



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 1775 of 2017**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI**

=====

Approved for Reporting	Yes	No

=====

SAWAISINH DEVISINGH CHAUHAN

Versus

YASHWANTSINH MAHANSINH RATHOD

=====

Appearance:

MR PJ YAGNIK for MR HARSH K RAVAL(9068) for the Appellant

MR.D K.PUJ(3836) for the Respondent

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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date : 03/07/2026**

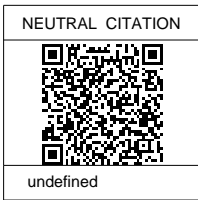
**JUDGMENT**

1. The present first appeal is directed against the judgment and decree dated 17th June 2016, passed by the learned Principal Senior Civil Judge, Gandhinagar in Special Civil Suit No. 403 of 2011, by which the plaintiff's suit was allowed.

1.1 By the impugned judgment and decree, the learned trial Court passed following order:

(i) declared the defendant's possession over the suit property as illegal and invalid;

(ii) directed the defendant to hand over vacant and peaceful possession of the suit property to the plaintiff within two months from the date of the order;



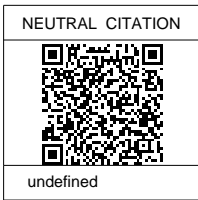
(iii) issued a perpetual injunction restraining the defendant from transferring, assigning, or creating any charge or obtaining any rent in respect of the suit property; and  
(iv) directed the defendant to pay Rs. 5,000/- per month as mesne profits from January 2008 till the date of recovery of possession.

2. For the sake of convenience and brevity, parties are referred to as per their original status before the learned trial Court.

3. Facts of the case are as under:-

3.1 The suit property is House No. 53, Motera, owned by the plaintiff.

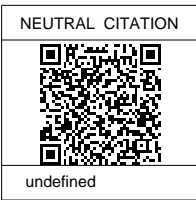
3.2 The plaintiff initially shifted to the suit property upon receiving the possession letter and share certificate from the society. Subsequently, the plaintiff shifted to another place in Bapunagar for personal reasons. The defendant is a near relative of the plaintiff. The defendant was working in Torrent Electricity Company and was about to superannuate in the year 2005. Thus, he was in search of residential premises. Upon the defendant's request, and out of good relationship, the plaintiff gave the suit property to the defendant for a period of two years, with the condition that the defendant would vacate the property whenever he obtained another residential property. There was no agreement between the parties to charge any rent.



3.3 The parties thereupon entered into an agreement on 26th May 2005, by which the defendant was permitted to reside in the suit property for a period of two years. The agreement remained in force for two years only. Even after the expiry of the two year period, the defendant did not vacate the suit property. On the contrary, the defendant filed a suit against the plaintiff, being Regular Civil Suit No. 293 of 2008 before the learned 7<sup>th</sup> Additional Senior Civil Judge, Gandhinagar, seeking an order of non-eviction without due process of law. The court in that suit, while not deciding in the defendant's favour on the merits, passed an order that the defendant may not be evicted without following the due course of law. In those circumstances, the plaintiff filed the present suit to recover vacant and peaceful possession of the suit property along with mesne profits.

3.4 The defendant on being served filed his written statement at Exhibit 14. He admitted that he is residing in the suit property since the year 2005. He denied almost all other facts pleaded by the plaintiff. The defendant contended that no agreement was executed between the parties on 26th December 2005 or at any point of time or any document if produced as such does not contain the valid and legal signature of the defendant. The defendant pleaded that he is an illiterate person, and that his signature, if any, was obtained by the plaintiff by exercising undue influence and coercion over him.

3.5 Specifically, in his oral deposition, the defendant contended that his signature on the agreement was obtained

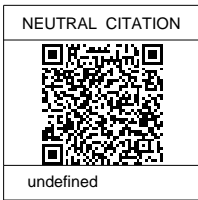


by the plaintiff under the threat that the plaintiff would commit suicide if the defendant refused to sign the document. The defendant contended that such a document does not constitute a valid and effective agreement between the parties.

3.6 The defendant claimed that he is a lawful tenant of the suit property at a monthly rent of Rs.1500/-. He contended that the plaintiff has been receiving rent month after month but has not issued any rent receipts. The defendant further contended that the plaintiff had agreed to sell the suit property to the defendant at a total sale price of Rs. 7 lakh, having already received Rs. 1,50,000/- as advance towards the same, but that the plaintiff failed to execute the sale deed. On the basis of the above contentions, the defendant prayed for dismissal of the plaintiff's suit.

