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

Regular Civil Appeal No. 54 of 2024

Exh.:- _____

<u>Appellants (Original Plaintiffs) :</u>				
1	Heirs of deceased Ganatra Vrujlal Laxmidas who has expired pendente lite: Joined vide application at Exh.12			74/B, Aditinagar, D-4, Near Annpurna Temple, Timbavadi, Junagadh
	Kiranben Vrujlal Ganatra	46	Household work	
2	Belim Hanifbhai Jikarbhai	—	Business	Kalva Chowk, Street of Diamond Talkies, Junagadh
<u>V E R S U S</u>				
<u>Respondents (Original Defendant Nos.2, 3, 4) :</u>				
1	The State of Gujarat Summons Through: The Government Pleader	—	—	Office of Government Pleader, Court Building, Junagadh
2	Administrator Mosque Makbara Committee and Mamlatdar	—	—	Janta Chowk, Junagadh
3	Chairman Mosque Makbara Committee	—	—	Office of the Deputy

	and Deputy Collector			Collector, Limda Chowk, Junagadh
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Appearance :-

Ld. Advocate **Mr. J. H. Dhamani** for appellants.

Ld. AGP **Mr. J. M. Devani** for respondent Nos.1, 2 and 3.

-:: J U D G M E N T ::-**1. The facts of the case of the plaintiffs :-**

- 1.1 Herein, parties are referred as plaintiffs or defendant as they stood in Regular Civil Suit No.280/2012.
- 1.2 It is pleaded that the plaintiffs have taken on rent a shop situated at Kalwa Chowk, in the lane of Diamond Talkies, Junagadh, at a monthly rent of Rs. 600/-, and have been carrying on our business therein. The boundaries of the said shop is more specifically pleaded in the said para 1.
- 1.3 It is further pleaded that the plaintiffs, have taken the aforesaid shop on rent from Defendant No. 1, Haji Sharifkhan Habibkhan, who represented that he was an authorized person of the trust along with Defendants Nos. 2, 3, and 4, and that he was managing and administering the aforesaid mosque on behalf of Defendants Nos. 2, 3, and 4. Acting on this representation, the plaintiffs had received the said premises on rent from him. The rent receipts are annexed herewith along with the documentary list.
- 1.4 It is further pleaded that Defendant No. 1 informed the plaintiffs that he was managing the aforesaid mosque situated at Kalwa Chowk and that he was the authorized

representative of Defendants Nos. 2, 3, and 4. He further stated that he was responsible for the administration of all the shops on their behalf. He also informed the plaintiffs that four shops had been constructed within the premises of the mosque, which was established for members of the Muslim community. Representing himself as the authorized representative of Defendants Nos. 2, 3, and 4, Defendant No. 1 collected a sum of Rs. 2,00,000/- from the plaintiffs as a security deposit and fixed the monthly rent at Rs. 600/-.

1.5 It is further pleaded that Defendant No. 1 further represented that these shops had been constructed with the consent of Defendants Nos. 2, 3, and 4, and that the deposit amount was being collected to recover the construction expenses. Out of the four shops so constructed by Defendant No. 1, the plaintiffs had agreed to take on rent the shop described in Paragraph 1 above. Since then, the plaintiffs have been regularly paying a monthly rent of Rs. 600/- to Defendant No. 1. The rent receipts are annexed with the documentary list. The details of the Rs. 2,00,000/- security deposit paid to Defendant No. 1 on behalf of Defendants Nos. 2, 3, and 4 are that Rs.1,00,000/- was deposited with the defendant No.1 on 20.12.2007 and Rs.1,00,000/- was deposited on 31.12.2007 with the defendant No.1 on behalf of the defendant Nos.2, 3 and 4.

1.6 It is further pleaded that thus, the plaintiffs have taken on rent the shop described by the four boundaries in

Paragraph 1 above from Defendant No. 1. Defendant No. 1 has constructed a total of four shops within the mosque premises. The remaining three shops were also constructed by Defendant No. 1 by incurring substantial expenditure and with the consent of Defendants Nos. 2, 3, and 4. These facts clearly establish that Defendant No. 1 was acting as the authorized representative of Defendants Nos. 2, 3, and 4.

- 1.7 It is further pleaded that accordingly, the plaintiffs took the said premises on rent from the defendants on 03/12/2007. Since that date, the plaintiffs have been in continuous, uninterrupted, and peaceful possession of the rented shop and have been carrying on the business of selling cold drinks therein up to the present day, thereby earning their livelihood
- 1.8 It is further pleaded that the mosque complex situated at the aforesaid location is meant for the worship of members of the Muslim community. Within the mosque premises, there is a water tank (Hoj) and the mosque is used for offering prayers. On the eastern side of the mosque, seven shops had earlier been constructed for the maintenance and upkeep of the mosque. The names of these shops are, respectively: Ellora Hair Art, Galaxy Hair Art, Galaxy Hair Art, Taj Cold Drinks, Rupali Hotel, Milan Consumers, and Milan Pan, making a total of seven shops situated on the eastern side of the mosque. All of these shops form part of the mosque complex and have been let out on rent.
- 1.9 It is further pleaded that apart from these, on the western

side, besides the shop occupied by the plaintiffs, there are three other shops, and in the same row there is one additional shop, which also forms part of the mosque complex and has likewise been let out on rent. Thus, all the shops constructed within the mosque complex are rented out, and the rent received from all such shops is paid to the mosque. The rent receipts in this regard are annexed with the documentary list.

- 1.10** It is further pleaded that in view of the above facts, the plaintiffs, are the lawful tenants of the defendants, and Defendant No. 1 is the duly authorized person to let out the shops on rent. Therefore, although Defendants Nos. 2, 3, and 4 had no authority to take any action against the plaintiffs without following the due process of law, on 29/07/2009, the plaintiffs were served with a notice bearing No. Treasury/Mosque/Wasi/118/2009 issued by Defendant No. 3, the Administrator of the Mosque Maqbara Committee, through the office of the Mamlatdar.
- 1.11** It is further pleaded that Defendants Nos. 3 and 4 are functioning respectively as the Administrator and Chairman of the aforesaid Mosque Maqbara Committee and are ex-officio Trustees of the Trust by virtue of their offices. Even assuming that Defendant No. 1 had committed any unlawful act, Defendants Nos. 3 and 4, being merely trustees of the mosque, have neither the right nor the authority to issue such a notice or to evict the plaintiffs from the rented shop without following the due process of law.

- 1.12 It is further pleaded that this is because, under the existing Trust, they merely hold the positions of Trustee, Administrator, and Chairman. They have not been vested with any statutory authority to evict tenants from rented premises. Consequently, the notice issued by Defendant No. 3 is wholly illegal, unlawful, and is not binding upon the plaintiffs.
- 1.13 It is further pleaded that the shop was rented to the plaintiffs by Defendant No. 1 and if Defendant No. 1 has failed to deposit the rent collected from the plaintiffs with Defendants Nos. 2, 3, and 4, or has failed to deposit the security deposit of Rs.2,00,000/- received from the plaintiffs with them, then Defendants Nos. 2, 3, and 4 are at liberty to recover such amounts directly from Defendant No. 1.
- 1.14 It is further pleaded that if Defendants Nos. 2, 3, and 4 wish to recover the monthly rent from the plaintiffs, or to recover the amount of Rs. 2,00,000/- paid by the plaintiffs to Defendant No. 1, they may recover the same from Defendant No. 1. The plaintiffs have no objection whatsoever to such recovery.
- 1.15 It is further pleaded that in these circumstances, if the plaintiffs are forcibly dispossessed from the rented premises without following the due process of law, the sum of Rs.2,00,000/-, which was collected from the plaintiffs by Defendant No. 1 as a security deposit on behalf of Defendants Nos. 2, 3, and 4, is likely to be lost. Further, if the rented shop is vacated without following the

due process of law, family of the plaintiffs would be rendered destitute and deprived of its livelihood.

- 1.16** It is further pleaded that the plaintiffs are ready and willing to pay the monthly rent, which the plaintiffs have been regularly paying to Defendant No. 1, directly to Defendants Nos. 2, 3, and 4. Whether Defendant No. 1 had the authority to collect the rent or to receive the security deposit is a matter requiring adjudication on the basis of evidence. If, before such issues are decided, the defendants dispossess the plaintiffs from the rented premises, the plaintiffs shall suffer irreparable loss, serious mental harassment, and their family would be left without any means of subsistence.
- 1.17** It is further pleaded that earlier, the plaintiffs had filed Regular Civil Suit No. 190 of 2009 seeking the aforesaid reliefs. However, before instituting the said suit, notice under Section 80 of the Code of Civil Procedure had been waived. Subsequently, in view of the judgment of the Hon'ble Gujarat High Court, it was held that where no interim injunction had been granted by the Court, the matter could not be treated as urgent, and therefore service of a notice under Section 80 Code of Civil Procedure, 1908, was mandatory before institution of the suit. Consequently, the plaint came to be returned for presentation after compliance with the statutory requirement.
- 1.18** It is further pleaded that thereafter, the present defendants were duly served with a legal notice by Registered A.D.

