing how many sons and daughters the original tenant, Abdul Mahmad, had, or how many sons and daughters his daughter Rehemabu had. Therefore, under no circumstances could Rashidaben become the tenant after the death of her maternal uncle. Thus, even from the legal perspective, Rashidaben cannot claim the status of a tenant.

12.49 It is further argued out regarding the Jurisdiction of the Suit that as regards jurisdiction, Rashidaben claims herself to be a tenant and has filed the present suit asserting that, being a tenant, the landlord cannot dispossess her except by following the procedure established by law.

12.50 It is further argued out that if that is the relief sought, then by virtue of Section 28 of the Bombay Rent Act, such a suit can be entertained only by the Rent Court. A Civil Court has no jurisdiction to entertain a suit arising under the Bombay Rent Act and has relied on the precedent reported in (1) 1985 GLH, page 920 – wherein it is held

that where a tenant files a suit against the landlord seeking a declaration that he is entitled to remain in possession of the premises, such a suit lies exclusively before the Rent Court under Section 28. (2) 4 GLR, page 90 – wherein it is held that the question whether the legal heirs of a deceased tenant have inherited tenancy rights can be decided only by the Rent Court, (3) 22 GLR, page 674 and 20 GLR, page 762 – wherein it is held that where the issue is whether a person has inherited tenancy rights under Section 5 of the Bombay Rent Act, such question can be decided only by the Special Rent Court constituted under Section 28, and no other Court has jurisdiction. (4) 27(1) GLR, page 232 and 1985 GLH, page 920 – wherein it is held that the Rent Court alone has jurisdiction to determine whether a person has acquired tenancy rights by succession under Section 5. (5) AIR 1974 Bombay 228 (C) – wherein it is held that where the dispute pertains to possession between a landlord and a tenant, the Civil Court has no jurisdiction to entertain such a suit.

12.51 Thus, it is further argued out that from the very nature of the pleadings in the present suit, it is evident that the plaintiff has instituted the suit before the Civil Court, although, by her own case, the dispute falls exclusively within the jurisdiction of the Rent Court under Section 28 of the Bombay Rent Act.

12.52 It is further argued out in respect to documents produced by the plaintiff that the plaintiff has produced documents such as her Aadhaar Card, Election Card, Ration Card, etc., as well as receipts showing payment of municipal

taxes. Documents marked as Mark 4/1 to Mark 4/13 have been exhibited as Exhibits 45 to 57. The documents produced at Mark 16 have been exhibited as Exhibits 58 to 61. The rent receipt produced as Mark 23/1 has been exhibited as Exhibit 64. The documents marked as Mark 44/1 to Mark 44/4 have been exhibited as Exhibits 68 to 71.

12.53 wherein it is held that all these documents have been produced by the plaintiff. An application was filed by the plaintiff at Exhibit 42 seeking exhibition of these documents. There is an endorsement made by the advocate for the defendants stating that tentative exhibit numbers may be assigned subject to strict proof. Accordingly, Exhibits 45 to 64 and Exhibits 68 to 71 have been assigned only tentative exhibit numbers. Likewise, documents marked as Mark 39/1 to Mark 39/3 have also been produced.

12.54 wherein it is held that the plaintiff principally relies upon her Aadhaar Card, Ration Card, and Voter Identity Card. However, none of these documents has been duly proved. When a party relies upon documents such as an Aadhaar Card, Ration Card, Election Card, or Municipal records to establish the address of the premises in which she resides, such documents must be proved by examining the competent authority or the concerned witness. None of the documents produced by the plaintiff has been proved in accordance with law.

12.55 wherein it is held that it is apparent that in the municipal tax receipt the plaintiff has herself inserted her name in

handwriting. It was for this reason that the defendant had filed an application at Exhibit 102 seeking examination of Asif Munsif, an employee of the Municipal Corporation. However, since right of the defendant to lead evidence came to be closed due to his absence, the said witness could not be examined.

12.56 wherein it is held that under the Right to Information Act, the defendant has obtained certified copies of the relevant records. In those records, the name "Rasida Rafik" appearing in Document No. 16/1 (Exhibit 58) has been written by hand, whereas the certified copies obtained under the RTI Act do not contain such an entry.

12.57 wherein it is held that although the defendant had summoned Asif Munsif, the Municipal Corporation employee, by filing Exhibit 102, he could not ultimately be examined. Nevertheless, since all the plaintiff's documents has been assigned only tentative exhibit numbers, the burden still lies upon the plaintiff to prove each of them.

