



Received on	16-04-2015		
Registered on	16-04-2015		
Decided on	31-07-2026		
Duration	11	03	16
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**IN THE COURT OF 16TH ADDITIONAL DISTRICT
JUDGE, SURAT AT SURAT**

Regular Civil Appeal No. 38/2015

Exh. 78

Legal Heirs of deceased Manilal Lilachand

~~1. Parsanben Wd/o. Manilal Lilachand~~

~~Aged about 78 years, Occupation: House hold,
Residing at: Ward No.4, Entry No.4166,
First Floor, Begam Pura,
Bhula Modi ni pole, Surat.~~

2. Tejas Manilal

Aged about 34 years, Occupation: Service,

3. Ushaben d/o. Manilal Lilchand

Aged about 43 years,
Occupation: Beauty Parlour and House hold,
Both Residing at: Ward No.4, Entry No.4166,
First Floor, Begam Pura,
Bhula Modi ni pole, Surat.

4. Hansaben d/o. Manilal Lilchand

Aged about 33 years, Occupation: House hold,
Residing at: 36, Bhagyodaya Society,
In the gali of Dr. Arvind Shah, Nr. Krushna Kunj Society,
Nr. Jakat Naka, Palanpur Patiya, Rander Road, Surat.

5. Sunita d/o. Manilal Lilchand

and w/o. Shaileshkumar Limbachiya
Aged about 46 years, Occupation: House hold,
Residing at: 24/24, Panchvati, Soniya Society,
Gorva, Vadodara.

.....Appellants

V E R S U S

Legal Heir and Legal Representative of
deceased Ishwarlal Motiram Choksi
through a will dated 18.02.1991

1. Deceased Arvindchandra Ishwarlal Choksi
Through his Legal Heirs and Legal Representatives
2. Chetanbhai Arvindbhai Choksi
Aged about 39 years, Occupation: Business,
Residing at: 3rd Floor, Choksi ni vadi, New Rander Road,
Adajan, Surat.
3. Bipinchandra Ishwarlal Choksi
Aged about 63 years, Occupation: Business,
Residing at: A/1, ChandraLok Society,
Rander Road, Surat.
Through his legal representative
4. Nanubhai @ Shashikant Thakordas Choksi
Aged about 67 years, Occupation: Business,
5. Deceased Kundanben Shashikant Thakordas Choksi
Through her legal heir and legal representative
6. Deceased Bhadreshkumar Shashikant Choksi
Through his legal heirs and legal representatives
- 6.1. Panna Bhadreshkumar Choksi (Wife)
Aged about adult, Occupation: House hold,

6.2. Panna Bhadreshkumar Choksi (Wife)

Aged about adult, Occupation: Service,

Both are residing at: 4/4166, Bhula Modi ni sheri,
Begampura, Surat.

7. Manojkumar Shashikant Choksi

Aged about 34 years, Occupation: Business,
residing at: 4/4166, Bhula Modi ni sheri,
Begampura, Surat.

8. Punam @ Hema Prafulchandra

Aged about 36 years, Occupation: House hold,
Residing at: Golvad gate, Navsari,
Taluka-Navsari, District-Navsari.

.....Respondents

Appearance:

Mr. J.S. Bharuchwala, Learned Advocate for the Appellants.

Mr. A.A. Dalal, Learned Advocate for the Respondents.

**AN APPEAL UNDER THE PROVISIONS OF SECTION 29
OF THE GUJARAT RENTS, HOTEL AND LODGING
HOUSE RATES CONTROL ACT, 1947**

J U D G M E N T

1. The present Appeal under Section 29 of the Gujarat Rent Act is preferred assailing the judgment and decree dated 10.03.2015 rendered by the Ld. Additional Judge, Small Cause Court, Surat (hereinafter “Ld. Trial Court”), in Small Civil Suit No.38/1991 filed by the respondents who happen to be the plaintiffs before the Ld. Trial Court. The plaintiffs had filed the suit seeking possession of the rented premises with recovery of rent, declaration and perpetual injunction. The

appellants, being gravely aggrieved and dissatisfied with the impugned judgment and decree as being manifestly illegal, unsustainable in law, perverse on facts, and violative of the fundamental principles of natural justice, invokes the appellate jurisdiction of this Court.

2. For the sake of convenience and to avoid confusion, the appellants herein, who were the original defendants before the Ld. Trial Court, shall hereinafter be referred to as the "defendants", whereas the respondents herein shall be referred to according to their original status before the Ld. Trial Court as the "plaintiffs". The parties shall accordingly be addressed in the same manner throughout this judgment.

Also, on admission of the appeal Record and Proceedings of the Small Civil Suit No.38/1991 were called for.

3. Factual Matrix:

- 3.1. The brief facts giving rise to the present appeal are that the plaintiffs instituted the suit for recovery of vacant and peaceful possession of the suit premises situated at Begampura, Bhulamodi Ni Pol, Surat, together with arrears of rent, damages and mesne profits. The suit premises comprise an eastern room bearing No.1 on the first floor, admeasuring approximately 6 feet x 20 feet, which, according to the plaintiffs, was let out to the original tenant, Manilal Lilachand, at a monthly rent of Rs.15/- for residential purposes.
- 3.2. The original tenant died during the pendency of the suit and his legal heirs were brought on record as the defendants. The plaintiffs sought eviction principally on the grounds that the defendants had acquired alternative

suitable residential accommodation, had kept the suit premises closed and unused for more than six months without reasonable cause, and had changed the user of the premises by conducting a beauty parlour therein, though the premises were allegedly let exclusively for residential purposes. The plaintiffs also alleged breach of the terms of tenancy, damage to the premises, nuisance and their bona fide and reasonable requirement of the suit premises for personal residential use.

- 3.3. The plaintiffs further claimed arrears of rent and damages amounting to Rs.85/- and relied upon the notice dated 02.11.1990 and the reply thereto.
- 3.4. The defendants resisted the suit and contended that the suit premises had been let not exclusively for residence but for both residential and business purposes. According to them, the original tenant had carried on the business of hair-cutting from the premises while residing therein, and such use had continued thereafter. They denied any unlawful change of user, non-user, damage, nuisance or breach of tenancy conditions. They also disputed the alleged acquisition of suitable alternative residential accommodation and contended that the properties relied upon by the plaintiffs were either unsuitable for residence, belonged to other persons, or were not proved to be in the defendants' possession.
- 3.5. Both sides led oral and documentary evidence. The plaintiffs relied, inter alia, upon the evidence of Plaintiff No.1, the Court Commissioner's report, the evidence of the concerned municipal officer and other witnesses. The

defendants relied upon the evidence of the defendants and their witness and contended that the suit premises continued to be used for residential as well as business purposes.