3.7 After framing the issues, the learned trial Court permitted both the parties to lead evidence. The Plaintiff entered the witness box at Exhibit 36; filed oral evidence of witness at Exh.47; placed on record documentary evidence at Exh.37 to 41 and lastly Exh.50. On the other hand, the defendant filed his oral evidence at Exhibit 52; led oral evidence of four witnesses from Exhs.58 to 61.

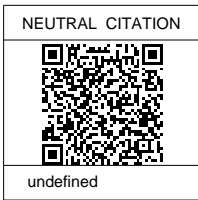
3.8 After hearing both the parties and after considering oral as well as documentary evidence, the learned trial Court was pleased to allow the suit of the plaintiff in the aforesaid premises.



3.9 Being aggrieved by the said judgment and decree, the defendant has preferred the present first appeal.

4. Heard learned advocate Mr. PJ Yagnik for the defendant and learned advocate Mr. DK Puj for the plaintiff.

5. Learned advocate Mr. PJ Yagnik, referring to the order passed by the Coordinate Bench of this Court on 14th June 2016, 28th June 2017 and 7th July 2017, contended that the Coordinate Bench of this Court has specifically observed that the learned advocate appearing for the defendant in the trial did not lead evidence properly. The glaring mistake and casual approach of the said advocate was visible from the record. He would further submit that the defendant should not be made to suffer for the fault of his advocate. He would further submit that the four witnesses examined on behalf of the defendant filed identical affidavits, which was the fault of the advocate and not the defendant. He would further submit that the Coordinate Bench of this Court further found that the learned trial court did not deal with the evidence of the witnesses examined by the defendant in the impugned judgment. No reference was made to those witnesses. Looking to this aspect, He would further submit that the impugned judgment and decree is cursory and reflects non-application of mind on the part of the trial court. He would further submit that the learned trial court did not consider that the defendant is a poor and uneducated person. The signature on Exhibit 40 was obtained by the plaintiff by exercising undue influence and coercion upon the defendant, who is a near relative of the plaintiff. He would further

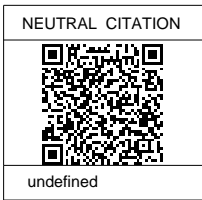


submit that the learned trial Court did not have inherent jurisdiction to decide a dispute between a landlord and a tenant. He would further submit that the plaintiff, in order to avoid the jurisdiction of the Rent Court, filed the suit in the Civil Court. This is a serious legal error that vitiates the impugned judgment. He would further submit that the document Exhibit 40 remained unproved on the record, yet the learned trial court relied upon it to pass the eviction decree. This is a clear error on the part of the learned trial court.

5.1 Learned advocate Mr. PJ Yagnik would further submit that in the earlier suit filed by the defendant (RCS No. 293/2008), the court held that the defendant is in legal and lawful possession of the suit property and cannot be evicted without due process of law. He would further submit that to avoid the effect of that judgment, the plaintiff filed the present suit in the Civil Court rather than the Rent Court, but, the learned trial court failed to consider this legal issue.

5.2 On the basis of the above grounds, it was submitted by learned advocate Mr. PJ Yagnik that present First Appeal may be allowed and the impugned judgment and decree suffer from vices, illegality and gross error and are required to be set aside.

6. *Per contra*, learned advocate Mr. DK Puj appearing for the plaintiff opposing the First Appeal, would submit that the documents at Exhibits 37, 38 and 39 are sufficient to prove that the plaintiff is the owner of the suit property. These



documents remain unchallenged. He would further submit that the order passed in the earlier suit (RCS 293/2008) did not favour the defendant's case on merits. The court therein merely observed that the defendant may not be evicted without following the due course of law. Consequently, the plaintiff filed the present civil suit, which was rightly decreed by the trial court. He would further submit that document at Exh.40 governs the relationship between the parties and the defendant's entry into the suit property. Although the defendant sought to impeach Exhibit 40 on the ground that his signature was obtained under undue influence and pressure, the defendant did not deny his signature on the document. He did not produce any evidence whatsoever to substantiate the claim of undue influence or coercion. In the absence of any counter documentary evidence, mere oral evidence of the defendant is insufficient to counter the plaintiff's claim. He would further submit that Exhibit 40 establishes that the plaintiff gave the suit property to the defendant gratuitously, out of good relationship, for a limited period of two years, as the defendant was on the verge of superannuation and was searching for other residential premises. There is no document on record other than Exhibit 40 that governs the relationship between the plaintiff and the defendant or that justifies and establishes the defendant's entry into the suit property.