Post. However, since the defendants failed to act in accordance with the contents of the said notice, the cause of action for filing the present suit has continuously and repeatedly arisen.

1.19 Therefore, the plaintiffs have sought the reliefs more specifically outlined in para 14 of the suit plaint wherein, they have prayed for a declaration to declare that the plaintiffs are lawful tenants of the shop situated at Kalwa Chowk, Diamond Talkies Lane, Junagadh, the boundaries whereof are described in Paragraph 1 of the plaint, at a monthly rent of Rs. 600/-, and that Defendant No. 1, acting as the authorized representative of Defendants Nos. 2, 3, and 4 on behalf of the Trust, accepted a security deposit of Rs. 2,00,000/- and monthly rent of Rs. 600/-, issuing rent receipts accordingly. Additionally, it is further prayed that this Hon'ble Court be pleased to declare that the notice dated 29/07/2009, bearing No. Treasury/Mosque/Wasi/118/2009, issued by Defendant No. 3, is illegal, bogus, null and void, and not binding upon the plaintiffs. It is further prayed that this Hon'ble Court declare that Defendants Nos. 2, 3, and 4 have no right or authority to initiate any action pursuant to the said notice, and that, being merely Trustees, Administrator, Chairman, or office-bearers of the Trust, they are not legally entitled to take any further action on the basis of the said notice. It is further prayed that pending the hearing and final disposal of the present suit, this Hon'ble Court may be pleased to grant a permanent injunction restraining the defendants, their agents, servants, attorneys, officers,

representatives, or any person acting under or through them, from interfering with the plaintiffs' possession of the shop described in Paragraph 1 of the plaint, from obstructing the plaintiffs in carrying on their business or trade therein, or from preventing their ingress or egress to and from the shop. It is further prayed that the defendants be permanently restrained from taking any further action for eviction of the plaintiffs or for getting the shop vacated on the basis of the illegal notice dated 29/07/2009, bearing No. Treasury/Mosque/Wasi/118/2009, without following the due process of law and also prayed for any other relief which deems fit and cost of the suit.

2. Defense of the defendants:

2.1 Defense of the defendant No.1:

2.2 The defendant No.1 had failed to file his reply and hence, it was ordered on 17.01.2013 below the adjournment application at Exh.23 that time limit to file written statement was over and hence, such application was rejected. During the pendency of the suit, the defendant No.1 had expired as declared vide purshis at Exh.34 by the Ld. Advocate for the defendant No.1 and accordingly, the suit was ordered to be abated against the defendant No.1 by virtue of order passed below Exh.1 on 05.07.2023.

2.3 Defense of the defendant Nos.3 and 4:

2.4 The defendant Nos.3 and 4 have appeared through their Ld. Advocate and filed their written statement vide **Exh.19** wherein they have denied the averments made in the suit

plaint.

- 2.5 It is contended that the plaintiffs' suit is neither bona fide nor legally maintainable and is not entitled to any relief.
- 2.6 It is further contended that the plaintiffs have sought a declaration that they are tenants along with consequential reliefs. Such relief can only be granted by the Rent Court. Since the plaintiffs have instituted the suit before this Hon'ble Court in its Civil Jurisdiction, it is not admitted that this Hon'ble Court has jurisdiction to entertain and try the present suit.
- 2.7 It is further contended that the suit property belongs to the registered Public Trust named "કાળવા ગેઈટ મરજુદ". The sole trustee of this Public Trust is "ગવર્નમેન્ટ ઓફ ગુજરાત". On behalf of the Government of Gujarat, the Deputy Collector, Junagadh acts as the Chairman of the Trust by virtue of his office, and the Mamlatdar acts as the Administrator by virtue of his office. Thus, the affairs of the Trust are managed by the Government of Gujarat.
- 2.8 It is further contended that from this point of view: (a) The said Public Trust is a necessary and proper party to the present proceedings. (b) Further, in a suit of the present nature, instituted without obtaining the permission of the Charity Commissioner under Sections 50 and 51 of the Bombay Public Trusts Act, the suit is liable to be dismissed. Moreover, the Charity Commissioner is also a necessary and proper party to the present proceedings. (c) The suit property belongs to the registered Trust "કાળવા ગેઈટ મરજુદ", bearing Registration No. B-625. Since the

said registered Trust has not been joined as a party to the present suit, the suit is not maintainable. The administration of the mosque is carried out by Defendants Nos. 4 and 3 under the supervision of the Mosque Maqbara Committee.

- 2.9** It is further contended that in the absence of the above two necessary parties, no effective judicial pronouncement can be made. Further, Defendant No. 2, namely the State of Gujarat, has also not been impleaded in its capacity as Trustee. For all these reasons, the plaint is not a legally constituted plaint, and the necessary parties have not been joined. Therefore, the present suit, in its existing form, is not maintainable in law.
- 2.10** It is further contended that there is no privity of contract between the plaintiffs and the Public Trust. The owner of the property, namely the Public Trust, has never let out any premises to the plaintiffs. There does not exist the relationship of landlord and tenant between the plaintiffs and the Public Trust. The allegation that the plaintiffs are tenants of the suit premises is wholly false and fabricated. The allegation that Defendant No. (1) let out the premises to the plaintiffs are also contrary to the truth.
- 2.11** It is further contended that from the plaint itself, it is evident that the plaintiffs are an unauthorized possessor and that he is a trespasser in respect of the suit premises. Such a trespasser cannot seek or obtain an injunction or any other relief against the real owner. The Public Trust owes no legal duty towards the plaintiffs, since they are not tenants of the Public Trust.

- 2.12 It is further contended that Defendant No. (1), Haji Sharifkhan, is neither an office-bearer nor an authorized person of the Trust. He is neither an employee nor a servant of the Trust. He has no lawful right or authority to perform any work on behalf of the Trust or to collect any money. The present suit has been filed in collusion between the plaintiffs and Defendant No. (1).
- 2.13 It is further contended that the genuineness of any of the documents produced by the plaintiffs at Exhibit 6, being Mark 6/1 to Mark 6/20, is not admitted. The allegation that those documents are genuine is also denied. Not only that, but even if such documents exist, they are not binding upon the Trust. It appears that the plaintiffs and Defendant No. (1) have collusively created these bogus documents solely for the purpose of filing the present suit.
- 2.14 It is further contended that even if the plaintiffs relies upon these documents as genuine, in Mark 6/1 itself, Defendant No. (1), Sharifkhan, has been described only as a " સેવક " of the mosque. He has not been described therein as the manager or an authorized officer of the Trust property. The document merely states that Defendant No. (1) is an honorary " સેવક ". None of the documents disclose that Sharifkhan was ever the administrator or manager of the Trust. It is humbly requested that these important circumstances be taken into consideration.
- 2.15 It is further contended that in Mark 6/1, it appears that, besides the plaintiffs, another person named Belim Hanif has been shown as an executant of the document. However, he has not been joined as a party to the present

proceedings. For this reason also, the suit is not maintainable. The plaintiffs' suit is liable to be dismissed on the grounds of non-joinder of necessary parties and mis joinder of the party.

- 2.16** It is further contended that there is no Trust or institution known as " કાળવા ચોક મસ્જીદ ". The name of trust institution is "કાળવા ગેઈટ મસ્જીદ", which is a Public Trust registered under Registration No. B-625 under the Bombay Public Trusts Act. The administration of the Trust can be carried out only by its trustees and by no one else. Defendant No. (1) has no position whatsoever in the Trust. Every mosque has thousands of worshippers/devotees who come to offer prayers, and Defendant No. (1) does not acquire any authority merely on that account.
- 2.17** It is further contended that it appears that the plaintiffs have abused the process of this Hon'ble Court and, in collusion with Defendant No. (1), without obtaining the permission of the Trust or any competent authority, demolished the wall of the Trust property and committed trespass thereon. By filing the present suit, the plaintiffs and Defendant No. (1) seek to obtain the approval of this Hon'ble Court so as to legalize their illegal acts. Such relief cannot be claimed under law. It is their humble submission that the Court cannot legalize an unauthorized and illegal act.
- 2.18** It is further contended that upon learning of these illegal acts committed by the plaintiffs and Defendant No. (1), the Trust, through its employee Kishor Abhani, lodged a criminal complaint against both of them at the B-Division

Police Station on or about 28-07-2009 for offences including damage to the Trust property, unauthorized occupation, and misappropriation. The said criminal case is presently pending before the competent Court. The complaint has been registered as First C.R. No. 261/2009 under Sections 447, 426, 114, etc., of the Indian Penal Code against the plaintiffs and Defendant No. (1). The plaintiffs have deliberately suppressed all these material facts. The plaintiffs have not approached this Hon'ble Court with clean hands. The Trust owes no obligation whatsoever towards the plaintiffs.