12.58 wherein it is held that for obtaining an Aadhaar Card or Election Card, the plaintiff was required to produce certain original documents before the concerned authorities. Neither those original documents nor the original records have been produced before the Court. Only photocopies have been produced, and it has not been established that such photocopies were prepared from the original documents.

12.59 wherein it is held that in these circumstances, since the learned Trial Court has assigned only tentative exhibit numbers to these documents, they cannot be read in

evidence. Even the Voter Slip (Exhibit 67) appears to have been subsequently created. Similarly, in the municipal tax receipts, the plaintiff's name appears to have been inserted subsequently. Even assuming that Rashidaben may at some point have paid rent or municipal taxes on behalf of the original tenant, such payment by itself does not confer upon her the status of a tenant.

12.60 wherein it is held that accordingly, none of the documents produced in the present case has been proved. More particularly, when the plaintiff relies upon these very documents to establish that she was residing at Junagadh and in the suit premises, the burden of proving those documents squarely lies upon her. The plaintiff has failed to discharge that burden. Therefore, none of the documents produced by the plaintiff can be treated as proved.

12.61 wherein it is held with regard to the application alleging breach of the injunction order that the submissions made at the beginning of these written arguments may kindly be read as part of the present submissions as well. In particular, the contradictions pointed out between the cross-examination of the plaintiff (Exhibit 41) and the cross-examination of her husband (Exhibit 77) are equally relevant for deciding the present suit. Hence, the same are not repeated herein.

12.62 wherein it is held that the defendants has examined neighbouring residents in support of the case, whereas the plaintiff has examined no witness other than herself and her husband. Although the plaintiff stated that she would produce birth certificates of her children and documents

relating to their education, no such documents have been produced.

12.63 wherein it is held that there is no evidence whatsoever regarding the alleged date on which the plaintiff was obstructed or dispossessed.

12.64 wherein it is held that thus, the plaintiff is not entitled to claim any right to continue in possession as a tenant. The plaintiff was never residing in the suit premises, nor does she possess any legal right to reside therein as a tenant. Therefore, considering the evidence on record, particularly the cross-examinations of the witnesses at Exhibits 41 and 77, and the fact that none of the documentary evidence has been proved, the learned Trial Court has rightly dismissed the suit.

12.65 wherein it is held that it is, therefore, respectfully submitted that the present appeal also deserves to be dismissed.

12.66 wherein it is held that since the respondent has been unnecessarily dragged into this litigation, it is further prayed that costs of Rs. 50,000/- be awarded against the plaintiff-appellant in favour of the respondents under Section 35 of the Code of Civil Procedure.

12.67 Thus, in a nutshell, it is prayed that the appeal be dismissed with costs.

REASONS

As regards issue Nos.1 to 4:

૧. શું વાદી સાબીત કરે છે કે, વાદી દાવાવાળા મકાનના માસીક રૂા.૮/- ના ભાડાથી ભાડુઆત છે અને તેનો કબ્જો તેઓ ધરાવે છે?
૨. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

૩. શું વાદી સાબીત કરે છે કે, દાવો દાખલ કરતા સમયે વાદી પાસે દાવાવાળા મકાનનો કબ્જો હતો અને નામદાર કોર્ટ દ્વારા મનાઈહુકમ આપ્યા બાદ ચાલુ દાવાએ પ્રતિવાદીએ સદર કબ્જો બળજબરીપૂર્વક મેળવી લીધલ છે અને નામદાર કોર્ટ ના હુકનો અનાદર કરેલ છે?
૪. શું વાદી આંક-૩૦ ની અરજીમાં માંગ્યા મુજબની દાદા (અ), (બ) અને (ક) મેળવવા હકકદાર છે?

13. In the present case, it is the case of the plaintiff that her maternal uncle, Abdul Mahmad, was the tenant of the suit premises at a monthly rent of Rs.8/-, and that the plaintiff was residing with the said tenant. So far as the tenancy of Abdul Mahmad is concerned, the defendant has admitted in the written statement that Abdul Mahmad was the tenant. Therefore, it stands proved that Abdul Mahmad was the tenant of the suit premises.