- 3.6. Upon appreciation of the evidence, the Ld. Trial Court recorded findings in favour of the plaintiffs on the material grounds of alternative suitable accommodation, non-user for more than six months and change of user, and held the plaintiffs entitled to possession and mesne profits. The suit was accordingly decreed.
- 3.7. Aggrieved by the said judgment and decree, the defendants have preferred the present appeal, principally contending that the Ld. Trial Court failed to properly appreciate the oral and documentary evidence and erroneously recorded findings regarding alternative accommodation, non-user and change of user.
4. Ld. Trial Court had framed the below mentioned issues at Exh. 49.
 1. Whether the Plaintiff proves that the Defendant is in arrears of rent for more than six months?
 2. Whether the dispute regarding standard rent is bona fide and honest? If yes, whether the existing rent is excessive and unreasonable? If yes, what is the standard rent?
 3. Whether the Defendant is ready and willing to pay the rent?
 4. Whether the suit notice is legal, valid and proper?
 5. Whether the Plaintiff proves that he reasonably and bona fide requires the possession of the suit premises for his personal use and occupation?

6. To whom would greater hardship be caused if a decree for eviction is passed or refused?
7. Whether the Plaintiff proves that the Defendant has unlawfully sublet, assigned or transferred his interest in the suit property in favour of a third person, as alleged?
8. Whether the Plaintiff proves that the Defendant has acquired suitable alternative residential accommodation, as alleged?
9. Whether the Plaintiff proves that the Defendant has been guilty of nuisance and annoyance, as alleged?
10. Whether the Plaintiff proves that the Defendant has made any material alteration or erected any permanent structure in the suit premises, as alleged?
11. Whether the Plaintiff proves that the Defendant has kept the suit premises closed for more than six months continuously and without any reasonable cause immediately preceding the date of the suit?
12. Whether the Plaintiff proves that the Defendant has committed waste or caused damage to the suit property and thereby rendered himself liable to be evicted from the suit premises?
13. Whether the Defendant has committed change of user, as alleged?
14. What amount, if any, is found due?
15. Whether the Plaintiff proves that the Defendant is trying to sublet, assign or transfer the suit premises?
16. Whether the Plaintiff is entitled to recover possession of the suit premises?
17. Whether the Plaintiff is entitled to recover mesne profits?

18. What order and decree?
5. Ld. Trial Court has answered the above said issues as below.
1. Not adjudicated.
 2. Not adjudicated.
 3. Not adjudicated.
 4. Not adjudicated.
 5. In the Negative.
 6. In favour of the Plaintiff.
 7. Not adjudicated.
 8. In the Affirmative.
 9. In the Negative.
 10. Not adjudicated.
 11. In the Affirmative.
 12. In the Negative.
 13. In the Affirmative.
 14. Not adjudicated.
 15. Not adjudicated.
 16. In the Affirmative.
 17. In the Affirmative.
 18. As per the final order and decree.
6. In order to bring home the case, the plaintiff produced the following evidence.

(A) Oral Evidence:

Sr. No.	Name of Witness(es)	Exh
1	Bipinchandra Ishwarlal Choksi, plaintiff.	106
2	Jagdishbhai Madhubhai Patel, witness.	143
3	Jashvantiben K. Patel, Court Commissioner.	153
4	Umesh Natvarlal Patel, witness.	158

5	Kachrabhai Mangalbhai Solanki, witness.	170
6	Bhadreshkumar Shashikant Choksi, plaintiff.	171 & 238
7	Chandrakant Ambalal Patel, witness.	176

(B) Documentary Evidence:

Sr. No.	Description of documents	Exh.
1	Tax bill.	110
2	Tax receipt.	111
3	Property Card.	112
4	Property Card.	113
5	Authenticated copy of will.	A
6	Authenticated copy of will.	B
7	Death Certificate of Ishwarlal Motiram Choksi.	114
8	Death Certificate of Arvindchandra Motiram Choksi.	115
9	Death Certificate of Nanubhai Thakordas Choksi.	116
10	Death Certificate of Manilal Lilachand Nayi.	117
11	Death Certificate of Kundanben Nanubhai Thakordas Choksi.	118
12	Death Certificate of Sanmukhlal Amrutlal Parekh.	119
13	Electricity bill.	120
14	Property Card.	121
15	Counter of rent receipt book.	122
16	Copy of Rationing card of Choksi Bhadreshkumar Shashikant.	123
17	Copy of voting card of Choksi Bhadreshkumar Shahshikant.	124
18	Entry No.4106.	145
19	Akarni Utaro of 4/4106, 4166-67.	146
20	Akarni Utaro of 4/4106, 4166-67.	147

21	Akarni Utaro of Tathastu Apartment.	148
22	Akarni Utaro of Tathastu Apartment.	149
23	Pursis.	154
24	Court Commissioner's report.	155
25	Notice.	156
26	Copy of an application.	160
27	Copy of tax receipt.	161
28	Copy of sale deed no. 10667.	162
29	Copy of a certificate issued by Shri Surat Co.Op. Housing Society Ltd.	163
30	Copy of Cut-book.	164
31	Copy of Cut-book.	165
32	Copy of Akarni Register.	166
33	Copy of Akarni Register.	167
34	A compared copy of application given for registration of beauty parlour.	178
35	Certified copy of tax bill.	179
36	Certified copy of tax receipt.	180
37	Electricity bill.	181
38	A compared copy of the consent letter of Manilal Lilachand Nayi.	182
39	Copy of return of Surat Municipal Corporation.	183
40	Copy of registration certificate.	184
41	Letter of Public Information Officer of Housing Board, Khatodra Colony.	240
42	Housing Board's letter.	241
43	Power of Attorney.	242
44	Power of Attorney.	243
45	Certified copy of conveyance deed.	244
46	Receipt No.4 of Sub-Registrar, Katar gam.	245

The defendants have produced below mentioned oral as well as documentary evidence.

(C) Oral Evidence:

Sr. No.	Name of Witness(es)	Exh
1	Parsanben Wd/o. Manilal Lilachand, defendant.	187
2	Tejas Manilal, defendant.	221
3	Ushaben Manilal, defendant.	225 & 269
4	Sadhnaben Pranalal Rajvadi, witness.	227

(D) Documentary Evidence:

Sr. No.	Description of documents	Exh.
1	Reply to notice.	188
2	Reply to notice.	189
3	Reply to notice.	190
4	Electricity bill.	191
5	Rationing card.	192
6	Electricity bill.	193
7	Electricity bill.	194
8	Electricity bill.	195
9	Electricity bill.	196
10	Electricity bill.	197
11	Tax bill.	198
12	Tax bill.	199
13	Tax bill.	200
14	Tax bill.	201
15	Tax bill.	202
16	Tax bill.	203
17	Tax bill.	204
18	Tax bill.	205
19	Tax bill.	206
20	Tax bill.	207
21	Tax bill.	208
22	Tax receipt.	209
23	Tax receipt.	210

24	Tax receipt.	211
25	Tax receipt.	212
26	Tax receipt.	213
27	Tax receipt.	214
28	Tax receipt.	215
29	Tax receipt.	216
30	Tax receipt.	217
31	Tax receipt.	218

After appreciating the evidence produced by the parties, the Ld. Trial Court has granted the suit of the plaintiffs by impugned Judgment and decree.

