

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 688 of 2022**

=====

HAKABHAI MANGABHAI

Versus

BHARTIBEN KANTILAL AASHRA

=====

Appearance:

MR. HJ KARATHIYA(7012) for the Applicant(s) No. 1,2

for the Opponent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 22/12/2022****ORAL ORDER**

1. Mr. HJ Karathiya, learned Advocate submitted that the respondent had filed the suit seeking eviction on three counts namely sub-letting, permanent alteration and construction and non-usage. It is submitted that neither of the issues could be proved by the respondents and therefore, learned Additional Judge Small Causes Court dismissed the suit. In appeal before the Additional District Judge, the applicant could not remain present. The learned Judge, allowed the appeal on the ground that at the time of drawing panchnama by the Court Commissioner, it was the defendant No. 2, who was present all throughout and not the defendant no. 1. The learned Judge, has also observed that the plaintiff is a blind lady unable to see the activities carried out in the rented premises by the defendants and that the defendants are the best persons to state the truth before the Court. It is submitted that said findings are also erroneous inasmuch as the respondent has not been enable to place on record any evidence to substantiate either of the grounds raised for eviction.

2. Reliance is placed on the judgment in the case of *Popatlal Premchand Sheth vs. Dhanjibhai* reported in (1994) 1 GLR 71. It is submitted that for the purpose of establishing the fact of sub-letting, it is essential that the parties shall establish two vital facts namely transfer of exclusive possession of the rented premises or any part thereof and valuable consideration of such transfer. It is submitted that the respondent has been unable to prove and therefore, the learned Judge committed an error in allowing the appeal.

3. Mr. Karathiya, learned Advocate, submitted that earlier the father of the applicants and thereafter, the applicants have been in possession as a tenant and the respondent agreed to purchase the property together with the tenants.

4. Considered the submissions. Issue notice to the respondents returnable on 06.01.2023.

5. Till the next date of hearing, the proceedings of execution i.e. EXE/SM/427/2022 before the Small Causes Court, Rajkot are hereby stayed. Direct service is permitted.

SINDHU NAIR

(SANGEETA K. VISHEN,J)