13.1 In the present suit, the plaintiff has sought the following relief in paragraph 12(a) of the plaint:

“અ: આ કામના વાદીને જુનાગઢ શહેરમાં નવા ધાંચીવાળામાં આવેલ પ્રતિવાદીના માલીકીના મકાનમાં માસીક રૂ.૮/- ના ભાડાથી તેના નાનાના વખતથી ભાડુત તરીકે રહે છે, જેથી આ ભાડુતી જગ્યા કાયદેસરની પ્રક્રિયા કર્યા વિના કે, સક્ષમ અદાલતનું હુકમનામું મેળવ્યા વિના આ જગ્યા ખાલી કરાવવા કે, વાદીનો કબજો છોડાવવા પ્રતિવાદીને કે, તેના કુટુંબીજનોકે, કુલ મુખત્યારને કે, અન્ય કોઈ ત્રાહીત વ્યક્તિને હકક કે, અધિકાર નથી તેવું વિજ્ઞાપન આપવા અરજ છે.”

13.2 Thus, the case of the plaintiff is that she has acquired the status of a tenant in respect of the suit premises.

13.3 It is an undisputed fact that the original tenant of the suit premises was Abdul Mahmad. It is also the case of the plaintiff that she had been residing in the suit premises along with the said Abdul Mahmad during his lifetime and has continued to reside therein even after his death.

13.4 The defendant has admitted that the plaintiff's maternal

uncle, Abdul Mahmad, was the tenant of the suit premises. The plaintiff claims that, having resided with the original tenant during his lifetime and having continued to reside in the suit premises after his death, she has become a tenant by virtue of law. In these circumstances, the provisions of Section 5(11)(c) of the Rent Act become relevant, which provide as under:

“5. Definitions :-

...

(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

...

(c) (i) in relation to premises let for residence, any member of the tenants' family residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court”

13.5 In the present case, the provisions of Section 28 of the Rent Act are attracted, which read as under:

“28. Jurisdiction of Courts :-

(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provisions, be within its jurisdiction, -

(a) in Greater Bombay, the Court of Small Causes, Bombay,
(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887 , such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction,

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of the Part apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other Court shall have jurisdiction to entertain any such suit, proceeding or application or to deal (2) (a) Notwithstanding anything contained in clause (aa) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Cause Courts Act, 1887 , and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area.

(b) Where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it to proceed from the stage at which it was withdrawn.

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for the purposes of such suit, proceeding or application, as the case may be, deemed to be the Court of Small Cause.

Explanation:- In this Section "proceeding" does not include an execution proceeding arising out of a decree passed before the coming into operation of this Act."

13.6 Therefore, the question that arises for determination is whether the plaintiff has acquired the status of a statutory tenant within the meaning of Section 5(11)(c) of the Rent Act.

13.7 Section 28 of the Rent Act specifically provides that where any claim or question arises under the provisions of the Rent Act, the Courts specified under Section 28(a), (aa), and (b) of the Act shall have jurisdiction to decide such

claim or question.

13.8 In the present case, the plaintiff has specifically claimed that she is a statutory tenant within the meaning of Section 5(11)(c) of the Rent Act. Such a claim arises under the provisions of the Rent Act and, therefore, is required to be adjudicated under the said Act. Consequently, the jurisdiction to determine such a claim vests in the Courts specified under Section 28(a), (aa), and (b) of the Rent Act and herein, Civil Judge, Junior Division Court is there and plaintiff has specifically titled that "જુનાગઢના નામદાર પ્રીન્સી. સીની. સીવીલ જજ સાહેબની કોર્ટમાં, જુનાગઢ"

13.9 Therefore, the learned Trial Court, i.e., the Court of the Senior Civil Judge, had no jurisdiction to adjudicate upon the question as to whether the plaintiff had acquired the status of a statutory tenant under Section 5(11)(c) of the Rent Act. This view is fortified by the judgment of the Hon'ble High Court of Maharashtra in *C. J. Ghadiali and Others v. Z. B. Wadiwalla*, decided on 24.07.1981, wherein, in paragraph 15, the Hon'ble High Court has held as under:

“15. Whether the plaintiff is a tenant under section 5(11)(c) is a question which cannot be decided by the City Civil Court and hence by this Court sitting in appeal from a decree in a suit filed in the City Civil Court. Prayer (a) which is the real substantial prayer in the plaint, cannot be granted in view of section 5(11)(c), in the sense that it includes a right to enter and enjoy premises. In the circumstances the judgment and decree of the learned trial Judge is liable to be set aside.”

13.10 Therefore, the learned Trial Court had no jurisdiction to decide the aforesaid question. On that ground alone, the suit was liable to be dismissed.