7. Grounds of Appeal agitated in the appeal memo:

The defendants, being aggrieved by the judgment and decree passed by the Ld. Trial Court, has preferred the present appeal, inter alia, on the following grounds:

- 7.1. That the judgment is erroneous, illegal, contrary to the settled principles of law and natural justice, and is based upon improper appreciation of the oral as well as documentary evidence on record. The Ld. Trial Court has failed to properly appreciate the evidence produced by the defendants and has, on the contrary, erroneously relied upon and appreciated the evidence adduced by the plaintiffs.
- 7.2. The Ld. Trial Court committed a serious error in answering Issue Nos. 6, 8, 11, 13, 16 and 17 in favour of the plaintiffs. The findings recorded by the Ld. Trial Court on the aforesaid issues are contrary to the pleadings, evidence and probabilities emerging from the record.

- 7.3. The suit premises were not let out exclusively for residential purposes. The premises were let out from the inception for both residential as well as business purposes. The defendants were residing in the suit premises and were simultaneously carrying on the business of hair cutting/barbering therein. Subsequently the daughter of the deceased defendant, Ushaben, was carrying on the business of beauty parlour in the premises. Such use was in continuation of the original purpose for which the premises had been let out and did not amount to any change of user.
- 7.4. There was no written rent note, lease deed or any other written document stipulating that the suit premises could be used exclusively for residential purposes. No specific written terms and conditions governing the tenancy were proved by the Plaintiffs. In the absence of any written restriction regarding the use of the premises, and in view of their specific pleading that the premises had been let out for residential as well as business purposes, the Ld. Trial Court ought not to have held that the defendants had changed the user of the suit premises.
- 7.5. The plaintiff, in his deposition at Exh.106, admitted during cross-examination that he was not aware of the purpose for which the suit premises had originally been let out. The said admission materially affected the Plaintiffs' case. The plaintiffs did not produce any rent note or other document establishing that the premises were let out exclusively for residential purposes, nor did they examine any neighbouring person to establish the

original purpose of letting.

- 7.6. The evidence of Sadhanaben Pranalal at Exh.225 supports the defendants case that the suit premises were being used for both residence and the business of hair cutting. The evidence established that such dual use was not a subsequent alteration but had continued from the inception of the tenancy and was in existence even on the date of institution of the suit.
- 7.7. The Ld. Trial Court committed an error in holding that the defendants had changed the user of the suit premises. The business of hair cutting/hair salon and the business of a beauty parlour are allied and substantially similar activities and, in the facts of the present case, carrying on the business of a beauty parlour could not be treated as a change of user when the premises had originally been let out for both residential and business purposes. The plaintiffs failed to establish any specific covenant or condition of tenancy prohibiting the carrying on of such business.
- 7.8. The Plaintiffs failed to prove that any damage had been caused to the suit premises on account of the alleged change of user. There was no cogent evidence showing that the suit premises had suffered any damage either due to alleged change of user or on account of alleged non-user. The Ld. Trial Court, therefore, ought not to have recorded any adverse finding against the defendants on this aspect.
- 7.9. The finding of the Ld. Trial Court regarding alleged non-user of the suit premises for a period of six months

preceding the institution of the suit is bad. The plaintiffs failed to establish by cogent and reliable evidence that the suit premises had remained continuously unused for a period exceeding six months immediately preceding the filing of the suit. The oral and documentary evidence on record, when properly appreciated, demonstrated that the premises continued to be used for residential as well as business purposes.

- 7.10. Mere absence of the defendants from the premises on a particular occasion or the circumstances noticed by the Court Commissioner could not establish the statutory requirement of continuous non-user for the requisite period. The burden of proving the statutory ground of non-user was upon the plaintiffs and that the said burden had not been discharged.
- 7.11. The burden of proving that the defendants had acquired suitable alternative residential accommodation was upon the plaintiffs, and the plaintiffs had failed to discharge the said burden by producing cogent and legally admissible evidence.
- 7.12. The property referred to as the “Tathastu” property was not established to be suitable residential accommodation and, the said property was in fact a shop. No reliable evidence was produced by the plaintiffs regarding the other properties relied upon by them. As regards the property situated at Varachha the same was jointly owned by the brothers and was not established to be an independent suitable residential accommodation available to the defendants.

- 7.13. Further relying upon the deposition of Bhadeshbhai Shashikant Choksi at Exh.171 and Exh.238 by contending that the said evidence supported the fact that deceased Manilal had been carrying on the business of hair cutting. The evidence did not establish that the property belonging to the Gujarat Housing Board was in the possession or exclusive control of the defendants. The plaintiffs did not examine any competent officer or person having knowledge from the Gujarat Housing Board, nor did they legally prove the documents relied upon by them in respect of such property.
- 7.14. The Ld. Trial Court erred in holding that the Housing Board property had originally been acquired in the name of the original defendant. The plaintiffs failed to establish the nature, ownership, possession and suitability of the said property by legally admissible evidence.
- 7.15. The Commissioner's report supports their case that the suit premises were being used for both residential and business purposes. Ld. Trial Court failed to properly appreciate the material observations contained in the Commissioner's report.
- 7.16. The documents produced at Exh.242 and Exh.243 were not sufficient to establish that the suit premises had been let out exclusively for residential purposes. Exh.243, at the highest, related to the authority to deal with transactions concerning the property and did not establish the purpose of the original letting.
- 7.17. The Ld. Trial Court failed to properly appreciate the authorities relied upon by the defendants. The legal

principles emerging from the authorities cited on their behalf supported the proposition that where the premises are let out for residential as well as business purposes, subsequent use of the premises for an allied business activity would not, in the absence of any contractual prohibition, amount to a change of user so as to attract the ground of eviction under Section 13(1)(l) of the Gujarat Rents, Hotel and Lodging House Rates Control Act.

7.18. The original landlord, Ishwarlal Motilal Choksi, was residing in the same locality, i.e. Begampura, Bhulamodino-Chakla, where the suit premises were situated. The landlord was therefore fully aware of the manner in which the suit premises were being used. From the inception of the tenancy, the premises were being used both for residence and for carrying on the business of hair cutting, and such use was within the knowledge and consent of the landlord. The Ld. Trial Court failed to properly appreciate this material circumstance.