6.1 Learned advocate Mr. DK Puj would submit that in the absence of any other document establishing a landlord-tenant or lesser-lessee relationship, the defendant's right to remain

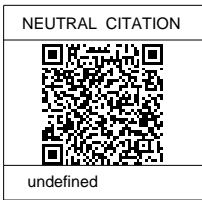


in possession of the suit property expired at the end of the two-year period provided in Exhibit 40, which was sometime in the end of the year 2007. The defendant's continued possession thereafter became illegal.

6.2 Learned advocate Mr. Puj would further submit that the plaintiff candidly conceded before this Court that the learned trial court erroneously granted mesne profits from January 2008, whereas the plaintiff had claimed mesne profits only from the date of the suit i.e. 23.12.2011. The plaintiff accordingly sought modification of operative order No.4 to the extent of modifying the date from which mesne profits are payable, from January 2008 to the date of filing of the suit.

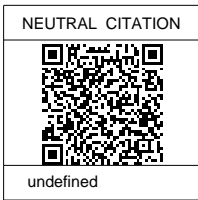
6.3 On the basis of the above submissions, the learned advocate Mr. DK Puj prayed that the appeal be dismissed, with the modification of the operative order to the extent of the mesne profits date.

7. The rival arguments raise question that; (1) whether the defendant proves that he is tenant and his tenancy is covered under the provisions of the Gujarat Rent, Hotel and Lodging House Rent Control Act, 1947 (in short "Rent Act")?; alternatively, he proves that he is lessee and the plaintiff is lessor and the tenancy of the suit property cannot be decided without the notice given under the Transfer of Property Act? Whether the learned trial Court has committed any error much less error of understanding the facts and provisions of law to decree the suit? What order?



8. The fact remains that the defendant's entry in the suit property came in the year 2005. The plaintiff came out with the case that the defendant who is his near relative and was on verge of superannuation in the year 2005 and was searching for residence for a limited time period. Upon the defendant's request, and out of good relationship, the plaintiff gave the suit property to the defendant for a period of two years by executing agreement dated 26.12.2005. The defendant came out with the case that he is tenant of the suit property and paying monthly rent of Rs.1500/-. Perusal of the written statement at Exh.14 filed by the defendant, it does not clarify that whether the defendant is claiming that he is tenant protected under the Rent Act or relationship between the plaintiff and the defendant is governed under the Transfer of Property Act. In general and spacious statements, the defendant claims that he is in possession of the suit property as a tenant. In para 14 of the written statement, the defendant contended that the plaintiff has obtained his signature on agreement dated 26.12.2005 without his clear consent and taking advantage of the said aspect, the plaintiff was threatening the defendant to raise the rent and also was passing the threat to take away the possession without following due process and therefore, the defendant had filed Regular Civil Suit No.293 of 2008. It is in these circumstances, the Court has to decide whether the defendant is tenant under the Rent Act or is governed by the provisions of the Transfer of Property Act.

9. Exh.37 on record is a booking agreement in favour of the



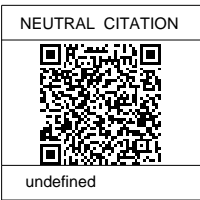
plaintiff in regards to suit property; Exh.38 is a share certificated issued in favour of the plaintiff on 25.7.2002 and Exh.39 is a possession letter dated 6.4.2004. Therefore, it is clear that the suit property was constructed and possession was taken post March 31, 2000. Precisely, the plaintiff has taken possession of the suit property in the year 2004. In view of Section 4(1A) of the Rent Act, new buildings or premises constructed on or after September 5, 2001 are exempted from the operation of the Rent Act. Since the suit property was constructed and possession was taken in the year 2004, the provisions of the said Act do not apply to the suit property. The relationship between the parties in respect of the suit property is therefore governed by the Transfer of Property Act, 1882 and the private agreement between the parties.

