

GJSK120000822016



Received on	09	02	2016
Registered on	09	02	2016
Decided on	01	04	2026
	YY	MM	DD
Duration			

IN THE COURT OF PRINCIPAL CIVIL JUDGE

AT TALOD, SABARKANTHA

EXHIBIT - 160

PLAINTIFF:

Patel Ronakbhai Ajitbhai,

Age: Adult, R/O: Desainagar Society,
Talod, Sabarkantha.

Versus

DEFENDANT:

Rajanikant Dharamchand Doshi,

Age: Adult, R/O: Talod, Sabarkantha.

Appearance: -

Advocate Mr. G. M. Patel for plaintiff.

Advocate Mr. R. H. Patel for defendant.

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

Suit for Eviction

1. The present suit has been filed by the plaintiff seeking eviction of the defendant from the shop on the following grounds - (i) bona-fide personal requirement of plaintiff, (ii) that the defendant is tenant in arrear, and (iii) that the defendant has, without consent of the plaintiff, permanently altered the premises.
2. After the institution of the suit, summons was issued to the defendant, which was duly served upon him and the defendant appeared through his advocate and filed written statement.
3. The brief facts of the plaint are as follows - the plaintiff is the owner of

shop situated in vicinity of Talod Bazar bearing C. S. No. 2437 admeasuring 20.17 square meters (the shop is hereinafter referred to as suit premises). That the defendant is the tenant of the suit premise since 1982 and its monthly rent is Rs. 1105/-. The suit premise was rented to the defendant for business purpose. That after the lending the suit premises to the defendant, the defendant has acquired properties in Talod in his and his wife's name. That the defendant has bought a land bearing C. S. No. 2453 admeasuring 117.80 sq. meters in the name of his wife and has constructed a two storey building wherein the defendant runs business in the name and style of Sangam Networks. That the defendant, during the tenancy of suit premises, has purchased land bearing C. S.

No. 2875, over which the defendant has constructed a house and that the defendant has purchased immovable property in Mahiyal village in the name of his wife. That the defendant has also purchased a shop situated in Talod bearing C. S. No. 2898 out of which shop no. GF/3 admeasuring 13.20 sq. meters in the name of his daughter-in-law. It is the say of the plaintiff that the defendant does not need the suit premises for business for he has purchased several other properties. The plaintiff further averred that the defendant has without the consent of plaintiff has permanently altered the suit premises by constructing a wall on both the sides, admeasuring two feet in length, up to the ceiling of the first floor and thereby extended the shop by two feet and

has put a door on the newly constructed walls; that this act of the defendant is illegal and therefore he does not want to the defendant as his tenant. The plaintiff also averred that the defendant has not paid rent of the premises since April 2013 due to which he has become tenant in arrears.

4. The plaintiff further averred that he has no job or occupation as of now and that he genuinely requires the suit premises to start a business in Talod.
5. The plaintiff averred that he had executed the registered sale deed of the suit premises to one Vishnubhai Gandlal Patel on 03/07/2014 but the sale was not executed and the sale deed was cancelled on 16/04/2015.

6. The plaintiff averred that he has sent the statutory notice to the defendant through his advocate on 26/12/2015, of which the defendant has filed a bogus reply and that since the defendant has not evicted the suit premises and neither paid the rent therefore, the plaintiff has filed the present suit.
7. Thus, the plaintiff was constrained to file the present suit wherein he has prayed for eviction of defendant from suit premises.
8. Per contra, the defendant in his written statement filed vide exhibit - 11 has mainly denied the averments made in the plaint and submitted that the plaintiff has falsely claimed that the suit premise is required for his personal use. That the defendant is not a tenant in arrear for he

has been paying the rent regularly. The defendant averred that he is the tenant of suit premise from 1982, since the time of plaintiff's father, and since then he is carrying business at suit premise in the name and style of Sabarkantha Radio Electric Corporation. The defendant further averred that apart from the suit premise the defendant does not have any other place to carry out business. That he did not alter the suit premise without the consent of plaintiff. Hence, the defendant prayed to dismiss the suit.