7.19. The plaintiffs failed to prove that the suit premises were being used exclusively for business purposes and not for residential purposes. The evidence on record did not justify such a conclusion. It is contended that the presence of certain utensils, as noticed in the Commissioner's Panchnama, could not by itself establish the fact of residence, nor could the absence of certain articles on the date of inspection conclusively establish non-residence.

7.20. The oral evidence, including the evidence concerning the business carried on by deceased Manilal and thereafter by Ushaben, coupled with the other circumstances appearing

on record, was sufficient to establish the nature of use of the premises.

- 7.21. The plaintiffs were themselves aware of the business being carried on in the suit premises. The knowledge of the landlord regarding the nature of use of the premises is a relevant circumstance in determining whether the alleged user constituted a change of user. The Ld. Trial Court failed to appreciate this aspect in its proper perspective.
- 7.22. The plaintiffs failed to establish that the suit premises had remained continuously unused for more than six months immediately preceding the institution of the suit. The findings recorded by the Ld. Trial Court on Issue Nos. 8, 11 and 13 are mutually inconsistent with the evidence on record and with the specific defence raised by the defendants.
- 7.23. The defendants have further contended that merely because defendants Nos.1 to 3, being the heirs of the original defendant, may have had access to or may have possessed some other property, it could not automatically be concluded that they had acquired suitable alternative residential accommodation or that the suit premises were no longer required by them. The suitability, nature, ownership, possession and actual availability of such alleged alternative accommodation were required to be established by the plaintiffs by cogent evidence.
- 7.24. The suit premises continued to be required by the defendants for both residential and business purposes and that the alleged alternative properties did not satisfy the

requirement of suitable accommodation. Even if the existence of any other property was assumed, the same could not by itself attract Section 13(1)(l) of the Gujarat Rents, Hotel and Lodging House Rates Control Act unless the statutory requirements were independently and strictly proved.

- 7.25. On an overall appreciation of the documentary and oral evidence produced by both sides, the only reasonable conclusion was that the suit premises had been let out for residential as well as business purposes, that such user had continued throughout the tenancy, that there was no subsequent change of use, that there was no continuous non-user for the statutory period and that the Defendants had not acquired any suitable alternative residential accommodation so as to attract the ground of eviction under Section 13(1)(l) of the Gujarat Rents, Hotel and Lodging House Rates Control Act.

8. Submissions:

- 8.1. The Ld. Advocate for the defendants, by way of written submissions at Exh.75, has mainly contended that the judgment and decree passed by the Ld. Trial Court is contrary to the pleadings and evidence on record and that the Ld. Trial Court has failed to properly appreciate the documentary as well as oral evidence produced by the defendants.
- 8.2. It is submitted that the Ld. Trial Court has committed an error in answering Issue Nos.6, 8, 11, 13, 16 and 17 in favour of the plaintiffs. According to the Ld. Advocate, the finding on Issue No.6 regarding comparative hardship

has been recorded without assigning cogent reasons. It is further submitted that the findings on the remaining issues have been recorded without properly considering the evidence produced by the defendants.

- 8.3. The Ld. Advocate for the defendants has mainly contended that the suit premises were let out for both residential and business purposes and not exclusively for residential purposes. It is submitted that the defendants had been residing in the suit premises and were also carrying on the business of hair cutting therein, and subsequently the daughter of the defendant was carrying on beauty parlour activities. According to the Ld. Advocate, such user was in continuation of the original purpose of letting and did not constitute any change of user.
- 8.4. It is further submitted that there was no written rent note, lease deed or written condition of tenancy establishing that the suit premises were let out exclusively for residential purposes or prohibiting the carrying on of business therein. The Ld. Advocate has relied upon the deposition of the plaintiff at Exh.106, particularly the admission in cross-examination that he was not aware of the purpose for which the premises had originally been let out. It is therefore contended that the plaintiffs failed to establish the original purpose of letting.
- 8.5. The Ld. Advocate has further relied upon the evidence of Sadhanaben Pranolal at Exh.225 and contended that the evidence supports the case of the defendants regarding

the continued residential as well as business use of the suit premises.

- 8.6. It is further submitted that the plaintiffs failed to prove that the defendants had changed the user of the suit premises. According to the defendants, when the premises had originally been let out for residential as well as business purposes, carrying on the business of hair cutting or an allied activity such as a beauty parlour could not amount to a change of user. It is also submitted that there was no contractual term prohibiting such business activity.
- 8.7. The Ld. Advocate has further submitted that the plaintiffs failed to establish that the suit premises had remained continuously unused for more than six months immediately preceding the institution of the suit. According to him, the oral and documentary evidence on record establishes continued use of the premises for residential and business purposes. Therefore, the statutory ground of non-user was not proved by the plaintiffs.
- 8.8. The Ld. Advocate has challenged the finding that the defendants had acquired suitable alternative residential accommodation. It is submitted that the burden of proving the availability and suitability of alternative accommodation was upon the plaintiffs and that the plaintiffs failed to discharge such burden by cogent and legally admissible evidence.
- 8.9. In this regard, it is submitted that the property referred to as the “Tathastu” property was a shop and not suitable residential accommodation, the Varachha property was

jointly owned by the brothers, and the plaintiffs failed to establish the nature, ownership, possession and suitability of the other properties relied upon by them. It is further submitted that the alleged Gujarat Housing Board property was not proved to be in the possession of the defendants and that no competent officer of the Gujarat Housing Board was examined by the plaintiffs.

- 8.10. The Ld. Advocate has also relied upon the evidence of Bhadeshbhai Shashikant Choksi at Exhs.171 and 238 and submitted that the said evidence supports the fact that deceased Manilal had been carrying on the business of hair cutting. It is contended that the evidence relating to the alleged alternative properties was not legally sufficient to establish that the defendants had acquired suitable alternative residential accommodation.
- 8.11. The Ld. Advocate has further relied upon the evidence of the Court Commissioner, Jasvatiben A. Patel, at Exh.153 and the Commissioner's report at Exh.155, contending that the same supported the defendants' case that the suit premises were being used for both residential and business purposes.
- 8.12. It is further submitted that the documents at Exhs.242 and 243 did not establish that the suit premises had been let out exclusively for residential purposes. According to the Ld. Advocate, the plaintiffs had failed to prove the original purpose of letting by any reliable documentary evidence.
- 8.13. The Ld. Advocate has also contended that the plaintiffs failed to establish that any damage had been caused to the

suit premises on account of the alleged change of user or non-user. It is submitted that there was no cogent evidence of any such damage.

8.14. It is further submitted that the original landlord, Ishwarlal Motilal Choksi, was residing in the same locality in which the suit premises were situated and was therefore aware of the manner in which the premises were being used. According to the Ld. Advocate, the residential and business use had continued from the inception of the tenancy with the knowledge and consent of the landlord.