- 2.19** It is further contended that the plaintiffs have no legal or justiciable cause of action to institute the present suit. The plaintiffs have failed to specifically state in the plaint the exact date on which the alleged cause of action arose. The present suit, in its existing form, is not maintainable in law. The plaintiffs have no legal relationship whatsoever with the Trust.
- 2.20** It is further contended in respect to Paragraph 2 of the plaint that the plaintiffs alleges that Defendant No. (1) represented himself to be an authorized person of the Trust. These allegations are false. The Trust has no knowledge that the plaintiffs took the shop on rent from Defendant No. (1), or paid him Rs. 2,00,000/-, or that the monthly rent was fixed at Rs. 600/-, or that Defendant No. (1) issued rent receipts.
- 2.21** It is further contended that the Trust maintains its accounts through the Treasury and the Bank. The work of letting out Trust property is carried out only after a resolution passed

by the Chairman and the Administrator of the Trust. Rent is collected only by the salaried employees appointed by the Trust, and the Trust maintains proper and lawful accounts.

2.22 It is further contended that the Trust has never received nor has there ever been deposited any amount as alleged by the plaintiffs. Whenever rent is received by the Trust, an official printed receipt of the Trust is issued. Despite being aware of all these facts, it appears that the plaintiffs and Defendant No. (1) have jointly committed the present criminal acts.

2.23 It is further contended that the plaintiffs have made a representation in the plaint which is akin to the proverb that a person himself asks for permission to pluck brinjals from another's field and himself grants that permission in the name of the owner. The plaintiffs have no legal status whatsoever. The lawful receipts issued by the Trust bear serial numbers. The alleged receipts produced by the plaintiffs contain no such particulars, nor do they bear the signature or seal of the Trust. The law confers no rights upon a trespasser. A person having no vested right cannot maintain a suit.

2.24 It is further contended that the plaintiffs' prayer that they should not be evicted until it is decided whether such unauthorized person had authority to collect a deposit or rent is wholly absurd. The plaintiffs have, on mere imagination, pleaded that Defendant No. (1) possessed such authority and seeks an order permitting the continuation of an illegal act until such imaginary issue is

decided. Such a claim is not merely strange but is itself illegal.

2.25 It is further contended that the plaintiffs, being a trespasser, have no right to insist upon due process of law. There is not even any requirement to serve notice upon a trespasser. The trustees of the Trust are not private individuals but responsible officers of the State of Gujarat. Without approaching such authorities or obtaining their consent, the plaintiffs commits illegal acts and then seeks protection from this Hon'ble Court to continue such unauthorized acts until the disposal of the suit. Such a prayer does not fall within the equitable discretion governing the grant of an injunction.

2.26 It is further contended that the plaintiffs have no prima facie case. Their attempts to cause irreparable loss to a Public Trust and to become an unauthorized occupant of property situated at a prime and congested locality like Kalwa Chowk cannot be regarded as deserving of any discretionary relief. The suit is not maintainable under the provisions of the Specific Relief Act. The plaintiffs have no right to institute the present suit.

2.27 It is further contended that the conduct of the plaintiffs appears to be fraudulent. This is evident from the fact that, till date, the plaintiffs have not filed any criminal complaint against Defendant No. (1) for cheating, which itself demonstrates the collusion between them.

2.28 It is further contended that the notice issued by the Trust is lawful, within the authority of the Trust, and was necessary for the protection of the Trust. The plaintiffs are not

entitled to seek any declaration that such notice is illegal or to claim any relief in that regard. The plaintiffs should remain satisfied with the consequences of his own illegal acts and should not unnecessarily involve the Trust. The plaintiffs have no right to institute any suit against the Trust.

2.29 For the above reasons, all the allegations made in the plaint are false, fabricated, and concocted. The plaintiffs are not even aware of the correct name of the Trust, nor does they know who its trustees are, yet they pretend as though they have entered into a contract with the Trust. Such a suit is not maintainable in law. All the allegations contained in the plaint are denied as false.

2.30 It is further contended that for the foregoing reasons, it is humbly prayed that this Hon'ble Court may be pleased to reject the plaint at the threshold under Order VII Rule 11 of the Code of Civil Procedure.

2.31 Thus, prayed to dismiss the suit with special cost.

Defense of the defendant No.2:

2.32 The defendant No.2 had appeared through Ld. AGP and filed an affidavit vide Exh.59 declaring that the fact that they adopt the written statement filed by the defendant Nos.3 and 4 vide Exh.19 as the written statement for the defendant No.2.

3. Evidence of the parties :

3.1 The following evidence has been presented by the plaintiffs in both oral and documentary forms:-

3.2 Oral evidence of the plaintiffs :

Exh.50	Deposition of plaintiff No.1 – Ganatra Vrujlal Laxmidas
Exh.58	Deposition of plaintiff No.2 – Belim Hanifbhai Jikarbhai
Exh.72	Deposition of plaintiffs' witness – Rustamkhan Bhikhumiya Sumara Inspector of Gandhinagar Wakf Board
Exh.88	Deposition of plaintiffs' witness – Ismailkhan Haji Sarifkhan Pathan Son of Sarifkhan Pathan who was doing sweeping work in the Masjid
Exh.92	Deposition of plaintiffs' witness – Anilkumar Chimanlal Chauhan Senior Assistant of P.G.V.C.L, Central Sub Divisional Office, Junagadh

3.3 Documentary evidence of plaintiffs :-

Exh.63	True copy of Notarized writing dated 09.12.2007 executed by Sevak of Kalava Chowk Masjid: Sharifkhan Habibkhan in favour of (1) Vrujlal Laxmidas Ganatra i.e. plaintiff No.1 (2) Belim Hanifbhai Jikarbhai i.e. plaintiff No.2			
Exh.64	True copy of handwritten writing dated 20.12.2007 executed by Haji Sharifkhan Habibkhan in favour of Vrujlal Laxmidas Ganatra i.e. plaintiff No.1 as a mode of payment receipt of Rs.2,00,000/- for shop repairing and Rs.1,00,000/- towards slab of Masjid			
Exh.65	True copy of handwritten writing dated 31.12.2007 executed by Haji Sharifkhan Habibkhan in favour of Vrujlal Laxmidas Ganatra i.e. plaintiff No.1 and Belim Hanifbhai Jikarbhai i.e. plaintiff no.2 as a mode of payment receipt of Rs.2,00,000/- for shop repairing and Rs.1,00,000/- towards slab of Masjid were already given and remaining Rs.1,00,000/- were given on that day			
Exh.66	True copies and copies of rent receipts in the name of Vrujlal Laxmidas Ganatra issued by Kalva Chowk Masjid Haji Sharifkhan Habibkhan			
	Sr. No.	Date	Period of rent	Amount
	1	02.05.2009	01.04.2009 to 30.04.2009	600
	2	01.06.2009	01.05.2009 to 31.05.2009	600

	3	02.02.2008	01.01.2008 to 31.01.2008	600
	4	02.06.2008	01.05.2008 to 31.05.2008	600
	5	02.05.2009	01.04.2009 to 30.04.2009	600
	6	01.06.2009	01.05.2009 to 31.05.2009	600
	7	02.05.2009	01.04.2009 to 30.04.2009	600
	8	01.06.2009	01.05.2009 to 31.05.2009	600
	9	02.05.2009	01.04.2009 to 30.04.2009	600
	10	01.06.2009	01.05.2009 to 31.05.2009	600
	11	02.02.2008	01.01.2008 to 31.01.2008	600
	12	02.06.2008	01.05.2008 to 31.05.2008	600
	13	02.02.2008	01.01.2008 to 31.01.2008	600
	14	02.06.2008	01.05.2008 to 31.05.2008	600
	15	02.02.2008	01.01.2008 to 31.05.2008	600
	16	02.06.2008	01.05.2008 to 31.05.2008	600
Exh.73	Papers produced in respect to Junagadh Kalwa Chowk Masjid, Junagadh (produced by witness at Exh.72)			
Exh.93	True copy of Debit Gate Pass dated 31.05.2008 of Gujarat Electricity Board (produced by witness at Exh.93)			
Exh.94	True copy of Rojkam dated 31.05.2008 carried by officials of P.G.V.C.L. (produced by witness at Exh.93)			
Exh.95	True copies of payment receipts dated 31.05.2008 showing consumer name Gnatra Vrajlal Laxmidas i.e. plaintiff No.1 (produced by witness at Exh.93)			
Exh.96	True copy of Statement of Rates issued by P.G.V.C.L. to Ganatra Vrajlal i.e. plaintiff No.1 (produced by witness at Exh.93)			
Exh.97	True copy of payment receipt dated 28.05.2008 showing consumer name Gnatra Vrajlal L. i.e. plaintiff No.1 (produced by witness at Exh.93)			
Exh.98	True copy of application for getting electricity connection showing the name of Ganatra Vrajlal Laxmidas i.e. plaintiff No.1 (produced by witness at Exh.93)			
Exh.99	True copy of rent receipt dated 01.04.2008 for rent from 01.03.2008 to 31.03.2008 (produced by witness at Exh.93)			