9.1 In identical fact situation, while examining whether provisions of Rent Act is applicable, the Coordinate Bench of this Court in case of Jamnadas Mangaldas Sharma Versus Rajeshkumar Somabhai Parekh, 2019 JX(Guj) 480, in para 22 to 24, held as under:-

***“22. The aforesaid contention of Mr. Golani deserves to be outright rejected in view of the Gujarat Amendment Act, 2001. Section 4 of the Act, 1947 reads thus:***

***"4. Exemptions***

***(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government but it shall apply in respect of***



*premises let to the Government or a local authority*

*(1A) This Act shall not apply to-*

*(a) any premises constructed on or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Second Amendment) Act, 2001 (hereinafter referred to as "the amending Act);*

*(b) any existing premises which is self-occupied by the owner or vacant on or after the commencement of the amending Act, and is let after such commencement for a period of ten years from the date of the commencement of the amending Act.*

*Explanation. - For the purpose of this section, "existing premises" means any premises which exists on the date of the commencement of the amending Act." '*

*(2) The State Government may, by a notification in the Official Gazette direct that all or any of the provisions of this Act shall not, subject to such conditions and terms, as may specify, apply ;*

*(a) generally-*

*[(i) to premises used for a public purpose of a charitable nature or to any class of premises used for such purpose.*

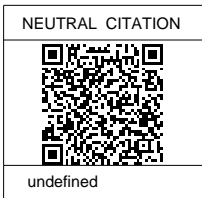
*(ii) to premises held by a public trust for a religious or charitable purpose and;*

*(iii) to premises held by & public trust for a religious or charitable purpose and administered by a local authority, or*

*(iv) to premises vested by or under the Charitable Endowment Act, 1890*

*(VI of 1890) in the treasurer of Charitable Endowments for India or for any State, or]*

*(v) to premises constructed or purchased out of Public Trust Administration Fund established*



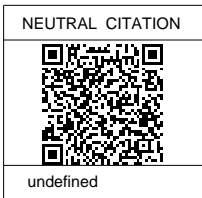
*under Section 57 of the Bombay Public Trust Act, 1950 (Bom. XXIX of 1950) and vesting in the Charity Commissioner, or*

*(b) for special reasons to be recorded, to any particular premises of the nature referred to in sub- clauses (i), (ii), (iii) of Clause (a) Explanation: - or the purpose of this section "public trust "means a Public Trust registered or deemed to be registered under Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950), or a wakfs registered or deemed to be registered under Muslim wake Act, 1954 (XXXIX of 1954].*

*(3) The (State) Government may also by order direct that all or any of the provisions of part III shall not apply to such hostel or institution or such class of hostels or institutions, subject to such terms and conditions, if any, as may be specified in the order.*

*(4) (3) The Expression "premises belonging to Government or & local authority" in sub- section (1) shall, notwithstanding anything contained in the said sub- section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the ' Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and (b) Notwithstanding anything contained in Section 15 such person shall be entitled to create & tenancy in respect of such building or part thereof whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 (Bom. Ord. II of 1959).*

**23.** *The Amendment Act, 2001 was to remain in force for a period of ten years. The Amendment Act came into effect with effect from 5th September 2001 i.e.*



*upto 31st day of March 2011. Later, the same came to be extended upto 31st March 2021. The Notification in that regard published in the Government Gazette reads thus;*

*"PART IV*

*Acts of Gujarat Legislature and Ordinances promulgated and*

*Regulations made by the Governor*

*The following Act of the Gujarat Legislature, having been assented to by the President on the 31<sup>st</sup> March, 2011, is hereby published for general information.*

*C.J. GOTHI,*

*Secretary to the Government of Gujarat.*

*Legislature and Parliamentary Affairs Department.*

*GUJARAT ACT NO.6 OF 2011.*

*(First published, after having received the assent of the President, in the*

*"Gujarat Government Gazette,"on the 31<sup>st</sup> March, 2011).*

*AN ACT*

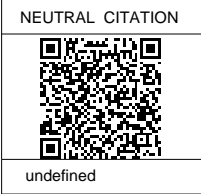
*further to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.*

*It is hereby enacted in the Sixty-second Year of the Republic of India as follows:-1. (1) This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Amendment) Act, 2011.*