8.15. The Ld. Advocate has also submitted that merely because utensils were noticed in the Commissioner's Panchnama, no conclusive inference could be drawn regarding residential use or non-use of the premises. According to the Ld. Advocate, the evidence as a whole was required to be considered rather than drawing an isolated inference from the Commissioner's inspection.

8.16. It is further contended that the Ld. Trial Court erred in holding that the defendants had failed to establish that the business of hair cutting was being carried on from the suit premises. According to the Ld. Advocate, the oral evidence and surrounding circumstances supported their case in that regard.

8.17. The Ld. Advocate has therefore submitted that, on an overall appreciation of the pleadings and evidence, the plaintiffs failed to establish the necessary ingredients of change of user, continuous non-user for the statutory period and acquisition of suitable alternative accommodation. Consequently, according to the

defendants, the provisions of Section 13(1)(l) of the Gujarat Rents, Hotel and Lodging House Rates Control Act were not attracted.

- 8.18. Lastly, it is submitted that the Ld. Trial Court ought to have properly appreciated the documentary evidence, oral evidence and legal authorities relied upon by the defendants and ought not to have decreed the suit for possession and mesne profits. The Ld. Advocate has therefore urged that the impugned judgment and decree be set aside and the suit filed by the plaintiffs be dismissed.
- 8.19. The Ld. Advocate for the plaintiffs, Shri A.A. Dalal, has submitted that the suit filed by the plaintiffs is founded upon Sections 13(1)(l) and 5(11)(c) of the Gujarat Rents, Hotel and Lodging House Rates Control Act. It is submitted that the suit premises were let out at a monthly rent of Rs.15/- and that the defendants are the legal heirs of the original tenant. According to the Ld. Advocate, the defendants are in arrears of rent for a period exceeding six months.
- 8.20. It is submitted that only the premises situated on the first floor were let out and that the same were let out exclusively for residential purposes. According to the Ld. Advocate, defendant No.3 is running a salon and beauty parlour in the suit premises. It is submitted that the defendants themselves have admitted such fact in their written statement produced at Exh.96. It is further submitted that the defendants have not produced any

evidence to establish that the suit premises were let out for carrying on any business.

- 8.21. The Ld. Advocate for the plaintiffs has further submitted that defendant Nos.1 to 3 are not residing in the suit premises and that defendant No.3 is using the suit premises for commercial purposes. Defendant Nos.4 and 5 are married daughters of the original tenant. It is submitted that the rent for the period from 01.08.1990 to 30.01.1991 was not paid by the defendants. It is further submitted that the defendants have admitted in their written statement at Exh.96 that permanent construction/alteration had been carried out in the suit premises.
- 8.22. It is submitted that the original tenant expired during the pendency of the suit and that the defendants, being his legal heirs, are possessed of other properties. According to the Ld. Advocate, one of such properties has been let out, while the defendants have also taken another premises on rent apart from the suit premises.
- 8.23. The Ld. Advocate has further submitted that a notice dated 02.11.1990 was issued to the defendants and the same was duly served upon them on 06.11.1990. The defendants gave a reply to the said notice on 04.12.1990.
- 8.24. It is further submitted that the family of the plaintiffs is large and that one of the family members requires the suit premises for residential accommodation. According to the Ld. Advocate, owing to the absence of suitable residential accommodation, the marriage of their son could not be arranged. It is also submitted that the municipal taxes

were required to be paid by the tenant, however, since the defendants failed to pay the same, the plaintiffs were required to discharge the said liability. The relevant document has been produced at Exh.110.

8.25. The Ld. Advocate has submitted that the rent agreement has not been traced or produced. It is further submitted that the defendants have produced their written statement at Exh.96, but there is no averment therein that the original tenant was carrying on the business of a barber from the jharokha of the suit premises. It is therefore submitted that no evidence beyond the pleadings can be considered. According to the plaintiffs, the defendants have failed to establish that the original tenant was carrying on any barbering business from the suit premises and, in any event, a barber shop could not have been operated from the first floor in the manner alleged by the defendants.

8.26. It is further submitted that the new flat allegedly acquired by the defendants was situated in the same locality as the suit premises and that the said property had subsequently been let out. It is also submitted that the defendants had purchased another property on Varachha Road.

8.27. The Ld. Advocate has placed reliance upon the report of the Court Commissioner and submitted that, according to the said report, only a beauty parlour was being operated from the suit premises. The deposition of the plaintiff was recorded at Exh.106 and the report of the Court Commissioner was produced at Exh.155. It is submitted that the said report records the existence of a board

displaying the name “Tejas Beauty Parlour” and also records the presence of material relating to the beauty parlour business at the suit premises.

- 8.28. The Ld. Advocate has further relied upon the deposition of Bhadesh Shashikantbhai at Exh.171 and the deposition of an officer of the Surat Municipal Corporation at Exh.176. Documents at Exhs.179 to 184 were produced through the said witness and the same established that the defendants were using the suit premises for commercial purposes.
- 8.29. It is submitted that the defendants are residing in another property owned by them and, despite the suit premises having been let out for residential purposes, they are using the suit premises for running a beauty parlour.
- 8.30. The Ld. Advocate has further referred to the deposition of defendant No.1, who is the wife of the original tenant, recorded at Exh.186. According to the Ld. Advocate, in her cross-examination she stated that her husband was carrying on barbering work in the kathedra. At the same time, according to her deposition, “Tejas Beauty Parlour” was being operated from the first room of the suit premises.
- 8.31. The deposition of defendant No.2, the son of the original tenant, was recorded at Exh.221, while the deposition of defendant No.3, the daughter of the original tenant, was recorded at Exh.225. The deposition of Sadhanaben, a witness examined on behalf of the defendants, was recorded at Exh.227.

- 8.32. The Ld. Advocate has further submitted that the defendants have acquired residential accommodation which is larger and more suitable than the suit premises. Reliance has also been placed upon the deposition of a witness from the Surat Municipal Corporation at Exh.143, through whom the ownership of another property belonging to the defendants is stated to have been established.
- 8.33. It is submitted that the defendants themselves have stated that the said property was purchased for use as an office. According to the plaintiffs, the said property is larger than the suit premises and, although presently being used as an office, is suitable for residential occupation.
- 8.34. The Ld. Advocate has further referred to the subsequent deposition of Bhadreshbhai at Exh.238 and submitted that a separate property in the name of defendant No.1 was situated amongst the Gujarat Housing Board houses. According to the Ld. Advocate, the said property was sold and, out of the sale proceeds thereof, the property standing in the name of defendant No.3 was acquired.
- 8.35. It is submitted that defendant No.3, Ushaben, has taken a defence that the property standing in her name was purchased out of the amount received by her pursuant to her divorce, however, no documentary or other cogent evidence has been produced to substantiate the said contention.
- 8.36. The Ld. Advocate has further submitted that, as reflected from the electricity bills produced on record, the electricity consumption at the suit premises was

extremely low. According to the Ld. Advocate, the same establishes that the suit premises had remained unused for a period exceeding six months.