Exh.100	True copy of Electricity Bill of October-November-2007 showing name of Haresh Parshotam Karia (produced by witness at Exh.93)
Exh.101	Copy of Voter ID Card of Ganatra Vrajlal Lakshmidas i.e. plaintiff No.1 (produced by witness at Exh.93)
Exh.102	Copy of Ration Card of Ganatra Vrajlal Laxmidas i.e. plaintiff No.1 (produced by witness at Exh.93)
Exh.103	Copy of license issued by Junagadh Municipal Corporation in the name of Jalaram Soda Center showing the name of Vrujlal Laxmidas Ganatra (produced by witness at Exh.93)
Exh.104	Attested copy of Rent note in favour of Vrajlal Laxmidas Ganatra (produced by witness at Exh.93)
Exh.105	True copy of payment receipt dated 31.05.2008 showing the name of Gnatra Vrajlal Laxmidas (produced by witness at Exh.93)
Exh.106	True copy of Electrical Contractor's Completion and Test Report (produced by witness at Exh.93)
Exh.110	Copy of notice issued by the Administrator of Mosque Makbara Committee and Mamlatdar, Junagadh i.e. defendant no.3 addressed Vrajlal Laxmidas Ganatra i.e. plaintiff No.1
Exh.111	Office copy of notice dated 20.03.2012 u/s.80 of the Code of Civil Procedure, 1908 issued by Ld. Advocates Dhamani Associates addressed upon (1) Administrator, Mosque and Makbara Committee and Mamlatdar Office, Junagadh i.e. defendant No.3 (2) Chairman of Mosque Makbara Committee and Deputy Collector, Junagadh i.e. defendant No.2 (3) Haji Sharifkhan Habibkhan i.e. defendant No.1
Exh.112	3-Postal payment receipts of RPAD
Exh.113	3-Postal Acknowledgment Cards of RPAD
Exh.107	Closing purshis

3.4 Evidence of the defendants :

The defendant No.1 had failed to adduce any evidence and therefore, right of the defendant No.1 was closed by noting in the

proceeding on 27.09.2024 and in the same way, right of the defendant Nos.2 to 4 was closed by noting in the proceeding on 04.10.2024.

4. Issues framed by the court below.

4.1 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.39** under the Order 14 of the Code of Civil Procedure Code, 1908 (*hereinafter be referred as 'the Code'*).

૧. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદી નં.૧ મોરક મકબરા સમિતીના અધિકૃત વહીવટદાર છે?
૨. શું વાદી પુરવાર કરે છે કે, તેઓએ કાયદેસર પ્રક્રિયાથી દાવાવાળી મિલકત ભાડે રાખેલ છે?
૩. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
૪. શું હુકમ અને હુકમનામું?

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

1. In Negative.
2. In Negative.
3. In Negative.
4. As per final order.

5. After considering the materials available on record, the **3rd Additional Senior Civil Judge, Junagadh** (hereinafter referred to as “**Ld. Trial Judge**”) has rejected the plaintiffs’ suit. Aggrieved by this judgment and decree, the plaintiffs have filed this appeal.

6. 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.

7. 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.

- (1) Whether the judgment & decree of Regular Civil Suit No.280/2012 which is in question is arbitrary, capricious, perverse and illegal, and judgment & decree required to be interfered ?
- (2) Whether the Trial Court has failed to consider the fact that the defendant No.1 was authorized to let such property on the behalf of other defendants?
- (3) Whether the Trial Court failed to consider the fact that in lawful way, such premises had been let to the plaintiff?
- (4) Whether the Trial Court failed to consider the evidence in respect to the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (in short "Rent Act")?
- (5) What order should be passed in this matter ?

8. 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) As per final order.

As to maintainability of appeal :

8.2 In the present case, it is the specific pleading of the plaintiff in Paragraph 5 of the plaint that the suit premises were let out to him on 31.03.2007. Therefore, the provisions of Gujarat Act No. 27 of 2001 would apply, which provide as follows:

“(iv) Guj. Act No. 27 of 2001.-In order to boost the house building activities and to encourage the landlord to let premises, it is considered necessary to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, so as to provide that the provisions of the Act shall not apply for a period of ten years from the date of the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Second Amendment) Act, 2001 to the premises constructed after such commencement as well as to the existing premises which are self-occupied or vacant on or after such commencement, and are let after such commencement.”

8.3 Therefore, the said Act, i.e., the Rent Act, shall not apply for a period of ten years where the premises were vacant on the date of commencement of Act No. 27 of 2001 and were let out after such commencement.

8.4 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] : ”

- 8.5 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 plaintiffs)

9. The learned advocate for the appellants/original plaintiffs has filed written arguments vide **Exh.25**, reiterating the facts stated in the appeal memo as well as the stand taken in the suit before the Trial Court.
- 9.1 It is argued out that brief of the case of the appellant is that they had taken on rent a shop situated at Kalwa Chowk, Diamond Talkies Lane, Junagadh, at a monthly rent of Rs. 600/- and have been carrying on their business therein. The size of the said shop is approximately 8 feet × 9 feet.

- 9.2** It is further argued out that they had taken the said shop on rent from Defendant No. 1, Haji Sharifkhan Habibkhan, who was the authorized representative of Respondent Nos. 1, 2 and 3. Sharifkhan represented that he was managing the mosque on behalf of Respondent Nos. 1 to 3. It is further stated that in December 2007, the appellants paid a sum of Rs. 2,00,000/- to Sharifkhan as a security deposit and that the monthly rent was fixed at Rs. 600/-, which was regularly paid to Sharifkhan.
- 9.3** It is further argued out that with the consent of Respondent Nos. 2 to 4, Sharifkhan had constructed four shops in the mosque complex and was functioning as the authorized representative of Respondent Nos. 1 to 3. Accordingly, the appellants took the shop on rent on 03.12.2007 and have been carrying on their business therein continuously and uninterruptedly since then.
- 9.4** It is further argued out that apart from them, other persons were also allotted shops on rent in the said mosque complex. However, on 29.07.2009, the respondents issued a notice bearing No.Treasury/Mosque/Wasi/118/2009 to the appellants. The said notice was served only upon Appellant No. 1 and not upon Appellant No. 2.
- 9.5** It is further argued out that Respondent Nos. 2 and 3 are merely trustees and are not the owners of the property. Therefore, without following the due process of law, they have neither the right nor the authority to evict the appellants from the rented premises. Hence, the aforesaid notice issued by them is illegal, unlawful, and not binding

upon the appellants.

- 9.6 It is further argued out that they are ready and willing to continue paying the rent regularly and that they had issued a notice to the respondents expressing their willingness. Since the respondents failed to comply with the same, the appellants were constrained to institute the present suit.
- 9.7 It is further argued out that iIn the suit, the appellants prayed for a declaration that, on the basis of the notice dated 29.07.2009 issued by Respondent Nos. 2 and 3, the respondents are not entitled to take any further action against the appellants. They also sought a permanent injunction restraining the respondents from interfering with the appellants' business, obstructing their ingress and egress to the shop, or taking any action against them pursuant to the said notice dated 29.07.2009.
- 9.8 It is further argued out that after the institution of the above suit, summons were served upon the defendants, who had filed their Written Statement at Exhibit 19. The defendants contended that the suit property belongs to a public trust registered in the name of Kalwa Gate Mosque, bearing Public Trust Registration No. B-625. It was further contended that the Government of Gujarat is the sole trustee of the said public trust; that the Deputy Collector, Junagadh, acts as the Chairman of the Trust in his official capacity on behalf of the Government, and the Mamlatdar, in his official capacity, functions as its Administrator. On this basis, it was contended that the suit suffered from non-joinder of necessary parties. It was further denied that the

Trust had ever let out the suit premises on rent, and accordingly, dismissal of the plaintiffs' (present appellants') suit was prayed for.

- 9.9** It is further argued out that on the basis of the pleadings of both sides, the learned Trial Court framed issues at Exhibit 39.
- 9.10** It is further argued out in respect to issue No.1 that this issue ought to have been decided in favour of the plaintiffs. However, the learned Trial Court committed a serious error in holding that Defendant No. 1 was not the authorized administrator of the Mosque and Makbara Committee.
- 9.11** It is further argued out that in the present case, the appellants had paid a sum of Rs.2,00,000/- to the original Defendant No. 1, Haji Sharifkhan Habibkhan. The writing executed on stamp paper evidencing the said payment has been produced by the appellants at Exhibit 64.
- 9.12** It is further argued out that apart from the shop in dispute, Sharifkhan had also constructed two other shops. Since he required funds for the construction of those shops, he accepted Rs. 2,00,000/- from the plaintiffs/appellants and was also receiving a monthly rent of Rs. 600/-.
- 9.13** It is further argued out that in order to establish their case, the appellants examined the responsible officer of Paschim Gujarat Vij Company Limited (PGVCL). In his deposition at Exhibit 92, the PGVCL officer stated that the rent agreement and rent receipts had been produced before the electricity company, and that the name of Sharifkhan appeared therein as the landlord. He further deposed that,

on the basis of those documents, an electricity connection was sanctioned to the appellants. The entire deposition of the PGVCL officer is at Exhibit 92, while the documents relating to the electricity connection are on record at Exhibits 93 to 106.