*(2) It shall come into force from the 1<sup>st</sup> April, 2011.*

*2. In the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the principal Act"), in section 3, in subsection (2), for the figures, letters and words "31<sup>st</sup> day of March, 2011", the figures, letters and words "31st day of March, 2021" shall be substituted.*

*3. In the principal Act, in section 4, in sub-section*



*(1A), the words "for a period of ten years from the date of the commencement of the amending Act" shall be deleted."*

**24.** *Thus, from the above, it is clear that the provisions of the Act, 1947 will have no application in the case on hand. This issue has been well considered by a Coordinate Bench of this Court in the case of Dipak Rasbiharilal Goyel vs. Naliniben H. Raval [First Appeal No.879 of 2011 decided on 23rd March 2012]. I may quote the relevant observations:*

*8...Moreover, it has been submitted that the operation of the Rent Act has been suspended and the notification will have effect only for the purpose of filing the proceedings instead of the Rent Court to the Civil Court, cannot be readily accepted. The notification which has been placed on record by the learned advocate for the appellant particularly Sub Section (1- A) of Section 4 of the Rent Act has been amended vide Government notification dated 30.10.2001, which reads as under :-*

*"(1- A) This Act shall not apply to - (a) any premises constructed on or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Second Amendment) Act, 2001 (Guj. 27 of 2001) (hereinafter referred to as "the amending Act");*

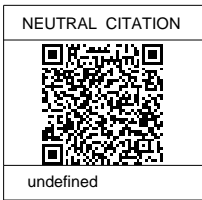
*(b) any existing premises which is self- occupied by the owner or vacant on or after the commencement of the amending Act, and it let after such commencement; for a period of ten years from the date of the commencement of the amending Act.*

*Explanation. - For the purposes of this section, "existing premises" means any premises which exists on the date of commencement of the amending Act."*

*[9] The notification by which the Bombay Rents, Hotel and Lodging House Rates Control Act has*



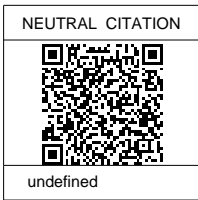
*been suspended clearly provides that "it shall be suspended for a period of ten years from the date of the commencement of the amending Act" and the provisions of the Rent Act would not be applicable. Therefore, naturally, when the statutory provisions of the Rent Act are not applicable and the entire transaction is pursuant to the leave and licence agreement between the parties, the parties would be governed by terms and conditions of such leave and licence agreement. As stated above, clause in the recital, the leave and licence agreement at Ex.26 which has been quoted here clearly provides that the premises has been permitted to be used purely on leave and licence basis as licensee only for a limited period of 11 months and not as a lessee or a tenant. Further, clause 7 again provides that "the licensee confirms that he will not claim exclusive possession or claim any tenancy right over the licensed premises." Thus, it is more than clear that the parties have accepted and agreed to be governed by leave and licence agreement as expressed stipulation that the possession is given only for the purpose of residence on the basis of leave and licence agreement for a period of 11 months and not as lessee or a tenant. Further, it has been clarified and confirmed by the licensee / applicant that he will not claim exclusive possession or claim any tenancy right over the premises. This would make it more than clear about the intention of the parties that they have willingly and readily accepted to be the governed by the leave and licence agreement. Therefore, the submissions with regard to gathering of the intention of the parties does not survive as parties have made their intention clear by clause in the agreement. Moreover, admittedly, by virtue of the amendment in the Rent Act, the operation of the Rent Act itself has been suspended and it is made clear that it was not applied for a period of 10 years. Therefore, when there is no statutory provisions in force or applicable and when the*



*parties have entered into leave and licence agreement willingly with open eyes with the terms and conditions which has been reduced in writing, they would naturally be governed by such expressed conditions agreed upon between the parties. Thus, they are governed by the terms and conditions of the leave and licence agreement."*

10. In view of above, defendant's first contention that he is a tenant protected under the Rent Act therefore fails on the threshold ground that the Rent Act is not applicable to the suit property. The defendant's relationship with the plaintiff, whatever its nature, is not governed by the Rent Act.