9. Evidence:

Plaintiff's Evidence -

1. Oral Evidence - Exhibit - 24 - Examination - in - Chief on affidavit of Patel Ronakbhai Ajitbhai.

2. Oral Evidence - Exhibit - 150 - Examination - in - Chief on affidavit of Patel Ronakbhai Ajitbhai.

3. Documentary Evidence - The Plaintiffs submitted the following documentary evidence in this suit.

Sr. No.	Exhibit No.	Description of Document
1.	28	O.C. of Statutory Notice given to Defendant.
2.	29 & 30	Acknowledgements of Postal Department.
3.	31	Registration Certificate of Sangam Network.
4.	32	True copy of Property Card of CT. Survey No. 2437.
5.	33	True copy of Property Card of CT. Survey No. 2875.
6.	34	True copy of Property Card of CT. Survey

		No. 2876.
7.	35	True copy of Property Card of CT. Survey No. 2453.
8.	36	True copy of Assessment letter of CT. Survey No. 3926/1.
9.	37	True copy of Assessment letter of CT. Survey No. 3503/1.
10.	38	True copy of Assessment letter of CT. Survey No. 3926.
11.	39	True copy of Village form No. 07/12 of property bearing survey no. 1092 of Mahiyal Village.
12	40	True copy of Village form No. 08-A of property bearing survey no. 1092 of Mahiyal Village.
13.	41	True copy of Voter list, 2016.
14	42	True copy of Assessment letter of CT. Survey No. 3503.

15.	43	Certificate of CSC.
16.	67	True Copy of Registered Sale deed
17.	68	True Copy of Cancellation of Sale deed.
18	69	True Copy of Index - 2
19.	84	Copy of Property Card of City Survey no.2898.
20.	85	True Copy of Assessment list of Talod Nagar Palika.

10. Defendant's Evidence -

(1). Oral Evidence - Exhibit - 142 - Examination - in - Chief on affidavit of Rajnikantbhai Dharamchand Doshi.

(2). Documentary Evidence -

Sr. No.	Exhibit	Document
1.	115	Registration Certificate of Defendants business.
2.	116	Bill of Telephone and its payment

		receipt.
3.	117	Electricity Bill and its payment receipt.
4.	118	Copy of Insurance Policy of Defendant's shop.
5.	119	Copy of Bank Statement of Defendant.
6.	120	Letter issued to Plaintiff for payment of rent for the year 2013-14.
7.	121	Cover returned with endorsement of refused.
8.	122	Letter issued by the purchaser of Suit premise.
9.	123	True Copy of Registered Sale deed.
10.	124	Cover of letter and Receipt of RPAD.
11.	125	Copy of Notice given by Plaintiff.
12.	126	Copy of letter given by Defendant.
13.	127	Receipt of RPAD.

14.	128	Copy of Village Form No. 8-A.
15.	129	Copy of Property Card of City Survey No. 1595.
16.	130	Certified copy of Judgment of RCS No. 32/2014.
17.	131	Certified copy of Decree of RCS No. 32/2014.
18.	132	Written Statement of Plaintiff in RCS No. 32/2014.
19.	133 to 141.	Receipts of rent deposition in Court in RCS No. 32/2014 by the defendants.

11. The plaintiff submitted evidence closing pursis in this suit vide exhibit - 156 whereas the defendant submitted evidence closing pursis vide exhibit - 157.

12. **Arguments:** - The arguments advanced by both the parties are respectfully taken into consideration. The plaintiff relied

upon three citations which are as follows -
2025(0) AIJEL-HC-252746, 2007(0) AIJEL-SC-
39073 and 1994(0) AIJEL-SC-2995.

13. The Court framed issues vide exhibit -
13 & 104 which are as follows -

૧. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીએ દાવાવાળી મિલકત ભાડે રાખ્યા બાદ અન્ય મિલકત સીટી સર્વે નંબર- ૨૮૭૫ વાળી ખરીદ કરેલ છે અને તેમા રહે છે અને મહીયલ ગામમાં પણ પત્નીના નામે મિલકત ખરીદ કરેલ છે.?

૧(એ) શું વાદી પુરવાર કરે છે કે, દાવા તારીખથી પ્રતિવાદી તેમના પત્ની તેમના પુત્ર, પુત્રવધુઓ સચુંકત કુટુંબમાં રહેતા - આવેલા અને દાવાવાળી મિલકત પ્રતિવાદીને ભાડે આપ્યા બાદ પ્રતિવાદીની પત્નીના નામે સર્વે નં.૨૪૫૩ વાળી મિલકત ખરીદી તેમાં સંગમ નેટવર્કના નામથી પ્રતિવાદી સચુંકત રીતે ધંધો - કરતા આવેલ છે તેમજ પ્રતિવાદીની પુત્રવધુ નામે કોમલબેનના