- 9.14** It is further argued out that thus, the agreement executed between the appellants and the original Respondent No. 1 has been produced at Exhibit 63; proof of payment of Rs.2,00,000/- to the original Defendant No. 1, Sharifkhan, has been produced at Exhibits 64 and 65; and the rent receipt has been produced at Exhibit 66.
- 9.15** It is further argued out that these documents clearly establish that the appellants paid the substantial amount of Rs. 2,00,000/- to Defendant No. 1 on behalf of Defendant Nos. 2, 3 and 4.
- 9.16** It is further argued out that Exhibit 103 is the trade license issued by the Junagadh Municipal Corporation, which stands in the name of the original plaintiffs, Vrajlal Laxmidas Ganatra, and demonstrates that he has been carrying on business from the suit premises since the year 2008. In addition, the rent agreement has been produced at Exhibit 104. In view of all these facts and documentary evidence, the learned Trial Court ought to have held that the plaintiffs were lawful tenants of the suit premises.
- 9.17** It is further argued out that Mark 4/21 is the letter/legal notice dated 22.07.2009 issued by the Administrator of the Mosque and Makbara Committee from the office of the Mamlatdar, Junagadh. A perusal of the said notice reveals

that the Administrator himself recorded that Sharifkhan had received Rs. 2,00,000/- and had handed over possession of the premises. This document lends substantial support to the appellants' case.

9.18 It is further argued out that among Respondent Nos. 1, 2 and 3, Respondent No. 1 is the Government, whereas Respondent Nos. 2 and 4 are the responsible office-bearers of the Trust.

9.19 It is further argued out that if the original Defendant No. 1, Sharifkhan, was not an authorized person, then several important questions arise namely from whose funds did Sharifkhan construct the shops; in what capacity was Sharifkhan in possession of the shops; in what capacity was Sharifkhan carrying out the construction of the shops, including laying the roof slabs, within the mosque/trust premises.

9.20 It is further argued out that had the Respondent Nos. 2 and 3 entered the witness box, these issues could have been clarified. However, the representatives of the Government failed to explain how the shops came to be constructed, who constructed them, the expenditure incurred for such construction, whether any resolution had been passed before constructing the shops, from whom the Government obtained permission for the construction, and why no estimate, sanctioned plan, layout plan, or any other relevant document relating to the construction has been produced by the respondents.

9.21 It is further argued out that before issuing the notice dated

29.07.2009 to the present appellants/original plaintiffs, it was incumbent upon the respondents to establish whether the Trust had passed any resolution authorizing such action. No evidence has been produced to show that whether any resolution was passed by the Trust before issuing the notice; who was authorized to issue the notice; who was authorized to institute legal proceedings; when the meeting of the Trust was convened; whether any agenda had been circulated; whether the resolution was passed unanimously; and which person was authorized, and by whom, to represent the Trust in litigation.

- 9.22** It is further argued out that since Respondent Nos. 2 and 3 did not step into the witness box, all these material questions have remained unanswered.
- 9.23** It is further argued out that this clearly establishes that Sharifkhan received a substantial amount of Rs. 2,00,000/- from the plaintiffs, constructed a new shop, and thereafter let out the said shop to the plaintiffs at a monthly rent of Rs. 600/-. The shop has had an electricity connection for several years. Even for obtaining the electricity connection, the affidavit and rent agreement were executed by the original Defendant No. 1, Sharifkhan, acting as the authorized representative of Respondent Nos. 1, 2 and 3.
- 9.24** It is further argued out that the defendants neither entered the witness box to rebut this evidence nor produced any documentary evidence to contradict the same.
- 9.25** It is further argued out that therefore, the learned Trial Court committed a grave error in deciding Issue No. 1

against the plaintiffs and in holding that Sharifkhan was not the authorized administrator of the Mosque and Makbara Committee.

9.26 It is further argued out in respect to issue No.2 that this issue also ought to have been decided in the affirmative by the learned Trial Court. However, the learned Trial Court committed a grave error in deciding the issue against the appellants.

9.27 It is further argued out that in fact, the construction of the newly built shops had been entrusted by Respondent Nos. 2 and 3 to Haji Sharifkhan Habibkhan, who constructed the said shops after receiving a sum of Rs.2,00,000/- from the appellants towards the construction cost. The person who was in possession and control of the shops himself executed the rent agreement and issued rent receipts to the appellants.

9.28 It is further argued out that if Sharifkhan was not an authorized person, then the representatives of the Government ought to have produced the sanctioned plans, construction estimates, expenditure details, and other relevant documents to establish that the shops had been constructed by the Government at its own expense. However, instead of doing so, the respondents failed to produce any evidence whatsoever contradicting the appellants' case.

9.29 It is further argued out that the respondents have not explained in what capacity Sharifkhan undertook the construction of the shops or from what source the

construction expenses were incurred. Respondent Nos. 2 and 3 did not even enter the witness box to lead evidence on these material aspects.

- 9.30** It is further argued out that if Sharifkhan was not an authorized person, then it is inconceivable that either the Deputy Collector or the Mamlatdar would personally collect rent. If that be so, the obvious question arises as to who has been collecting the rent. The respondents have failed to answer this question as they have deliberately abstained from entering the witness box.
- 9.31** It is further argued out that accordingly, this issue also stands duly proved in favour of the appellants.
- 9.32** It is further argued out that moreover, had the Mamlatdar or any responsible officer of the Mosque and Makbara Committee entered the witness box, they could have explained under which budgetary head the Government incurred the construction expenses for the new shops; whether the expenditure was duly audited; who executed the construction work; under whose authority and on the basis of which sanctioned plans the construction was undertaken; and how many new shops were constructed.
- 9.33** It is further argued out that since neither the Mamlatdar, the Deputy Collector, nor the Administrator of the Mosque and Makbara Committee could furnish answers to these material questions, all the defendants deliberately avoided entering the witness box.
- 9.34** It is further argued out that in these circumstances, the appellants place reliance upon the judgment of the Hon'ble

Supreme Court in Vidhyadhar v. Manikrao, wherein it has been held that where a party fails to enter the witness box and does not subject himself to cross-examination, the Court is entitled to draw an adverse inference against such party.

- 9.35** It is further argued out that in the present case also, none of the defendants entered the witness box in order to suppress the true facts of the case. Therefore, Issue No. 2 ought to have been decided in favour of the plaintiffs. The learned Trial Court has thus committed a serious error in deciding the said issue against the appellants.
- 9.36** It is further argued out in respect to issue Nos.3 and 4 that having regard to the above circumstances, it is evident that the work relating to collection of rent, construction of shops, and handing over possession of the shops situated in the mosque complex at Kalwa Chowk was being carried out by the original Defendant No. 1, Sharifkhan Habibkhan.
- 9.37** It is further argued out that if Sharifkhan had no authority whatsoever, then why did Respondent Nos. 2 and 3 permit or direct him to construct the shops and let them out on rent? Why would any private individual construct shops on Government property and thereafter let them out on rent unless he was duly authorized to do so?
- 9.38** It is further argued out that if Sharifkhan had no authority either to construct the shops or to let them out, and if he had not constructed the shops in question, then several material questions remain unanswered: Who was in

possession of the shops prior to the appellants; What rent was being charged; Who were the previous tenants; Who let out the adjoining shops; Who has been collecting rent from those shops even today;

- 9.39** It is further argued out that none of these questions has been answered because Respondent Nos. 2 and 3 failed to adduce any oral evidence.
- 9.40** It is further argued out that in these circumstances, although the appellants' suit deserved to be decreed, the learned Trial Court erroneously dismissed it. The impugned judgment and decree are therefore liable to be set aside.
- 9.41** It is further argued out that the learned Trial Court has failed to properly appreciate and evaluate the oral and documentary evidence produced on record, thereby committing a serious error.
- 9.42** It is further argued out that although the appellants fully established their case and proved that the premises had been let out by an authorized person, the learned Trial Court erroneously held that such person was not authorized.
- 9.43** It is further argued out that the appellants had also relied before the learned Trial Court upon the decision of the Hon'ble Supreme Court in *Vidhyadhar v. Manikrao* (1999), wherein it has been laid down that where a party does not enter the witness box and refuses to subject himself to cross-examination, an adverse inference ought to be drawn against such party. Despite this settled principle of law, the

learned Trial Court failed to consider the said binding precedent and passed the impugned judgment, which is manifestly erroneous and liable to be set aside.

9.44 It is orally argued by the learned Advocate for the appellants that, at the relevant time, the appellant was not aware as to whether the said person was authorized or not, and that one out of the three shops was given to the appellant.