11. Again reading of paragraph 14 of the defendant's written statement reveals that the defendant has accepted his signature on Exhibit 40. He sought to impeach the document on two grounds: (i) in the written statement, he stated that his signature was taken without his clear consent; and (ii) in his oral deposition (examination-in-chief), howbeit, he introduced a new and different ground that the plaintiff had threatened to commit suicide unless the defendant signed the document, and thereby, the signature was obtained under coercion and duress. This Court finds it significant and surprising that the ground of suicide threat, a specific and grave allegation, was never raised at any prior point of time. It was not pleaded in the written statement nor raised in the earlier suit filed by the defendant (RCS 293/2008). It appears for the first time in the examination-in-chief filed during the trial. Such a contention, raised belatedly and unsupported by any prior pleading or contemporaneous document, is a hollow statement and cannot



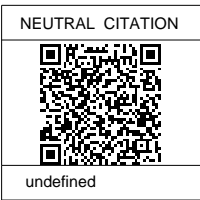
be accepted. Such statement is clear afterthought product.

12. The document at Exhibit 40 was within the defendant's knowledge since it was executed in the year 2005. If the defendant's signature was truly obtained under duress or threat of suicide, it is inexplicable why this contention was not raised in the written statement or in any prior proceeding. The belated introduction of this ground in oral deposition, without any corroboration, does not impeach Exhibit 40.

13. Since the defendant has failed to prove that Exhibit 40 was executed under duress, coercion, or by obtaining his signature without free consent and understanding, the said document stands proved. Exhibit 40 governs the relationship between the parties. Apt to note that no other document executed between the parties recites any relationship of landlord-tenant, lessor-lessee, or otherwise, is produced during trial.

14. As per the recital of Exhibit 40, the plaintiff handed over possession of the suit property to the defendant for a limited period with the condition that the defendant would be liable to pay charges for light, local taxes, etc. The defendant's right to remain in possession expired upon the expiry of the agreed period. The continuation of the defendant's possession thereafter is without any legal basis. The recital of Exh.40 reads as under (translated into English from vernacular language):-

*“We, the Lessee, have taken for residential purpose only, a house exclusively owned, possessed, and*



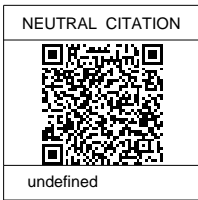
*occupied by you, the Lessor, situated at Res. 53, Hariomnagar Part-2, Motera Village, Taluka and District: Gandhinagar; and we, the Lessee, shall not have any right to claim any rent of any nature whatsoever from you, the Lessor. The said house has been taken by us, the Lessee, for a period of two years only from today. Any amounts towards light bills, taxes, cesses, or any other outgoings that may arise in respect of the said house shall be entirely paid by us, the Lessee; you, the Lessor, are not liable to pay any amount towards the same. The aforementioned house has been given to us, the Lessee, solely for residential purpose, and we, the Lessee, are not required to pay any rent of any kind to you, the Lessor.*

*The Lessor has not received any security deposit of any nature whatsoever in respect of this house.*

*We have executed this agreement voluntarily, in our full senses, and without any duress, coercion, or inducement from anyone; and the same is acceptable, approved, and binding upon us as well as our legal heirs and relatives. In witness whereof, we have affixed our signatures and those of our witnesses below.”*

15. The above recital reflects the nature of Exh.40 on leave and license agreement. The defendant was in need of residential premises, as he was about to retire from service. He was looking for the residence for limited time period, until search permanent abode. The plaintiff and the defendant are near relatives. All these factual aspects decipher that leave and license agreement was executed between the parties and after expiry of the leave and license agreement, licensee's possession became illegal.

15.1 In paragraph 6.1 of the impugned judgment, the trial court acknowledged that it had taken reference of the oral

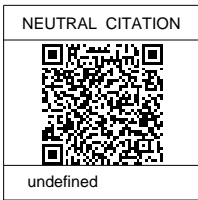


evidence led by the defendant, but had not discussed the same at length. Para 6.1 reads as under:-

*“6.1 The defendant has in his examination-in-chief vide Exh.52, specifically stated that he obtained the suit property in the year 2005 at the rate of Rs.100/- per month as rent. According to defendant he is residing in the suit property from year 2005 and plaintiff has got his signature on an agreement by making undue pressure on him. The defendant has denied that the suit property is situated in a posh area of the city and entitle to receive Rs. 10,000/- P.M as rent. It is further stated that the plaintiff has intended to sale out the suit property to defendant at Rs.7,00,000/- but never ready to execute any sale agreement in his favour. The plaintiff has got signature of defendant upon an agreement forcefully and therefore such agreement is not considerable.*