- નામે તા.૨૨/૧૦/૨૦૧૮ ના રોજ તલોદના સીટી સર્વે નંબર વાળી દુકાન વેચાણ રાખેલ છે અને આમ દાવાવાળી મિલકત - પ્રતિવાદીને ભાડે આપ્યા બાદ પ્રતિવાદીએ વૈકલ્પિક મીલકતો સંયુક્ત કુટુંબમા વસાવેલી હોય તેથી દાવાવાળી મિલકતનો ભાડુઆત તરીકે કબજો ચાલુ રાખવા પ્રતિવાદી હકકદાર નથી?
૨. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીએ વાદીની જાણ અને - સંમતિ વગર પાકુ બાંધકામ કરેલ છે જે મિલકતને નુકશાન કર્યા સિવાય દૂર કરી શકાય તેમ નથી.
૩. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીએ છ માસથી વધુ સમયથી ભાડુ ન ચૂકવી એરીયર્સ ઓફ રેન્ડ બનેલ છે?
૪. શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીને કાયદેસરની નોટીસ આપેલ હોવા છતાં ભાડુ ચુકવવામાં બેદરકાર રહેલ છે?
૫. શું વાદી પુરવાર કરે છે કે, વિષ્ણુભાઈ ગાંડાભાઈ ને કરી આપેલ વેચાણ દસ્તાવેજ રદ કરવામાં આવેલ છે?

૬. શું વાદી પુરવાર કરે છેકે, તેઓની દાવાવાળી મિલકતનુ વ્યાજબી અને નિષ્ઠાપૂર્વકની જરૂરીયાત છે?
૭. શું પ્રતિવાદી પુરવાર કરે છેકે, તેઓએ ભાડાનો ચેક અને મનીઓર્ડર વાદીને મોકલી આપેલ હોવા છતાં તેઓએ સ્વીકારેલ નહીં?
૮. શું પ્રતિવાદી પુરવાર કરે છેકે, વાદી ધ્વારા આપવામાં આવેલ નોટીસ ગેરકાયદેસર છે?
૯. શું પ્રતિવાદી પુરવાર કરે છેકે, તેઓએ માગ્યા મુજબ કોમ્પેન્સેટરી કોસ્ટ મેળવવા હકકદાર છે?
૧૦. શું પ્રતિવાદી પુરવાર કરે છેકે, વાદીના દાવા ને પક્ષકારને જોડવાની ખામીનો બાધ નડે છે?
૧૧. શું વાદી માગ્યા મુજબની દાદ મેળવવા હકકદાર છે.?
૧૨. શું હુકમ, હુકમનામુ ?

14. Findings:

1. Partly Affirmative.

- 1(A) Negative.
2. Negative.
3. Negative.
4. Negative.
5. Affirmative.
6. Negative.
7. Affirmative.
8. Negative.
9. Negative.
10. Negative.
11. Negative.
12. As per final order.

15. Reasons:

(A). Issue No. 01 - The burden of proving this issue lies upon the plaintiff. The plaintiff has contended that the defendant has acquired property bearing city survey no. 2875 and resides in it and has also purchased

property at Mahiyal village in the name of his wife. The plaintiff further contended that the defendant purchased property situated at Talod bearing C.S. No. 2453 admeasuring 117.80 sq. meters in the name of his wife and that the defendant has constructed two floors over it and that the defendant jointly carries business with his family members in the name and style of Sangam Networks. However, from the evidence on record, it emerges that the property situated at Talod bearing C.S. No. 2453 and the property bearing survey no. 1092, situated at Mahiyal village stand is in the name of the defendant's wife, Ushaben Rajnikant, whereas property (shop)

bearing City Survey No. 2898 out which shop no. 03 on ground floor, stands in the name of defendant's daughter-in-law, Komalben Mehulkumar. The plaintiff argued that since the wife and daughter-in-law of the defendant are house wives and that they do not have any independent source of income and that they are dependent on the defendant therefore, it must be presumed that the defendant has purchased the above mentioned properties from his income in the name of his wife and daughter-in-law. Now taking into consideration the cross examination of the defendant it transpires that the wife and daughter-in-law of the

defendant are house wives and have no independent source of income. However, this fact alone is not sufficient to conclusively hold that the defendant himself has purchased the above mentioned properties in the name of his wife and his daughter-in-law from his own income. The plaintiff admitted in his cross examination (exhibit - 150) that he did not furnish any evidence to show that defendant has purchased other properties from his own income. The plaintiff has failed to produce any cogent evidence or oral evidence to demonstrate that the consideration amount of the said properties was paid by the defendant, or that the transactions were *benami* in nature.