9.45 It is further argued that, on the basis of the rent note and rent receipts, the appellant applied to the G.E.B., and the G.E.B. allotted an electricity meter to the appellant. The appellant examined an official of the G.E.B. as a witness at Exh.92 and produced the relevant documents at Exhs.93 to 106. Therefore, it is not the case of the appellant that he had entered the premises unauthorizedly. Rather, it is the case of the appellant that if he is evicted after following the due process of law, he has no objection.

9.46 It is further argued that an electricity meter has been allotted to the appellant, that he has been carrying on his business in the said shop, and that he has produced the rent receipts issued by the said Sharifkhan and has relied upon the documents produced on record.

9.47 It is further argued that the payments made by the appellant to Sharifkhan and the writings executed in respect thereof have been produced at Exhs.64 and 65.

9.48 It is further argued that an important fact is that the Government got these three shops constructed, i.e., the Mosque Makbara Committee constructed the three shops,

and the administration of the said shops was handed over to the said person. However, neither the concerned person nor any representative of the Committee entered the witness box to depose as to who had constructed the shops, who had let them out on rent, or how much expenditure had been incurred for their construction. Therefore, unless such witness or defendant enters the witness box, the allegations raised by the defendants cannot be substantiated.

- 9.49** It is further argued that, before the Trial Court, the plaintiffs had contended that none of the defendants had entered the witness box. According to the defendants themselves, defendant No.1 was not authorized to let out the shop on rent. Such a fact could have been proved only if the concerned person had entered the witness box and deposed as to how the three shops were constructed and how they came to be let out on rent.
- 9.50** It is further argued that each rent receipt is for an amount of Rs.600/-, and the said receipts have also been produced on record.
- 9.51** It is further argued that the first writing executed by Sharifkhan has been produced at Exh.63 (Mark 4/17), and another writing has been produced at Exh.64. The original documents have also been produced on the record of the suit.
- 9.52** It is further argued that the notice issued by the defendant-State to plaintiff No.1 has been produced at Exh.110.
- 9.53** It is further argued that the first writing was executed on

03.12.2007, and the appellants have been in occupation of the suit premises since the date of the said writing. Thereafter, the notice was issued by the defendant on 29.07.2009. The appellant obtained the G.E.B. connection on 31.05.2008, and the rojkam of the place, along with the electricity bills, has also been produced on record.

- 9.54** It is further argued that the defendants did not produce the relevant evidence before the Trial Court. It is submitted that three new shops were subsequently constructed, and the defendants were in possession and management of seven shops from which they used to collect rent. It is further submitted that the three shops constructed by Sharifkhan were let out to the plaintiffs by him, and had the defendants produced the relevant record, the factual position would have become clearer.
- 9.55** It is further argued that the said defendants did not enter the witness box and that, as per the judgment of the Hon'ble Supreme Court, where a party fails to enter the witness box, an adverse inference can be drawn against such party.
- 9.56** It is further argued that, since the said defendants neither adduced evidence nor entered the witness box, the plaintiffs were deprived of an opportunity to cross-examine them. It is submitted that if the matter is remanded and the defendants are permitted to lead evidence, the plaintiffs would also get an opportunity to cross-examine them. Therefore, the plaintiffs could adduce evidence only to the limited extent available to them.

9.57 It is further argued that Sharifkhan had constructed the three shops, supervised the construction until its completion, paid the relevant bills, and thereafter let out the shops on rent. Therefore, any third person would naturally believe him to be an authorized person. It is further submitted that all three shops were newly constructed, that Sharifkhan got them constructed while representing himself to be the administrator of the Trust, and that until then no objection or action was taken by the defendants.

9.58 It is further argued that the said defendants are estopped from disputing the authority of Sharifkhan.

9.59 Thus, it is prayed that the appeal be allowed, the impugned Judgment and Decree passed by the Trial Court be quashed and set aside, and the suit of the plaintiffs be decreed.

9.60 Therefore, in view of the aforesaid written submissions, it is most respectfully prayed that this Hon'ble Court may be pleased to allow the present appeal, set aside the judgment and decree dated 28.11.2024 passed by the learned Trial Court in Regular Civil Suit No. 280 of 2012, and further be pleased to decree the original suit filed by the appellants, together with such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

10. Arguments of the respondent Nos.1 to 3: (original defendant No.2 to 4)

10.1 Learned AGP for the respondent Nos.1 to 3/original

defendant Nos.2 to 4 has argued that the Trial Court has passed a just and proper order.

- 10.2** It is orally argued by the learned Advocate, Mr. J. M. Devani, for the defendants that the suit property belongs to the Mosque and Makbara Committee and that the Committee is administered by an Administrator, while the Deputy Collector acts as its Chairman. Therefore, the administration and management of the Committee vest in them.
- 10.3** It is further argued that it is the case of the appellants that the shop belonging to the Mosque and Makbara Committee was lawfully let out to them. However, when the matter was adjudicated by the learned Trial Court, no document was produced to establish that the appellants were the lawful occupants of the suit shop. Although the appellants have contended that a rent note was executed by the Mosque and Makbara Committee, no such document has been produced on record.
- 10.4** It is further argued, by referring to the parties to the suit, that one Sharifkhan was a party before the Trial Court but expired during the pendency of the proceedings, whereupon his legal heirs were brought on record. It is the case of the appellants that the said Sharifkhan had executed the writings in their favour and had been collecting rent from them.
- 10.5** It is further argued, by referring to the status of Sharifkhan, that he was merely a person engaged in sweeping the mosque premises and filling water. He was neither a trustee nor authorized by the Trust or by any member of

the Mosque and Makbara Committee to let out the shops or execute any document on its behalf.

- 10.6** It is further argued that the alleged writings were executed by Sharifkhan, who expired during the pendency of the suit before the Trial Court. Thereafter, the son of Sharifkhan was examined as a witness on behalf of the plaintiffs. During his cross-examination by the defendants, he was asked whether his father had ever been a trustee of the Mosque and Makbara Committee, to which he replied in the negative. He was further asked about the nature of his father's duties, and he replied that his father was engaged in sweeping the mosque premises, filling water, and performing similar duties.
- 10.7** It is further argued that Sharifkhan was merely a servant rendering charitable services in good faith. Ultimately, there is nothing on record to establish or even suggest that the appellants are the authorized occupants of the suit premises or the lawful tenants thereof.
- 10.8** It is further argued that, after considering all the aforesaid facts and evidence, the learned Trial Court rightly dismissed the suit, and the findings recorded therein are fully supported by the evidence available on record.
- 10.9** It is further argued that the defendants examined an official of the G.E.B., through whom the relevant facts were brought on record.
- 10.10** It is further argued that, upon acquiring knowledge of the unauthorized occupation, the defendants, being the administrators of the Mosque and Makbara Committee, issued the necessary notice. It is submitted that the

Administrator is responsible for protecting and maintaining the property, keeping accounts of its income and expenditure, and paying the electricity charges, as there was a common electricity connection for the mosque. It is further submitted that, prior to the construction of the shops, the said land was lying vacant.

- 10.11** It is further argued that the keys of the suit property used to remain with the sweeper, Sharifkhan, and that he had handed over possession of the suit property to the appellants. It is submitted that the defendants were not aware of these facts, and that upon acquiring knowledge thereof, they immediately took appropriate action by issuing the requisite notice. It is further argued that it is not the settled position of law that mere inaction or silence on the part of the defendants for a considerable period amounts to permission or authorization.
- 10.12** It is further argued that the concerned defendant was functioning as the Administrator and Mamlatdar and was entrusted with the administration of several other properties as well as various official responsibilities. Therefore, it was not possible for him to have personal knowledge of every such incident at the relevant time.
- 10.13** It is further argued that the defendants have established their case through the cross-examination of the plaintiffs' witnesses, whose testimony supports the case of the defendants and forms part of the record. It is further submitted that when the official of the P.G.V.C.L. was examined, he was specifically asked whether the Corporation had verified the legality or authenticity of the

writing produced before it while granting the electricity connection.

10.14 It is further argued that the alleged writing is itself bogus, as it was executed by a person who had neither the authority to execute any document nor the authority to issue any rent receipts. Nevertheless, the said person was issuing rent receipts, and the present plaintiffs allegedly paid an amount of Rs.2,00,000/- to Sharifkhan, who had no authority or legal status in relation to the Mosque and Makbara Committee. It is further submitted that there is nothing on record to show that the Mosque and Makbara Committee was ever informed about the installation of the electricity meter. It is also argued that the electricity bills pertaining to the suit shop were paid by the concerned occupants, whereas the bills relating to the remaining shops were paid by Sharifkhan, and the charges for the common electricity meter were paid by the Committee pursuant to resolutions passed in its meetings.

10.15 Thus, prayed to dismiss the appeal with costs.

11. Arguments of the respondent No.2 : (original defendant No.3)

11.1 The respondent No.2/original defendant no.3 has argued out encircling it's objections vide **Exh.29** filed in the appeal and has further argued out that the Trial Court has passed the just and proper order.

