

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL REVISION APPLICATION NO. 311 of 2023**

=====

HUSNABANU SADIKALI BUKHARI

Versus

KANIZ E ZEHRA D/O AHMEDHUSAIN AND W/O NAWAZISALI BUKHARI

=====

Appearance:

MR SIRAJ R GORI(2298) for the Applicant(s) No. 1,2

for the Opponent(s) No. 1,2,3,4,5,6

=====

**CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 08/08/2023****ORAL ORDER**

1. Mr Siraj R. Gori, learned advocate appearing for the applicants, submitted that the plaintiffs and the respondents are the family members and close relatives residing in the same vicinity. It is submitted that the address mentioned in the cause title of suit, substantiates the said aspect. Therefore, the suit filed in the year 2022 by the plaintiffs seeking peaceful and vacant possession of the land admeasuring 200-300 sq. mtrs. out of 927 sq. mtrs. of survey no.752, wrongly mentioned as survey no.753/1, would be barred by limitation for, everything was within the knowledge of the plaintiffs. It is submitted that the property, in which, the repairing work is undertaken, is in existence since last 40 years and was and is in occupation of the defendant nos.1 and 2. It is submitted that the present suit, is nothing but a clever drafting only with a view to come out of Order VII Rule 11 of the Code of Civil Procedure, 1908 application.

2. The defendant no.1 at the very young age had become widow; however, has raised the children accordingly. One of the sons, since

now is earning member, and considering the condition of house, that some repairing work was initiated.

3. The plaintiffs have filed the suit seeking possession on the ground that there is an illegal encroachment by the defendant no.1 which fact, is incorrect. It is submitted that the suit having been barred by limitation, there is not a slightest discussion in the order passed by the court below discussing as to how the suit is not barred by limitation except reiterating and making a reference of judgments. It is submitted that as per the order below notice of motion Exhibit 6 and 7, the learned judge, has permitted the repairing work. Had it been the case of the plaintiffs that the petitioners are not owner or occupier of the property, the said order, could not have been passed. Permitting the petitioners to carry out the repairing work itself suggest that the building is in existence and is in possession of the petitioners.

4. Considered the submissions. Issue notice to the respondents, returnable on 12.09.2023. Ad-interim relief, is granted in terms of paragraph 12.D. till the next date of hearing. Direct service is permitted.

RAVI P. PATEL

**(SANGEETA K. VISHEN,J)**