Mere suspicion, however, strong cannot take the place of proof. In absence of any material showing direct nexus between the defendant and the purchase of said properties, it cannot be presumed that the defendant has acquired the properties in the names of his family members out of his income. Therefore, the plaintiff has failed to discharge the burden to proof cast upon him. Accordingly, the issue is decided in the negative.

(B). **Issue No. 01 A** - At the outset, it is an admitted position that the plaintiff's suit is founded only on three grounds, namely: (i) arrears of rent, (ii) alleged permanent structural alterations, and (iii)

bona-fide and genuine requirement of the plaintiff. There is no specific pleading in the plaint that the defendant has acquired alternate properties in the names of his family members and such acquisition constitutes a ground for eviction. It is a settled principle of law that a party must succeed on the case pleaded by him, and no relief can be granted on a ground which is not made the foundation of the suit. It is true that there exists a pleading in the plaint to the effect that the defendant has acquired alternate accommodation after commencement of tenancy. However, a mere averment is not sufficient. For a ground to be made the basis of

eviction, it must be clearly pleaded as a specific and independent ground forming part of the cause of action, and appropriate issue must be framed thereon. The alleged acquisition of alternate accommodation has not been projected as a substantive ground of eviction nor made part of the cause of action. It is a settled principle that a decree cannot be granted on a ground which is not specifically pleaded as cause of action and put to trial. If a ground is not distinctly raised as a basis for eviction, granting a decree on such ground would cause prejudice to the defendant and violate principles of natural justice. Further, even assuming such a plea exists in

passing, the plaintiff has neither pressed it as a ground nor led cogent evidence sufficient to establish that the alleged alternate accommodation is legally attributable to the defendant and is suitable.

Even otherwise, on merits, the plaintiff has failed to produce any cogent evidence to establish that: (i) the defendant has acquired several properties in the names of his family members, (ii) such family members are residing with and doing business jointly with defendant, (iii) the alleged properties are available to the defendant as suitable alternate accommodation. As discussed in issue no. 01, two

properties are shown in the names of the wife and daughter -in-law of the defendant, but there is no evidence to show that the same were purchased by the defendant or that they are benami or under his control. Therefore, in absence of a clear cause of action and proper foundation in pleadings, the plaintiff is not entitled to seek eviction on the ground of alternate accommodation. The citation relied upon by the plaintiff is not applicable to present case for the reasons mentioned hereinabove. Accordingly, the issue is decided in the negative.

(C). **Issue No. 02** - The burden to prove this issue lies upon the plaintiff.

The plaintiff has alleged that the defendant has, without his knowledge and consent, made permanent structural alterations in the suit premises of such nature that it cannot be removed without causing damage to the suit premises. However, except for the bare averments made in the plaint and the statement made in the examination in chief, the plaintiff has not produced any cogent or independent evidence to substantiate the said allegations. No documentary evidence, such as photographs, municipal records, or expert reports, has been placed on record. Furthermore, the plaintiff has failed to specify material

particulars such as the exact nature of the alleged construction, the time when such alterations were made, and the manner in which they were carried out. It is settled principle of law that mere assertions, unsupported by reliable evidence, are insufficient to prove a fact in issue. The Court requires clear and convincing evidence, particularly when alterations related to permanent structural changes affecting immovable property. In the absence of any corroborative evidence, the intention of the plaintiff remains unsubstantiated. The plaintiff has thus failed to discharge the burden of proof cast upon him. Accordingly,

this issue is decided in the negative.

- (D). **Issue No. 03** - The burden to prove that the defendant is in arrear of rent lies upon the plaintiff. The plaintiff, in his notice (exhibit - 28) dated 26/12/2015, issued prior to institution of suit, has argued that the defendant has not paid rent since April 2013. Per contra, the defendant has specifically contended that up to April 2013, rent was regularly paid to the plaintiff through cheque. It is further the case of the defendant that thereafter the plaintiff, with ill intention, refused to accept the rent for the year 2013-14. In support of this contention, the