*The defendant has made specific allegation against plaintiff but poorly failed to submit even an iota of evidence to substantiate his statement made in his examination-in-chief. As a matter of fact, the defendant has made only oral allegation but as we know that such oral allegation cannot be accepted as true in absence of any supportive documentary evidence. The defendant has never ever made any police complaint for getting his signature forcefully over such agreement. During cross examination, the defendant has voluntarily stated that he is. residing in the suit property by purchasing it. Now there is no evidence produced on record showing that any kind of sale or sale agreement is ever been made between the parties. The defendant has clearly admitted that no such agreement or writing is made with plaintiff in respect of the suit property. It is also admitted by defendant that there is no agreement pertaining to rent has been made with plaintiff.”*

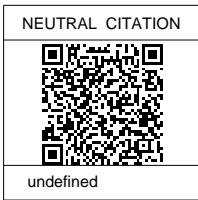
16. In the aforesaid order, the learned trial Court observed that over and above the defendant, four other witnesses have



been examined and in their affidavits in lieu of examination-in-chief that were identical copies of each other from paragraph 5 onwards. The cross-examinations were also identical.

17. It is pertinent to note that the defendant himself chose to examine four witnesses in addition to his own oral evidence. The identical nature of the affidavits and the cross-examinations is attributable to the defendant's then advocate. However, that apart, the defendant has not produced anything on record by way of documentary evidence to substantiate his claim of being a tenant, lessee, or person in legal possession of the suit property. The defendant himself (Exhibit 52) admitted in his deposition that no agreement has been executed between him and the plaintiff. Witness Jignesh Sawai Singh (Exhibit 58) admitted in cross-examination that he is doing business of selling milk on the suit property, that he has constructed a cabin outside the suit property for this purpose, and that he pays Rs. 1000/- towards rent. Identical chief examinations have been made by other witnesses and identical cross-examinations are made, but what appears that the defendant have not produced anything on record except oral evidence to substantiate this claim.

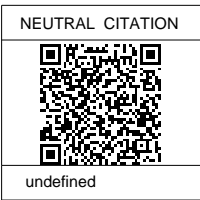
18. In the aforesaid circumstances, even if the trial court's non-discussion of the defendant's witnesses' evidence is acknowledged, the said witnesses have not produced any documentary evidence of their own, and their oral evidence does not establish the defendant's claim to legal or lawful possession. The deficiency in the trial court's discussion of



this evidence therefore does not change the ultimate conclusion.

19. The Coordinate Bench of this Court while admitting the appeal, observed the casual approach of the defendant's then-advocate in leading evidence. The defendant's advocate submitted that the defendant should not be condemned for the fault of his advocate. This Court does not find this contention tenable. The defendant is a person who was himself engaged in prior litigation, he had filed a suit against the plaintiff before the present suit was decreed. He was therefore not unfamiliar with court proceedings and presumably knows how to conduct Court proceedings. It also gives presumption that the defendant was well aware how and why to remain vigilant and attentive in his own legal proceedings. Moreover, at no point of time, including in the present appeal memo, the defendant has made any specific claim against his then-advocate for the alleged inaction or casual approach.

20. So far as contention of learned advocate Mr. PJ Yagnik that the learned trial Court did not have inherent jurisdiction to decide a dispute between a landlord and a tenant, and that the plaintiff filed the suit in the Civil Court to circumvent the jurisdiction of the Rent Court. Since this Court has already held that the Rent Act does not apply to the suit property, the question of jurisdiction of the Rent Court does not arise. The learned civil court therefore had proper jurisdiction to try and decide the present suit. The contention on jurisdiction fails and out-rightly rejected.



21. The defendant is in possession of the suit property under the good will of the plaintiff, who is the owner. The plaintiff, as owner, permitted the defendant to reside in the premises gratuitously and for a limited period, out of their family relationship and because the defendant was on the verge of superannuation. The defendant did not vacate the premises upon expiry of the agreed period and has continued in possession since 2005 without any legal basis.