8.37. It is further submitted that the plaintiffs genuinely require the suit premises for their residential use and occupation. According to the Ld. Advocate, the deposition establishes that the co-plaintiff residing in the adjoining property also requires the premises for residential purposes. It is further submitted that plaintiff No.4 has remained unmarried owing to the absence of suitable residential accommodation.

8.38. The Ld. Advocate has also submitted that co-plaintiff Bhadreshbhai does not possess the financial capacity to purchase another property for residential purposes, that his daughter is mentally ill, and that his son is unmarried. It is therefore contended that the plaintiffs have established their genuine and bona fide requirement of the suit premises.

8.39. On the basis of the aforesaid submissions, the Ld. Advocate for the plaintiffs has contended that the plaintiffs have successfully established their requirement of the suit premises, whereas the defendants have no genuine requirement thereof. According to him, the defendants have acquired other suitable residential accommodation and, despite the suit premises having been let out for residential purposes, they have discontinued residential use thereof and have started using the same for commercial purposes by running a

beauty parlour, thereby changing the user of the suit premises.

8.40. It is, therefore, submitted that the defendants have no genuine need for the suit premises and that the present appeal has been preferred merely with a view to extracting a higher amount from the plaintiffs. The Ld. Advocate for the plaintiffs has accordingly urged that the appeal be dismissed and that the judgment and decree passed by the Ld. Trial Court be confirmed.

9. From the rival contentions, following points arise for the determination of the present appeal:-

Sr. No.	Points
01	Whether the judgment and decree passed by the Ld. Trial Court is legal, proper and in accordance with the facts and evidence on record?
02	Whether the Ld. Trial Court has properly appreciated the oral and documentary evidence produced by the parties while deciding the suit?
03	Whether the findings recorded by the Ld. Trial Court on the material issues are sustainable in law and on facts?
04	Whether the defendants have established any ground warranting interference with the impugned judgment and decree in exercise of appellate jurisdiction?
05	Whether the impugned judgment and decree passed by the Ld. Trial Court calls for any interference by this Court?
06	What order and decree?

10. My findings on the above points are as under:

Sr. No.	Findings.
01	In the Affirmative.

02	In the Affirmative.
03	In the Affirmative.
04	In the Negative.
05	In the Negative.
06	As per final order.

11. Findings and Analysis:

Since all the points of determination arise out of the same set of facts, the same evidence and the same questions of law governing the rights and liabilities of the parties, they are interrelated and interconnected with each other. The findings on one point have a direct bearing upon the determination of the remaining points. Separate discussion on each point would therefore result in repetition of the pleadings, evidence and legal principles already considered. Hence, for the sake of convenience, brevity and to avoid duplication of discussion, all the points of determination are taken up together and are being discussed jointly. However, separate findings on each point are recorded hereinafter in accordance with law.

- 11.1. The principal challenge raised by the defendants is to the findings recorded by the Ld. Trial Court with regard to the purpose for which the suit premises were let, the alleged change of user, non-user of the premises for the requisite period, and acquisition of alternative suitable residential accommodation. The defendants have also contended that the Ld. Trial Court has not properly appreciated the oral and documentary evidence produced

on record. These contentions, therefore, require consideration in light of the pleadings and evidence available on record.

11.2. At the outset, it is pertinent to note that the defendants had initially not filed their written statement in opposition to the suit. Subsequently, after production of the amended plaint, the defendants filed their written statement. Thus, the defence subsequently raised by the defendants has to be appreciated in the context of the pleadings taken by them after the amended plaint was brought on record.

11.3. It is an admitted position that neither the plaintiffs nor the defendants have produced the rent note or any written document recording the terms and conditions of the original tenancy. Therefore, there is no documentary evidence directly demonstrating the precise purpose for which the suit premises were originally let. However, the absence of the rent note by itself cannot be treated as conclusive in favour of the defendants. The purpose of letting can be gathered from the entire evidence available on record.

11.4. In this regard, the municipal tax bills produced by both sides assume significance. The said municipal records describe the suit premises as residential premises. The documentary evidence produced by the parties, therefore, lends considerable support to the case of the plaintiffs that the premises were intended for residential use. Though the municipal assessment by itself may not conclusively determine the contractual purpose of letting, it is certainly a relevant circumstance which, when

considered along with the oral evidence and conduct of the parties, supports the plaintiffs' case.

- 11.5. The evidence of defendants Tejash Manilal and Ushaben is also material. From their depositions, it emerges that the family of the original tenant consisted of six members and that all those family members were earlier able to reside in the suit premises. However, at the time when their evidence came to be recorded, only three members of the family were required to reside therein, yet according to their own evidence they were not in a position to adjust or reside in the suit premises. This circumstance assumes considerable importance.
- 11.6. If the suit premises were originally being used as a residential accommodation by six members of the family, and even three members subsequently could not conveniently reside therein, the evidence indicates a material change in the manner in which the premises were being used. The subsequent inability of even three family members to reside in the premises, despite six members having earlier resided therein, is a circumstance which lends support to the plaintiffs' case that the premises were subsequently put to commercial use. The establishment and functioning of the Beauty Parlour in the suit premises provides a reasonable and natural explanation for such changed circumstances.
- 11.7. The evidence further establishes that defendant No.3, Ushaben, is carrying on the business of a beauty parlour from the suit premises. The Court Commissioner's report is particularly significant in this regard. The report

records the physical condition and actual use of the premises and contains material indicating the existence of the beauty parlour and the articles/material connected with such business. The report, read with the oral evidence of the witnesses and the other documentary material, is therefore a relevant piece of evidence regarding the actual user of the suit premises.

- 11.8. The defendants have sought to contend that the premises were originally used for carrying on the business of hair cutting/saloon along with residence and, therefore, the subsequent use as a beauty parlour does not constitute a change of use. However, this defence cannot be accepted merely on the basis of an assertion. The defendants were required to establish, by cogent evidence, that the premises had in fact been let for both residential and commercial purposes. In the absence of the rent note, the said question has to be decided from the cumulative effect of the evidence on record.
- 11.9. Also, in the present case, the municipal records indicate residential use, the evidence regarding the residence of the family members demonstrates that the premises were capable of and were in fact used as a residence, whereas the evidence recorded at the relevant stage, coupled with the Court Commissioner's report, establishes that the premises were subsequently being used as a beauty parlour. Thus, the evidence as a whole does not support the defence that the premises were originally let for a composite residential-cum-commercial purpose.
- 11.10. Another important aspect relates to the acquisition of

alternative accommodation. The record indicates that the original tenant had acquired an interest in another property through a power of attorney arrangement. It is true that the power of attorney executed in favour of the original defendant does not, in express terms, contain a declaration of ownership in his favour. However, the subsequent power of attorney executed by the original defendant contains recitals indicating transfer of ownership. Moreover, the person in whose favour the subsequent transaction was effected ultimately obtained a conveyance deed directly from the Housing Board.