- 13.11** However, assuming for the sake of argument that the Trial Court had the requisite jurisdiction, it is necessary to examine whether the findings recorded by the Trial Court are sustainable in law and on facts.
- 13.12** To establish her claim under Section 5(11)(c) of the Rent Act, the plaintiff was required to prove that she was a member of the tenant's family and that she was residing with the tenant at the time of, or within three months immediately preceding, the death of the tenant.
- 13.13** In the plaint, the plaintiff has pleaded that her maternal uncle died on 01.10.198
- 13.14** In support of her case, the plaintiff has produced a ration card at Exh.48. However, the said ration card stands in the name of Sitarbhai, though it contains the name of the plaintiff. The said document does not establish that the plaintiff was residing with her maternal uncle at the time of his death.
- 13.15** The plaintiff's date of birth is 12.04.1969. Therefore, it was incumbent upon her to prove that she was residing with her maternal uncle at the time of his death. However, no documentary or other cogent evidence has been produced to establish that she was residing with him when he died.
- 13.16** The plaintiff has also produced Exh.61, which stands in the name of Hanif Satar Abdulla and not in the name of the plaintiff. On the contrary, the defendant has admitted in the cross-examination that the son of the plaintiff's maternal uncle was residing in the suit premises at the time of the maternal uncle's death. Defendant No.1 has stated in his cross-examination, "સાક્ષી જણાવે છે કે માત્ર સિતારભાઈ રહેતા

હતી..."

13.17 Thus, the plaintiff has failed to produce any documentary evidence to establish that she was residing with her maternal uncle at the time of his death, as required under Section 5(11)(c) of the Rent Act.

13.18 The plaintiff has been examined at Exh.41. In her cross-examination, she has admitted that: "...એ વાત ખરી છે કે મારા સંતાનોનો જન્મ કોડીનારમાં થયેલ છે. મારી મોટી દિકરી આઠ ધોરણ સુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ છે. મારી નાની દિકરી છ ધોરણ સુધી કોડીનારની સરકારી સ્કુલમાં ભણેલ છે.... કોડીનારમાં મારે રેશન કાર્ડ છે જેમાં અમો પતિ પત્ની તથા અમારા બાળકોના નામ છે... મારે બે રેશનકાર્ડ છે એક જુનાગઢનું છે અને એક કોડીનારનું છે...મારા લગ્ન થયા બાદ હું કોડીનાર ગયેલ હતી પરંતુ આવક જાવક ચાલુ હતી.

13.19 Further, she has admitted that "મે ભાડું ક્યારેય દેવા માટે ગઈ હોય અને મને ભાડુત તરીકે મારા નામની પહોંચ આપવામાં આવી હોય તેવું બનેલ નથી. એ વાત ખરી છે કે જે પરત આવેલ મની ઓર્ડર મેં રજુ કરેલા છે તે સતાર અબ્દુલ ભાડુત હતા ત્યારના છે.

13.20 Further, she has admitted that " એ વાત ખરી છે કે દાવો દાખલ કર્યો ત્યારે આ વાદગ્રસ્ત મકાનમા રહેતી ન હતી પરંતુ મનાઈ હુકમની અરજીનો ઠરાવ આવ્યો ત્યારે હું તે મકાનમાં રહેવા ગયેલ."

13.21 Further she has admitted that "મારા બન્ને દિકરાઓના જુનાગઢમા અભ્યાસ કરતા તે બતાવતા કોઈ દસ્તાવેજો મારી પાસે નથી....અવેશનો જન્મ જુનાગઢ હોસ્પિટલમાં થયેલો તેનો કોઈ દાખલો મારી પાસે નથી."

13.22 Her husband has deposed vide Exh.77 and he has admitted that " મારા દીકરા અને દીકરીનો જન્મ કોડીનાર ખાતે થયેલો. મારી મોટી દીકરી કોડીનાર ખાતે આઠ ધોરણ સુધી ભણેલી છે.

13.23 Further, he has admitted that “ સવાલ: તમારા પત્ની જુનાગઢ રહેતા તો તમારા બાળકો કોડીનાર એકલા રહેતા હતા? જવાબ: મારા છોકરા મોટા થયા પછી મારી પત્ની જુનાગઢ આવેલી અને તે આવતી જતી રહેતી હતી. હવે જણાવુ છુ કે લગ્ન પછી મારી પત્ની જુનાગઢ રહેતી હતી અને છોકરાઓ મોટા થતા છોકરા કોડીનાર આવેલા... આ ચારેય છોકરાઓના નામ કોડીનારમા રેશનકાર્ડમાં હતુ.