11.2 It is argued out that the mosques and mausoleums (makbaras) under the control and management of the Mosque and Makbara Committee, situated in Junagadh

City, are registered public trusts under the Bombay Public Trusts Act, bearing Registration Nos. B-620 to B-631. Among them, the mosque registered as Trust No. B-625 is situated at Kalwa Chowk, Junagadh City, adjacent to the Police Chowki.

- 11.3** It is argued out that the sole trustee of the said registered public trust is the Government of Gujarat, and the Deputy Collector, Junagadh, acts as the Chairman of the trust on behalf of the State Government. The Mamlatdar, Junagadh (City), holds the office of Administrator of the trust by virtue of his official position. The mosques covered under Registration Nos. B-620 to B-631 are administered under the Mosque and Makbara Committee, and, on behalf of the Government, the Administrator manages and administers these mosques.
- 11.4** It is argued out that no employee has been appointed by the Mosque and Makbara Committee for the supervision or maintenance of the Kalwa Chowk Mosque. However, one Haji Sharifkhan Habibkhan, without any authority and without the permission of the Committee, has been managing the affairs of the mosque. Although he is neither an office-bearer of the Mosque and Makbara Committee nor a trustee of the mosque, and despite not having been granted any authority by the Government to administer the trust, and without obtaining the consent of the Mosque and Makbara Committee, he illegally and unauthorisedly constructed three shops behind the Kalwa Chowk Mosque, in the lane adjoining Diamond Talkies, without obtaining the permission of either the trust or the Junagadh

Municipal Corporation.

- 11.5** It is argued out that out of these three shops, he delivered unauthorised possession of one shop to the plaintiff upon accepting a premium of Rs. 2,00,000/- and fixed a monthly rent of Rs. 600/-. By doing so, Haji Sharifkhan Habibkhan committed acts seriously prejudicial to the rights, interests, and property of the trust.
- 11.6** It is argued out that consequently, with a view to initiating legal action against such unauthorised acts, this office issued Notice No.Treasury/Mosque/Vashi/118/09 dated 26.03.2009, calling upon Haji Sharifkhan Habibkhan to furnish his explanation within seven days regarding the said unauthorised activities. A copy of the said notice was also served upon the plaintiff (Ganatra Vrajlal Laxmidas), directing him to vacate the disputed premises. Thereafter, by Letter No.Treasury/Mosque/Vashi/118/2009 dated 29.07.2009, the plaintiff was directed to vacate and hand over possession of the premises within five days. Challenging the said notice, the plaintiffs have instituted the present suit.
- 11.7** It is argued out that Haji Sharifkhan Habibkhan had no authority whatsoever to transfer or allot any property belonging to the trust registered under the Public Trusts Act. Nevertheless, by illegally dealing with the trust property in favour of Ganatra Vrajlal Laxmidas, both of them engaged in unlawful transactions concerning the trust land. Consequently, acting in the capacity of Administrator of the trust and Mamlatdar, Junagadh, a police complaint was lodged against both of them at B-Division Police

Station, Junagadh, vide Letter No. Treasury/Vashi/M.M./8/09 dated 18.08.2009.

- 11.8 It is argued out that the plaintiff, Ganatra Vrajlal Laxmidas, had thereafter instituted the present suit and upon it's dismissal, preferred the present appeal. It is, therefore, respectfully prayed that the present appeal be dismissed.

REASONS

As regards issue Nos.1 to 3:

૧. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદી નં.૧ મોસ્ક મકબરા સમિતીના અધિકૃત વહીવટદાર છે?
૨. શું વાદી પુરવાર કરે છે કે, તેઓએ કાયદેસર પ્રક્રીયાથી દાવાવાળી મિલકત ભાડે રાખેલ છે?
૩. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?

12. In the present case, it is the case of the plaintiffs that the suit property, as described in Paragraph 1 of the plaint, was taken on rent by way of the execution of an agreement, and that such agreement was executed by defendant No.1 on behalf of defendant Nos.2 to 4. Therefore, it is an admission on the part of the plaintiffs that the agreement was required to be executed on behalf of defendant Nos.2 to 4, and accordingly, it was executed by defendant No.1 on their behalf.

- 12.1 The said agreement has been produced at Exh.63, and it provides as follows:

“ કાળવા ચોકની મસ્જીદમાં વજુ માટેના હોજની બાજુમાં ફાજલ પડેલ જગ્યામાં દુકાન બનાવેલ છે. અને આ દુકાન હું ગણાત્રા વૃજલાલ લક્ષ્મીદાસને ઠંડાપીણા બનાવીને વેંચવા માટે નીચે મુજબ મસ્જીદમાં રીપેરીંગ ખર્ચ માટે નાણાની જરૂરીયાત હોવાથી માસિક રૂ. ૬૦૦/- ભાડુ અને મસ્જીદના સમારકામ જેવું કે મસ્જીદનો આગળનો સ્લેબ તેમજ પેશ

ઈમામનો રૂમ, નમાજુઓ માટેની બેઠક વ્યવસ્થા અને બંને સ્લેબ ઉપર ગ્લેઝ ટાઈલ્સ તેમજ તે માટે ઇલેક્ટ્રીક ફીટીંગ ઉપકરણો વગેરે ખરીદી માટે પૈસાની જરૂરત હોય તે માટે મસ્જીદ્માં ઉપરોક્ત ખર્ચ માટે જે ખર્ચ થશે તે આ દુકાનના ભાડુત વૃજલાલ લક્ષ્મીદાસ ગણાત્રા આપશે અને આ કામના ખર્ચ મુજબ હમે હમે આપતા રહેશે.

મસ્જીદના સેવકશ્રી શરીફખાનની જવાબદારી છે. આ કરાર મેં મારી શુદ્ધ બુધ્ધીથી કોઈ જાતના વિના દબાણે, વિના કેફે લખી આપેલ છે. અને નોટરી કરાવી નં.૨ ને સાક્ષી કરેલ છે. જેની અમો બંને પાલન કરવા બંધાયેલા છીએ.”

12.2 Therefore, the agreement specifically states that it was executed by defendant No.1. However, nowhere in the agreement is it stated that defendant No.1 was authorized to execute the said agreement on behalf of the Trust.

12.3 In the present case, defendant No.1 has expired, and consequently, the suit has abated against him. An order to that effect was passed on 05.07.2023.

12.4 It is an undisputed fact that defendant No.1 expired before he could enter the witness box. At the same time, defendant No.1 had not filed any written statement. The plaintiffs have examined the son of defendant No.1 at Exh.88, and the said witness has specifically deposed that his father was merely carrying out cleaning work in the said Masjid. He has deposed as : "મારા પિતા કાળવા ચોકમા આવેલ મોસ્ક મકબરા કમીટીની મસ્જીદમા સફાઈની કામગીરી કરતા હતા..”

12.5 Further, said witness says that “મને નીશાની ૬/૧ બતાવામા આવે છે તે જોઈને કુટુંબ કે તેમા મારા પિતાની સહી નથી.”

12.6 Further in cross examination, said witness says that:

“એ વાત ખરી છે કે હું મજૂરી કામ કરીને ગુજરાન ચલાવું છું. એ વાત ખરી છે કે હું કોઈ નોકરી કરતો નથી. એ વાત ખરી છે કે મુસલમાન હોવાના નાતે હું કાળવા ચોકમાં આવેલ મસ્જીદમાં ઈબાદત કરવા જાઉં છું અને રોવાના કામો કરું છું. એ વાત ખરી છે. કે લાઈટ બીલ ભરવાનું કે પાણી આપવાનું કામ હું સેવાના ભાગ રૂપે કરું છું. એ વાત ખરી છે કે મેં વાદી કે અન્ય કબજેદાર પાસેથી કોઈ રકમ લેતો નથી. તેઓ મને ધર્માદા તરીકે જે રકમ આપે તે રકમ લઈને મસ્જીદમાં સેવાર્થે આપી દઉં છું. એ વાત ખરી છે કે મારા પિતાશ્રી પણ નોકરી કરતા ન હતા અને મજૂરી કામ કરતા હતા. એ વાત ખરી છે કે મને કે મારા પિતાશ્રીને ટસ્ટ દ્વારા ટસ્ટી તરીકે નિમણુંક કરી હોય તેવું બન્યું નથી તે જ રીતે મામલતદાર શ્રી દ્વારા કે સરકાર દ્વારા મસ્જીદ અન્વયે કોઈ કામગીરી મને કે મારા પિતાશ્રીને સુપ્રત કરી હોય તેવું બન્યું નથી. એ વાત ખરી છે કે મેં કે મારા પિતાશ્રીએ વાદી પાસેથી રા. ૨,૦૦,૦૦૦/- રીપેરીંગ ખર્ચના તથા રૂ. ૧,૦૦,૦૦૦/- સ્લેબના મેળવ્યા નથી. એ વાત ખરી છે કે આવી કોઈ રકમ મને કે મારા પિતાશ્રીને મેળવવાનો કોઈ હકક અધિકાર ન હતો.”