11.11. These documents cannot be considered in isolation. Their cumulative effect indicates that the original defendant had acquired an interest in, and subsequently dealt with, the alternative property as owner. The fact that the subsequent conveyance deed came to be executed directly by the Housing Board in favour of the concerned person does not, by itself, efface the circumstances emerging from the power of attorney transactions. The documents, when read together with the oral evidence, provide sufficient corroborative circumstances regarding acquisition of alternative accommodation by the original defendant.

11.12. More importantly, defendant No.1, in her cross-examination, has admitted that the original defendant had acquired another residential property. Such admission coming from the wife of the original tenant is of considerable evidentiary value. The said admission, coupled with the documentary material relating to the

alternative property, supports the finding of the Ld. Trial Court that the defendants had acquired or had access to alternative residential accommodation.

- 11.13. The evidence concerning defendant No.3, Ushaben, is also relevant. It has emerged from the record that defendant No.3 has acquired another residential property as well as a shop. The availability of such accommodation assumes significance particularly in the context of the defence that the suit premises were required for carrying on the business of a beauty parlour.
- 11.14. The cross-examination of defendant Nos.2 and 3 further reveals that defendant Nos.1 and 3 regularly went to sleep in the alternative premises. This admission is inconsistent with the contention that the suit premises continued to be necessary as the residential accommodation of the defendants. It also supports the inference that the suit premises were no longer being used for the residential purpose for which they were originally let.
- 11.15. The evidence regarding the use of the suit premises as a beauty parlour also assumes significance in this context. If the original business of the family was that of hair cutting/saloon, defendant No.3 has subsequently acquired a separate shop which could reasonably be utilised for carrying on such commercial activity. Therefore, the defendants cannot successfully contend that the continued occupation of the suit premises is necessary for carrying on the business. The availability of another shop for commercial activity, coupled with the availability of residential accommodation, considerably weakens the

defence of the defendants.

- 11.16. It is also significant to note that defendant No.3 has obtained a licence/registration under the applicable Shops and Establishments law in respect of the Beauty Parlour being run by her from the suit premises. However, no such licence or registration was ever obtained by the original defendant during his lifetime. If, as contended by the defendants, the original defendant was in fact carrying on the business of a hair-cutting saloon from the suit premises, ordinarily there would have been some corresponding registration, licence or other official record evidencing such commercial activity. No such document has been produced by the defendants to establish that the original defendant was carrying on such business from the suit premises. The subsequent obtaining of a licence by defendant No.3 for the Beauty Parlour, coupled with the complete absence of any corresponding registration in the name of the original defendant, is a material circumstance which lends support to the plaintiffs' case that the commercial use of the suit premises was commenced subsequently by defendant No.3. The defendants, having asserted that the original defendant was carrying on a hair-cutting saloon from the suit premises, were expected to produce the best available evidence in support of such assertion. Their failure to produce any registration, licence or contemporaneous official record relating to the alleged hair-cutting business of the original defendant, particularly when defendant No.3 herself subsequently obtained such registration for

her Beauty Parlour, constitutes a material circumstance which operates against the defendants and strengthens the inference that the suit premises was originally used for residential purposes and that the commercial use was subsequently introduced.

11.17. The aforesaid circumstances also have a bearing upon the question of non-user of the suit premises for residential purposes. The issue is not required to be decided merely on the basis of the presence of some articles or utensils in the premises. The Court is required to consider the actual and substantial use of the premises. The evidence of defendant Nos.2 and 3 regarding their residence elsewhere, their admission regarding sleeping in the alternative premises, and the actual functioning of the beauty parlour in the suit premises, read with the Commissioner's report, establish that the residential use of the suit premises had substantially ceased.

11.18. The Court Commissioner's report deserves particular consideration. The Commissioner had inspected the suit premises and recorded the physical features and articles found therein. The report indicates the presence of the Beauty Parlour, including the board/signage and materials connected with such activity. The report is not merely a formal document, it provides contemporaneous evidence of the actual physical use of the suit premises. The defendants have not been able to demonstrate any material circumstance which would justify discarding the report altogether.

11.19. It is true that a Commissioner's report by itself cannot

determine the legal rights of the parties. However, when the report is read along with the admissions made by defendant Nos.2 and 3, the evidence regarding alternative accommodation, the municipal records and the other documentary evidence, it substantially corroborates the plaintiffs' case regarding the actual use of the premises.

11.20. The contention that the Ld. Trial Court failed to appreciate the defence regarding residential-cum - commercial use also cannot be accepted. The Ld. Trial Court was required to consider the entire evidence and not merely the assertions contained in the written statement. The absence of a rent note, in the circumstances of the present case, requires the Court to determine the purpose of letting from the surrounding circumstances and conduct of the parties. The evidence on record, viewed cumulatively, does not establish that the suit premises were let for commercial use along with residence.

11.21. It is also significant that the defendants themselves have relied upon the fact that the original tenant and his family had resided in the suit premises. The evidence that six members of the family could earlier reside therein, but subsequently even three members could not conveniently reside therein, coupled with the admitted use of the premises as a beauty parlour, is a circumstance which cannot be ignored. It reasonably establishes that the nature and extent of use of the premises underwent a substantial change.

11.22. So far as the ground relating to alternative suitable

accommodation is concerned, the evidence of defendant No.1, the admissions of defendant Nos.2 and 3, the documents relating to the alternative property and the evidence concerning the property acquired by defendant No.3, when considered together, sufficiently establish availability of alternative accommodation. The defendants have not been able to satisfactorily explain why, despite having access to residential accommodation elsewhere and a separate shop for commercial activity, the suit premises continued to be necessary for their residence and business.