defendant has placed on record the forwarding letter and RPAD receipt (exhibit - 120) along with RPAD cover dated 28/03/2014 (exhibit - 121) through which a cheque of Rs. 13, 260/- towards rent for the year 2013-14 was sent to the plaintiff which was refused. The defendant has also brought on record that he again sent rent for the year 2013-14 and 2014-15 through cheque by RPAD, which were returned by the plaintiff without acceptance (exhibit - 124). This conduct of the plaintiff clearly indicates refusal to accept rent tendered by the defendants. It is further established on record that thereafter the defendant has been regularly depositing the yearly

rent in Court and the same is proved vide receipts submitted by the defendant vide exhibit - 133 to 141. Such deposit indicates continuous readiness and willingness on the part of the defendant to pay rent. Additionally, it is an admitted position that the plaintiff has never issued receipts for rent allegedly received which creates doubt and makes it difficult to rely solely on the plaintiff's assertions regarding non-payment. In law, when the tenant has tendered rent and the landlord refuses to accept the same, the tenant cannot be said to be in arrears. The act of depositing rent in Court further safeguards the tenant from being termed as a

defaulter. In the present case, the defendant has sufficiently demonstrated that rent has duly tendered and refusal, if any, was on the part of the plaintiff. Therefore, the plaintiff has failed to prove that the defendant has become a tenant in arrears of rent for six months. Accordingly, this issue is decided in the negative.

(E). **Issue No. 04** - The burden lies upon the plaintiff to establish that despite service of statutory notice dated 26/12/2015 (exhibit - 28), the defendant failed to pay the arrears of rent within the prescribed period. In the present case, although the plaintiff has alleged non-payment of rent since April

2013, the material on record suggests otherwise. The defendant has consistently taken the stand that the rent up to April 2013 was paid through cheque and that thereafter the plaintiff deliberately refused to accept the rent. The defendant has produced on record that RPAD cover dated 28/03/2014 vide exhibit - 120 and RPAD cover dated 27/3/2015 vide exhibit - 124, evidencing that two cheques towards the rent for the year 2013-14 and 2014-15 was sent to the plaintiff which was refused. It is pertinent to note here that the defendant has sent the rent through RPAD twice, first on 28/02/2014 and second on 27/03/2014, whereas the

plaintiff has issued notice (exhibit - 28) stating rent in arrear of 26/12/2015. On perusing the above mentioned facts it is crystal clear that the defendant has tendered rent even before the statutory notice was issued by the plaintiff. Such conduct on the part of the plaintiff clearly indicates refusal to accept rent lawfully tendered by the defendant. The defendant thereafter started depositing the rent regularly in the Court, which demonstrates his continuous readiness and willingness to pay rent. It is settled principle that when a tenant tenders rent and the landlord refuse to accept the same, the tenant cannot be treated as a

defaulter. Deposit in rent in Court further cures any alleged default. In these circumstances, it cannot be said that the defendant has failed to pay rent even after service of statutory notice. On the contrary, the evidence shows that the defendant had made bona fide attempts to pay rent, which were refused by the plaintiff. Therefore, the plaintiff has failed to discharge the burden of proving this issue. Accordingly, the issue is decided in the negative.

- (F). **Issue No. 05** - The burden to prove this issue lies upon the plaintiff. The record indicates that prior to the institution of the present suit, the plaintiff had executed a

registered sale deed dated 03/07/2014 in favor of Vishnubhai Gandabhai Patel in respect of suit premises. However, it is the specific case of the plaintiff that the said sale transaction was subsequently cancelled. In support of this contention, the plaintiff has produced on record a registered cancellation deed date 16/04/2015 vide exhibit - 68. The said document clearly reflects that the earlier sale deed (exhibit - 67) executed in favor of Vishnubhai Gandabhai Patel was mutually cancelled by executing a subsequent registered instrument. It is a settled principle of law that a registered sale deed can generally be cancelled either by

mutual consent or by filing a civil suit for cancellation. A Court declaration is mandatory for canceling a registered sale deed; it cannot be cancelled unilaterally except in limited situations for example if the buyer agrees, both the parties can execute and register a cancellation deed at the same Sub-Registrar's office where the original sale deed took place. Therefore, the contention of defendant that only Civil Court can cancel sale deed cannot be relied upon and the same is rejected. The Court is of the considered view that a document can be cancelled by a subsequent registered instrument, particularly when such cancellation

is effected with the consent of the concerned parties. The registration of cancellation deed lends authenticity and legal sanctity to the act of cancellation. Nothing substantial has been brought on record by the defendant to discredit the genuineness or legality of the said cancellation deed. There is no evidence to suggest that cancellation document is invalid, void or ineffective in law. In view of the documentary evidence produced by the plaintiff, namely the registered cancellation of deed dated 16/04/2015, this Court is satisfied that the sale deed dated 03/07/2014 executed in favor of Vishnubhai Gandabhai stands duly

cancelled. Accordingly, the plaintiff has successfully discharged the burden to proof. Hence, the issued is decided in the affirmative.

