

: ORDER BELOW EXHIBIT-5 : REGULAR CIVIL SUIT NO. 29/2022

- (1) I have heard the learned advocates for the parties. I have gone through the record of this case.
- (2) The learned advocate for the plaintiffs, has submitted that the plaintiff No. 1's father was tenant of a shop and the late father of the defendant was the owner of that shop. The rent of that shop was Rs. 25/- per month. This shop was taken on rent by the father of the plaintiff No. 1 and father-in-law of plaintiff No. 2 (hereinafter referred as Mr. Ratilal). Mr. Ratilal had taken this shop on rent of Rs. 25/- per month in the year of 1964 and Mr. Ratilal was having possession of the shop since the year of 1964 as tenant but it was agreed upon between the Ratilal and the late father of the defendant Mr. Dev Shankar bhai that the shop will be divided into two parts and one part will be given to the Mr. Ratilal as owner and the possession of the remaining part shall be handed over back to the Mr. Dev Shankarbhai. As per the agreement, one part of this shop was given to the Mr. Ratilal by way of sale and Mr. Ratilal became the owner of that part of the shop and the possession of the remaining part was given back to Mr. Dev Shankarbhai. Thereafter, as the Mr. Ratilal became the owner of the first part of this shop, he was not required to pay any rent. That part which was given to Mr. Ratilal by way of sale and which was of the ownership of Mr. Ratilal is disputed property in this suit. As the Dev Shankarbhai and Mr. Ratilal were relatives, no written agreement or document was executed. Mr. Ratilal paid the rent up to the year of 1979 regularly. The plaintiff is having possession of the suit property from so many years. The name of the plaintiff is there in the record of Nagar Palika as occupier of the disputed property. After the death of Mr. Ratilal, the present plaintiffs are having possession of the disputed property and presently, the plaintiffs are doing the business in the disputed property in the name of "Bansi Beauty Parlour". The learned advocate for the plaintiffs has further submitted that the plaintiffs are having the possession of the disputed property from so many years. The defendant has filed false complaint under Land Grabbing Act against the plaintiffs. The learned advocate for the plaintiff has

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further submitted that the defendant has failed to produce any material to show that the possession of the disputed property was handed over back to the Dev Shankarbhai. The learned advocate for the plaintiff has argued that the material produced by the plaintiff clearly shows that they are in possession of the suit property.

- (3) The learned advocate for the defendant has argued that the plaintiffs are not the owner of the suit property, therefore, present application should be rejected.
- (4) I have taken the rival submissions into my consideration very seriously. The plaintiffs have filed present suit claiming that they are the owner of the suit property and having possession of the suit property as owner and the plaintiffs have prayed for protection of their possession.
- (5) Thus, in substance, the plaintiff's case is that of ownership of the suit property and plaintiffs are praying for the protection of their possession on the basis of that title (ownership).
- (6) But as submitted by the plaintiffs themselves, no written agreement or sale deed was or registered deed is executed in favour of plaintiffs or their late father or father-in-law Mr. Ratilal. Looking to the provisions of Section 54 of Transfer of Property Act and the provisions of Registration Act, it is very much clear that the title of an immovable property cannot be transferred except with a registered document. In this case, it is the submission of the plaintiffs themselves that no document much less, registered document was executed in favour of the plaintiffs. In the view of the above mentioned legal provisions, the plaintiffs have failed to establish prima facie that they are the owner of the suit property.
- (7) The most important thing is that the plaintiff's case is not that of

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tenancy right but plaintiff's case is that of ownership. If the plaintiffs are claiming that they are the owner of the suit property and on the basis of this ownership, they are having the possession of the suit property and are praying for the protection of their possession, therefore, it was for the plaintiff to establish their title to the suit property. But as the plaintiffs themselves have submitted that no written document was executed to pass the title in favour of Mr. Ratilal, therefore, prima facie, it appears that the title of the disputed property was never transferred in favour of Mr. Ratilal, therefore, the plaintiffs have failed to establish prima facie case.

(8) In view of all the discussions made above, I pass the following final order below this application:

::ORDER::

1. The present application is hereby rejected.
2. The cost of this application shall follow the cost of the suit.

Pronounced in open Court today.

Date:- 15.07.2025

Place: Kheralu, Mahesana

(Rakeshkumar Vasantlal Soni)

Principal Senior Civil Judge, Kheralu.

Judge Code: GJ01193