- 11.23. It is further contended on behalf of the defendants that the properties standing in the name of defendant No.3, Ushaben, were purchased out of the amount received by her from her husband at the time of divorce and, therefore, such properties cannot be considered while examining the availability of suitable alternative accommodation to the defendants. The said contention, however, does not merit acceptance. The controversy in the present case is not with regard to the ownership of the alternative property, but with regard to whether the defendants have acquired or have access to suitable accommodation for their residential requirement. For determining the availability of suitable alternative accommodation, the mere fact that the property stands in the individual name of one of the family members cannot, by itself, be treated as conclusive. Where such a family member is residing with or forms part of the family of the defendants and the premises is available for the

residential use of the family, the same can certainly be considered while assessing the availability of suitable accommodation. In the present case, defendant No.3 is admittedly a member of the family and has acquired residential property as well as another shop. The evidence of defendant Nos.2 and 3 further indicates that defendant Nos.1 and 3 regularly go to the said premises for residing/sleeping. Therefore, merely because the residential property was acquired by defendant No.3 from the funds received by her upon dissolution of her marriage, the same cannot be excluded from consideration. The relevant question is whether the family has access to suitable residential accommodation and not from whose funds the property was purchased. Consequently, the said defence raised by defendant No.3 does not dislodge the case of the plaintiffs regarding availability of suitable alternative accommodation.

- 11.24. The argument that the alternative property was acquired through a power of attorney and, therefore, cannot be treated as an acquisition of suitable accommodation is also not persuasive in the facts of the present case. The documentary chain, coupled with the subsequent conveyance by the Housing Board and the admissions made by the defendants themselves, demonstrates that the transaction was not a mere notional or nominal arrangement. The conduct of the parties in actually using the alternative premises for residence further strengthens the conclusion that the accommodation was real, available and suitable.

- 11.25. The findings of the Ld. Trial Court on the material issues, therefore, cannot be said to be based upon no evidence or upon an erroneous appreciation of the evidence. On the contrary, the findings are supported by the oral evidence, admissions of the defendants, municipal records, documentary evidence and the Court Commissioner's report. Merely because another view of the evidence may be possible is not sufficient ground for an appellate Court to substitute its own view, particularly when the findings recorded by the Ld. Trial Court are based on a plausible appreciation of the evidence.
- 11.26. The defendants have failed to demonstrate any material perversity, illegality or patent error in the findings recorded by the learned Trial Court. The challenge raised in the appeal essentially seeks a re-appreciation of the evidence without demonstrating that the conclusions arrived at by the Ld. Trial Court are wholly unreasonable or unsupported by the record.
- 11.27. It is pertinent to note that the Ld. Trial Court has left certain issues undecided. However, upon perusal of the reasoning assigned in the impugned judgment, it appears that the Ld. Trial Court has observed that the respective parties have failed to prove the facts pertaining to those issues. If that was the conclusion reached by the Ld. Trial Court on appreciation of the evidence, the proper course would have been to record findings on such issues in the negative, rather than leaving them undecided. Nevertheless, neither the plaintiffs have challenged the said aspect of the judgment by preferring any appeal or

cross-objection, nor have the defendants raised any grievance in the present appeal against the issues having been left undecided. In the absence of any challenge from either side, and particularly when the ultimate conclusions recorded by the Ld. Trial Court have not been shown to have caused any prejudice to the defendants, this Court does not find it necessary to interfere with the said aspect of the impugned judgment. The said procedural irregularity, by itself, therefore, does not furnish any ground for setting aside or disturbing the otherwise sustainable findings and conclusions of the Ld. Trial Court.

11.28. On an overall consideration of the evidence, this Court finds that the plaintiffs have established the relevant grounds pleaded for recovery of possession. The defendants have failed to establish that the suit premises were let for residential-cum-commercial purposes or that their subsequent commercial use as a beauty parlour was permissible under the original terms of tenancy. The evidence further establishes the availability of alternative residential accommodation and the fact that the defendants are actually using such alternative premises for residence.

11.29. Consequently, the findings recorded by the Ld. Trial Court do not warrant interference in the present appeal. The defendants have failed to establish that the impugned judgment and decree suffers from any perversity, illegality, material irregularity or error of law. The appeal, therefore, deserves to be dismissed and the

judgment and decree passed by the Ld. Trial Court deserves to be confirmed.

12. Conclusion

12.1. In view of the foregoing discussion and upon an independent re-appreciation of the oral and documentary evidence available on record, this Court is of the considered opinion that the defendants have failed to establish any ground warranting interference with the judgment and decree passed by the Ld. Trial Court. The plaintiffs have succeeded in establishing that the suit premises was originally let for residential purpose, that the defendants subsequently changed the nature of its use by running a Beauty Parlour therein, and that the defendants had access to suitable alternative residential accommodation. The evidence regarding the alternative properties, the admissions emerging from the depositions of defendant Nos.1 to 3, the municipal records, the low electricity consumption, the physical condition and actual user of the premises noticed by the Court Commissioner, and the subsequent registration obtained by defendant No.3 for running the Beauty Parlour, when considered cumulatively, substantially support the case of the plaintiffs. Conversely, the defendants have failed to produce the rent note or any cogent contemporaneous evidence establishing that commercial use was part of the original terms of tenancy or that the original tenant was carrying on a hair-cutting business from the suit premises. The absence of any licence or registration in the name of the original tenant, despite the subsequent registration

obtained by defendant No.3 for the Beauty Parlour, is also a material circumstance operating against the defence of the defendants. The findings of the Ld. Trial Court, therefore, cannot be said to be perverse, arbitrary, contrary to the evidence on record or legally unsustainable. No material error of law or fact, miscarriage of justice or prejudice to the defendants is demonstrated before this Court. The grounds urged in the appeal consequently fail to dislodge the findings recorded by the Ld. Trial Court. The appeal, therefore, deserves to be dismissed and the judgment and decree passed by the Ld. Trial Court deserves to be confirmed.

- 12.2. Accordingly, Point Nos.1 to 3 are answered in the Affirmative, whereas Point Nos. 4 & 5 are answered in the Negative. Consequently, the appeal deserves to be dismissed.

ORDER

1. The present appeal is hereby dismissed.
2. The judgment and decree dated 10.03.2015 passed by the Ld. Trial Court in Small Suit No. 38 of 1991 is hereby confirmed.
3. The defendants shall hand over vacant, peaceful and physical possession of the suit premises to the plaintiffs in accordance with the decree passed by the Ld. Trial Court.
4. The decree for recovery of arrears of rent and/or compensation/mesne profits, as granted by the Ld. Trial Court, is hereby confirmed. The plaintiffs shall be entitled to recover the amount in accordance with the terms of the decree.

5. The defendants shall also be liable to pay mesne profits/use and occupation charges, if and to the extent determined by the Ld. Trial Court, until handing over the vacant and peaceful possession of the suit premises to the plaintiffs.
6. In view of the facts and circumstances of the case, the parties shall bear their own costs of the present appeal.
7. The decree be drawn accordingly.
8. Record and proceedings of the Ld. Trial Court be sent back forthwith along with a copy of this judgment.

Signed and pronounced in open Court today on this 31st day of July, 2026.

Date : 31-07-2026

Place : Surat

Self

(S. P. Mehta)

16th Additional District Judge,
Surat.

Unique ID : GJ00934