13.24 The defendant has examined Ezaz Mahida at Exh.87. In his examination-in-chief, he has deposed that the plaintiff was not residing with Satarbhai. During his cross-examination, the witness stated that:“ એ વાત ખરી નથી કે અમારા ઘરમાથી બેઠા બેઠા દાવાવાળું મકાન જોઈ શકાય નહીં.”

13.25 The defendant has also examined another witness at Exh.88, who has deposed that the plaintiff was not residing with Satarbhai. In his cross-examination, the witness has stated as under: “એ વાત ખરી નથી કે રશીદાબેન નાનપણથી આ જ વિસ્તારમાં રહેતા હતા.”

13.26 The same fact has also been deposed to by the witness, Husenbhai, at Exh.92. In his cross-examination, the witness has stated as under: “સાહેદ જણાવે છે કે રશીદાબેનના મામા સતારભાઈ તે ઈકબાલભાઈના ભાડુત હતા.”

13.27 The same fact has also been deposed to by the witness, Munirbhai Hasanbhai Padaya, at Exh.93.

13.28 Thus, the following facts emerge from the evidence on record:

- A.** The plaintiff's maternal uncle, Abdul Mahmad, was the tenant of the suit premises;
- B.** Sitarbhai was the son of the said tenant, Abdul Mahmad;

- C. The plaintiff possesses ration cards pertaining to both Junagadh and Kodinar.
- D. The plaintiff has admitted that her children received their education at Kodinar.
- E. The plaintiff has failed to produce any documentary evidence to establish that she was residing with her maternal uncle at the time of his death.
- F. Had the plaintiff been residing in the suit premises at Junagadh, the names of her children would ordinarily have been included in the ration card pertaining to Junagadh.
- G. The plaintiff could have produced school records of her children from Junagadh to substantiate her claim of residence.
- H. The plaintiff could also have produced the birth certificates of her children issued at Junagadh in support of her case.
- I. The plaintiff has not produced any rent receipt to show that rent in respect of the suit premises was accepted from her or that any rent receipt was issued in her name.
- J. The plaintiff's own cross-examination reveals that, after her marriage, she was residing at Kodinar.

13.29 Therefore, in the aforesaid circumstances, the findings recorded by the learned Trial Court on Issue No.1 are found to be just, proper, and in accordance with the evidence on record. Likewise, the findings recorded by the learned Trial Court on the remaining issues are also legal, proper, and do not warrant any interference by this

Appellate Court.

13.30 Thus, upon an overall appreciation of the pleadings, oral as well as documentary evidence, and the provisions of the Rent Act, this Court is of the considered opinion that the plaintiff has failed to establish that she acquired the status of a statutory tenant under Section 5(11)(c) of the Rent Act. Even otherwise, the learned Trial Court lacked jurisdiction to adjudicate the said issue. Assuming that it had such jurisdiction, the findings recorded by the learned Trial Court are based on a proper appreciation of the evidence and settled principles of law. Consequently, the findings recorded by the learned Trial Court on all the issues are legal, proper, and do not warrant any interference by this Appellate Court.

13.31 Therefore, considering the aforesaid facts and circumstances, Point Nos. 8(1) to 8(5) are answered accordingly, as discussed hereinabove, and therefore, the following order is passed so far as Point No. 8(6) is concerned.:

:: ORDER ::

1. This appeal is hereby **dismissed** and therefore, the Judgment and Decree dated 07.02.2024 passed by the Ld. 3rd Additional Senior Civil Judge, Junagadh, in Regular Civil Suit No.156/2016 is hereby **confirmed and upheld**.
2. Taking into consideration the circumstances of the present case, the appellant/s shall bear the entire costs of this appeal.
3. Pursuant to Order 41 Rule 37 of the Code of Civil

Procedure, 1908, a certified copy of the judgment of this appeal shall be sent to the court below for the necessary procedures as stipulated in Order 41, Rule 37 of the Code of Civil Procedure, 1908.

4. Any interim order, if issued, shall be merged into the final order.
5. Application/s, pending if any, shall stand disposed of accordingly.
6. The original record shall be promptly returned to the Ld. Trial Court.
7. The decree shall be drawn accordingly.

Pronounced in the open Court today
on this 31st day of July, 2026.

Date : 31.07.2026
Junagadh

(B. G. Dave)
Principal District Judge
Junagadh
[GJ00469]