(G). **Issue No. 06** - The burden to establish bona-fide and genuine requirement squarely lies upon the plaintiff. The plaintiff has averred that he is without any occupation and, therefore, requires the suit premises. However, the evidence on record reflects that the plaintiff is possessed of joint agricultural properties, which are stated to be sufficient to maintain the joint family. This circumstance weakens the plea of absence of livelihood. Further, it has also come on record

that the plaintiff has contested elections from Aam Admi Party (exhibit - 99). The Court is of the considered view that participation in electoral activities indicates that the plaintiff is actively engaged in public and political affairs, which again does not support the case of complete lack of occupation or means. The plaintiff admitted in cross examination that property situated on college road Talod bearing C. S. No. 1595 is of his ownership and it is vacant as of now and admitted that there are several shops near it. This clearly shows that the plaintiff has property in Desainagar Talod, on college road, on which the Postal

Department was working earlier which clearly suggests that the plaintiff has alternate properties in his name to carry out business. The plaintiff has not produced any cogent evidence to show any concrete plan, preparation or pressing necessity for the use of the suit premises. Mere assertion of requirement, without substantiating circumstances, cannot be accepted as proof of bona-fide need. In eviction matters, bona-fide requirement must be genuine, honest and conceived in good faith and not a mere pretext for eviction. In the present case, the overall circumstances create doubt regarding the genuineness of the requirement. Accordingly, the

plaintiff has failed to discharge the burden of proving that he requires the suit premises bona-fidely and genuinely. Hence, the issue is decided in the negative.

(H). **Issue No. 07** - The burden to prove this issue lies upon the defendant. The defendant has specifically contended that he had regularly paid rent through cheque up to April 2013 and that thereafter the plaintiff deliberately refused to accept the rent. In support of this contention, the defendant has produced on record the receipt of postal department and forwarding letter (exhibit - 120) issued by him to the plaintiff dated 28/03/2014, which evidences that a cheque of Rs. 13, 260/- towards rent

for the year 2013-14 was sent to the plaintiff. The RPAD cover is produced on record vide exhibit - 121 which shows that the same was refused by the plaintiff. Further, the defendant has also established that he once again sent rent for the years 2013-14 and 2014-15 through cheque by RPAD on 25/03/2015 (exhibit - 124) which got delivered on 26/03/2015 but the plaintiff returned the cover along with cheque to the defendant. These documentary pieces of evidence lend corroboration to the oral testimony of the defendant and clearly demonstrate that rent was duly tendered through cheque via RPAD but was not accepted by the plaintiff.

There is no material on record to disbelieve the said evidence. The plaintiff has also not provided any satisfactory explanation for refusal of the rent sent through RPAD. Thus, the defendant has successfully proved that he had sent rent via cheque and that the plaintiff refused to accept the same. Accordingly, the issue is decided in the affirmative.

- (I). **Issue No. 08** - The burden to prove this issue lies upon the defendant. The defendant has challenged the legality of the notice issued by the plaintiff determining the tenancy. It is not in dispute that the plaintiff is the landlord and the defendant is the tenant in respect

of the suit premises. The record reveals that prior to institution of suit, the plaintiff had issued a notice, recorded vide exhibit - 125, to the defendant terminating the tenancy. In the said notice, the plaintiff has clearly stated the grounds namely (1) arrear of rent, (2) alleged permanent structural alteration in the suit premises, and (3) bona-fide requirement of the suit property. A notice determining tenancy is required to convey the intention of the landlord to terminate the tenancy and call upon the tenant to vacate the premises. It is not necessary that the grounds mentioned therein must ultimately be proved in the suit; failure to prove

the grounds does not render the notice itself illegal or invalid. In the present case, the defendant has not produced any material to show that the notice given by the plaintiff (exhibit - 125) is contrary to law, vague or otherwise defective. The notice appears to be clear, specific and duly communicates the termination of tenancy along with the reasons of such termination. The Court is of the considered view that, merely because the plaintiff has failed to prove the grounds for eviction in the present suit, it cannot be inferred that the notice issued prior to the suit is illegal. The defendant has thus failed to

discharge the burden of proving that the notice in question is illegal. Accordingly, this issue is decided in the negative.