22. The Hon'ble Apex Court in **Maria Margarida Sequeria Fernandes Versus Erasmo Jack De Sequeria(Dead) Through L.Rs., 2012 (5) SCC 370**, held that the protection of the court can only be granted or extended to a person who has a valid, subsisting rent agreement, lease agreement, or licence agreement in his favour. In the absence of any such agreement, the court cannot protect the possession of such a person. The Hon'ble Apex Court further held that the possession of a person other than the owner, if at all it is to be called possession, is permissive on behalf of the title holder, and that the right of past possession and the right to remain in possession in the future are distinct from each other. In para 64 to 74, the Hon'ble Apex Court held as under:-

*“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.*



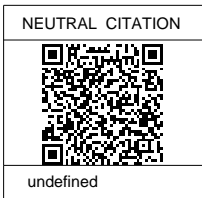
**65.** *A suit can be filed by the title holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.*

**66.** *A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.*

**67.** *In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.*

**68.** *In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.*

**69.** *The person averring a right to continue in possession shall, as far as possible, give a detailed*



*particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.*

**70.** *It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.*

*(a) who is or are the owner or owners of the property;*

*(b) title of the property;*

*(c) who is in possession of the title documents*

*(d) identity of the claimant or claimants to possession;*

*(e) the date of entry into possession;*

*(f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*

*(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*

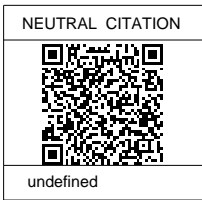
*(h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;*

*(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;*

*(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and*

*(k) basis of his claim that not to deliver possession but continue in possession.*

**71.** *Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.*



**72.** *The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.*

**73.** *Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.*

**74.** *If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission."*

23. The Hon'ble Apex Court in the aforesaid judgment also defined term "due process" in para 79 and 80, which reads as under:-

**79.** *Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.*

**80.** *The High Court of Delhi in a case Thomas Cook (India) Limited V/s. Hotel Imperial 2006 (88) DRJ 545 held as under:*

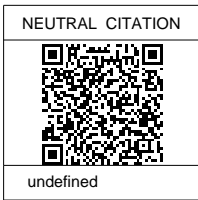
*"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply*



*mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.*

*Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway- I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."*

*We approve the findings of the High Court of Delhi on this issue in the aforesaid case."*

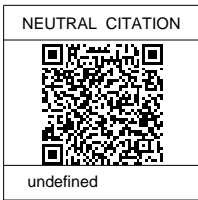


24. The Hon'ble Apex Court says that nobody can be condemned unheard and that an opportunity to file pleadings and documents must be granted, but that this does not mean the entire trial has to be repeated once completed.

25. The defendant, in the present case, does not have any valid, subsisting agreement rent, lease, or licence in his favour. Exhibit 40 itself establishes that his possession was permissive and for a limited period. The defendant's claim to remain in possession, supported only by oral evidence and unsupported by any documentary proof of tenancy, fails. The learned trial court has not committed any error of law or fact in passing the decree in favour of the plaintiff. The plaintiff's evidence remained practically unchallenged.

26. In view of the foregoing reasons, this Court finds no substance in the present appeal, except to the limited extent of the date from which mesne profits are payable. Hence, I pass following order:-

26.1 The present first appeal is partly allowed. The impugned judgment and decree of the learned Principal Senior Civil Judge, Gandhinagar dated 17th June 2016 in Special Civil Suit No. 403 of 2011 is modified to the extent that the defendant shall be liable to pay Rs. 5000/- per month as mesne profits to the plaintiff from the date of filing of the suit, being 23.12.2011 till the date the defendant hands over vacant and peaceful possession of the suit property to the plaintiff. The trial court's direction to pay mesne profits from January 2008



is set aside and substituted by this direction.

26.2 The rest of the judgment and decree of the learned trial court stands confirmed. The appeal is, to that extent, dismissed. Interim relief, if any, granted earlier stands vacated forthwith.

26.3 Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

### **FURTHER ORDER**

After pronouncement of the judgment, learned advocate Mr. PJ Yagnik prays to suspend the operation and implementation of present order for a period of 15 days so as to approach the higher forum. Request is acceded to. The operation and implementation of the present judgment and decree are suspended for a period of four weeks from the date of this order, to enable the appellant to approach the higher court.

SHEKHAR P. BARVE

**(J. C. DOSHI,J)**