- 12.7** Therefore, the said witness, who is the son of deceased defendant No.1, has specifically deposed that his father was merely carrying out cleaning work in the said Mosque. He has further stated that his father was neither employed as a servant nor engaged in any other capacity. He has also admitted that his father was not appointed by the Trust, the Mamlatdar, or the Government, and that no administrative responsibility of the said Mosque had ever been entrusted to him.
- 12.8** The said witness has further specifically admitted that his father was not authorized to collect any amount, as alleged by the plaintiffs.
- 12.9** Since it is the case of the plaintiffs that the agreement was executed by an authorized person, the burden squarely lies

upon them to establish that the executant of the agreement at Exh.63 was duly authorized by the Trust to execute the same on its behalf. The fundamental legal maxim governing the burden of proof is *Ei incumbit probatio qui dicit, non qui negat*, which means, "the burden of proof lies upon him who asserts, not upon him who denies." In the present case, the plaintiffs have failed to discharge the said burden.

12.10 Further, the legal maxim *Nemo dat quod non habet* means that "no one can give what they do not have." In the context of property and contract law, it signifies that a person cannot confer a better title or authority than that which he himself possesses.

12.11 Therefore, in the absence of proof that defendant No.1 had the requisite authority to execute the agreement on behalf of the Trust, no enforceable rights could have been created in favour of the plaintiffs. Consequently, the Trial Court has rightly decided the issues.

12.12 It is the contention of the plaintiffs that since they had been paying the electricity bills, the Trust is estopped from disputing their rights under the agreement.

12.13 The plaintiffs examined an official of the Paschim Gujarat Vij Company Limited (PGVCL) at Exh.92. During cross-examination, the said witness admitted as follows:

“એ વાત ખરી છે કે વિજ કનેક્શન લેતી વખતે કોઈ પણ વ્યક્તિ દ્વારા બોગસ અને ઉપજાવી કાઢેલા દસ્તાવેજો રજુ કરવામાં આવે તો તેની સામે ફોજદારી ફરીયાદ કરવામાં આવે છે તેનો મને ખ્યાલ છે. મને આંક ૯૪ બતાવવામાં આવે છે તે જોઈને કહું છું કે તેમાં મસ્જીદનું નામ જણાવવામાં આવેલ નથી. મને આંક ૯૬ બતાવવામાં આવે છે તે જોઈને કહું છું કે

તેમાં મકરાણી મસ્જીદનો ઉલ્લેખ કરવામાં આવેલ છે. એ વાત ખરી છે કે મારી પાસેના રેકર્ડ ઉપરથી હું જણાવું છું કે મિલ્કતના માલીક મસ્જીદ છે. મારી પાસે જોડાણ લેતી વખતે મસ્જીદે સરીફખાનને અધિકૃત કરતો કોઈ પત્ર રજુ કરેલ હોય તેવું બનેલ નથી. મસ્જીદના લેટર હેડ ઉપર અથવા મસ્જીદના સહી સીકકા વાળો કોઈ કાગળ વિજ જોડાણ લેતી વખતે રજુ થયેલ હોય તેવું રેકર્ડ મારી પાસે નથી. મને આંક ૮૯૮ બતાવવામાં આવે છે તે જોઈને કહું છું કે તેમાં સરીફખાન બાપુના અંગુઠાનું નિશાન છે જ્યારે આંક ૯૯ માં સરીફખાન હબીબખાનની સહી છે. આંક ૯૮ તથા આંક ૯૯ માં કરેલ અંગુઠાનું નિશાન કે સહી અમારા કચેરીના અધિકૃત વ્યક્તિ સમક્ષ કરવામાં આવેલ હોય તેવો ઉલ્લેખ નથી. એ વાત ખરી છે કે આંક ૯૮ અને આંક ૯૯ વાળા દસ્તાવેજમાં કોનો અંગુઠો કે સહી છે તે અમારી કચેરીના અધિકૃત વ્યક્તિ સમક્ષ કરેલ ન હોય ચોક્કસ પછે કહી શકાય નહીં કે તે કોણે કરેલ છે. મને આંક ૧૦૩ બતાવવામાં આવે છે તે જોઈને કહું છું કે તેમાં મસ્જીદનો કોઈ જગ્યાએ ઉલ્લેખ નથી. મને આંક ૧૦૪ બતાવવામાં આવે છે તે જોઈને કહું છું કે તેમાં મસ્જીદે ભાડે આપેલ હોય તેવો ઉલ્લેખ નથી. સાહેદ સ્વેચ્છાએ જણાવે છે કે તે લખાણમાં મસ્જીદ એવું જણાવે છે કે અમારા ભાડુઆત છે. એ વાત ખરી છે કે આંક ૧૦૪ વાળા લખાણમાં મસ્જીદના સહી સીકકા નથી. એ વાત ખરી છે કે જે મિલ્કતમાં વિજ જોડાણ આપવાનું હોય તે મિલ્કતના માલીકીનો આધાર તથા જો તે મિલ્કત અન્યના કબજામાં હોય ત્યારે તેના કબજાનો આધાર લેવાનો હોય છે. એ વાત ખરી છે કે જ્યાં સુધી આવો આધાર રજુ ન કરે ત્યાં સુધી વિજ જોડાણ આપવાનું થતું નથી. મારી પાસેના રેકર્ડ આધારે હું મિલ્કતના માલીક મસ્જીદ હોવાનું જણાવું છું તે કઈ મસ્જીદ છે તે હું ચોક્કસ પછે કહી શકું નહીં. હું ગ્રેજ્યુએટ છું. મારી સાથે લાવેલ દસ્તાવેજ આધારમાં માલીકી આધાર નથી. મારી પાસે ઓફીસમાં આ સિવાય બીજા કોઈ દસ્તાવેજો નથી. મને આંક ૧૦૪ બતાવવામાં આવે છે તે જોઈને કહું છું કે તે ૫૦ રુપિયાના સ્ટેમ્પ પેપર ઉપર થયેલ લખાણ છે તેમજ તેમાં અમારા અધિકારીની રબરમાં સહી કે અંગુઠા કરવામાં આવેલા નથી. એ વાત ખરી છે કે હું કહી શકું નહીં કે તે સ્ટેમ્પ પેપરમાં કોની સહી અને કોના અંગુઠાનું

નિશાન છે. મને આંક ૯૯ તથા આંક ૧૦૪ બતાવવામાં આવે છે તે જોઈને કહું છું કે તેમાં આંક ૯૯ માં હાજી સરીફખાન હબીબખાનની સહી છે જ્યારે આંક ૧૦૪ માં સરીફખાન બાપુનો અંગુઠાનું નિશાન છે.”

12.14 Further, even if, for the sake of argument, it is assumed that the Paschim Gujarat Vij Company Limited (PGVCL) granted an electricity connection to the plaintiffs, such a fact does not operate as an estoppel against the Trust. The right to electricity has been recognized as an aspect of the right to life under Article 21 of the Constitution of India, and even a trespasser may be entitled to an electricity connection in accordance with law. Therefore, the mere grant of an electricity connection does not establish the consent of the Trust or create any tenancy or contractual relationship. In the present case, the plaintiffs have not produced any evidence to establish that the Trust had consented to or authorized the obtaining of the electricity connection on its behalf. Moreover, the doctrine of estoppel operates against facts and not against the law.

12.15 Further, the plaintiffs have not produced any evidence to establish that the Trust had received any monthly rent or other consideration from them. In the absence of any evidence proving the authority of defendant No.1, the payment of rent, or the consent of the Trust, the findings recorded by the Trial Court are based on proper appreciation of the evidence on record. Therefore, the judgment and decree passed by the Trial Court do not call for any interference.

12.16 Therefore, upon an overall appreciation of the oral and documentary evidence on record, the plaintiffs have failed

to establish that defendant No.1 was duly authorized to execute the agreement on behalf of the Trust or that any landlord-tenant relationship existed between the parties. Consequently, the findings recorded by the Trial Court are legal, proper, and based on the evidence on record. Hence, the judgment and decree passed by the Trial Court do not warrant any interference by this Appellate Court.

12.17 Therefore, reasons and observations which are assigned by the Trial Court is legal one and all the issues are decided in legal way by appreciating the evidences in proper perspective and there is no need to interfere it. Therefore, considering the same, point nos.7(1) to 7(4) are answered accordingly in **Negative** and so far as the point no.7(5) is concerned, the following order is passed:-

:: ORDER ::

1. This appeal is hereby **dismissed** and therefore, the Judgment and Decree dated 28.11.2024 passed by the Ld. 3rd Additional Senior Civil Judge, Junagadh, in Regular Civil Suit No.280/2012 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 Trial Court.
7. The decree shall be drawn accordingly.

Pronounced in the open Court today
on this 20th day of July, 2026.

Date : 20.07.2026
Junagadh

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