- (J). **Issue No. 09** - The burden to prove this issue lies upon the defendant. The defendant has contended that the plaintiff did not act as per the terms contained in the reply of notice cum counter notice given by him (exhibit - 126) to the plaintiff. The defendant argued that the plaintiff has filed the present suit only with the intent to harass the defendant by evicting him from the suit premises without due process of law. The Court here is of the view that merely not acting as per the terms of reply cum counter

notice does not automatically entitle the defendant to compensatory costs. As per settled principles governing award of compensatory costs under section 35A of CPC, 1908, such costs can be granted only when the Court is satisfied that the claim or plea is false or vexatious to the knowledge of the party raising it. In the present case, there is no material on record to show that the plaintiff's claim is false, vexatious or instituted with mala-fide intention. The plaintiff, being a landlord, had approached the Court asserting his rights, though he ultimately failed to prove the same. Failure to prove a case cannot, by

itself, lead to an inference that the suit was false or vexatious. The defendant has not led any cogent evidence to demonstrate that the suit was instituted with knowledge of its falsity or with intent to harass. Hence, this Court is of the opinion that the defendant has failed to discharge the burden to prove that he is entitled to compensatory costs. Accordingly, this issue is decided in the negative.

- (K). **Issue No. 10** - The burden to prove this issue lies upon the defendant. The defendant has averred in his written statement that the plaintiff has not added the person, who had purchased the suit premises from the

plaintiff, as party in the suit. To prove this issue the defendant relied upon the registered sale deed (exhibit - 123) bearing no. 815/2014, which shows that the plaintiff had sold the suit premises to one Vishnubhai Gandabhai Patel on 03/07/2014. On perusing record it transpires that the plaintiff has admitted that he had sold the suit premises to one Vishnubhai Gandabhai Patel, on 03/07/2014 through a registered sale deed; however, it is the say of the plaintiff that he cancelled the impugned sale deed on 16/04/2015 and that since then the plaintiff is sole owner of the suit premises. To prove his claim the plaintiff furnished the impugned

sale deed no. 815/2014 (exhibit - 67) and vide exhibit - 68 the plaintiff furnished the registered document of cancellation of impugned sale deed bearing no. 339/2015. Now, on perusing exhibit - 68 i.e. cancellation of sale deed, it becomes crystal clear that on 16/05/2015 the plaintiff once again became the sole owner of the suit premises. The Court finds that since both the landlord and tenant are added as parties in this suit, therefore the suit is not barred by non-joinder of necessary party. Hence this issue is decided in the negative.

(L). **Issue No. 11** - The entitlement of the plaintiff to the relief of

eviction is dependent upon the successful proof of the material issues framed in the present suit. from the findings recorded hereinabove:

- The plaintiff has failed to prove that the defendant has acquired alternative suitable properties out of his income.
- The plaintiff has failed to establish his bona-fide and genuine requirement of the suit premises.
- The plaintiff has also failed to prove that the defendant is in arrears of rent or that he has not paid rent even after service of statutory notice.

- On the contrary, it has been proved that the defendant has tendered rent through cheques, which the plaintiff refused to accept, and thereafter the defendant has been depositing rent in Court.

Thus, none of the statutory grounds for eviction, as pleaded by the plaintiff, have been established by cogent evidence. It is a settled principle of law that eviction cannot be granted merely on assertions; the plaintiff must strictly prove the grounds entitling him to such relief. In the present case, the plaintiff has failed to discharge the burden cast upon him. Therefore, the

plaintiff is not entitled to the relief as prayed for. Accordingly, the issue is decided in the negative.

(M). **Issue No. 12** - In view of the findings recorded on all the above issues, particularly that the plaintiff has failed to prove bona fide requirement, arrears of rent, and other grounds for eviction, the suit of the plaintiff deserves to be dismissed. Hence, I answer this issue by passing the following order.

: O R D E R:

- The suit filed by the plaintiff is hereby dismissed.

- The plaintiff shall bear the costs of the suit.
- Decree to be drawn accordingly.

Signed and Pronounced in open court today on this 01st day of April, 2026.

Date: 01/04/2026

(Sunil Chaudhary)

PCJ, Talod (GJ01378)