

Gujarat High Court

Vikrambhai vs Harishbhai on 8 April, 2010

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Gujarat High Court Case Information System

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FA/5622/2008      5/ 7      ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST  
APPEAL No. 5622 of 2008

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VIKRAMBHAI  
PUNJABHAI PALKHIWALA AS L.R.OF DECD. - Appellant(s)

Versus

HARISHBHAI  
BABUBHAI PALKHIWALA & 7 - Defendant(s)

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Appearance

:  
MS  
MEGHA JANI for  
Appellant(s) : 1,  
None for Defendant(s) : 1 - 2, 2.2.1, 2.2.2,  
2.2.3,4 - 8.  
MR TEJAS P SATTA for Defendant(s) : 1, 1.2.1,  
1.2.2,1.2.3  
- for Defendant(s) :  
3,

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CORAM

:

HONOURABLE

Date  
: 08/04/2010

ORAL  
ORDER

Present appeal arises from the preliminary decree passed by City Civil Court, Ahmedabad in Civil Suit No.1257 of 1981. The learned Trial Court has by the preliminary decree impugned in present appeal, passed below mentioned directions:

A preliminary decree is passed as under:

It is hereby declared that partnership firm Punjabhai Mohanbhai Palkhiwala shall stand dissolved from Kartak Sud 1, S. Y. 2035 to 18/05/1981.

It is hereby declared that heirs of deceased plaintiff Sushilaben have 1/4th share, jointly, and heirs of defendant No.1 Punjabhai Monhanlal have 3/4th Share, jointly, in the partnership firm Punjabhai Mohanlal Palkhiwala from Kartak Sud 1, S. Y. 2035 to 18/05/1981.

It is ordered that the matter be sent to the Office of the Commissioner for Taking Accounts, Ahmedabad who shall be the receiver of the partnership estate and effects in this suit and who shall get in all the outstanding boom-debts and claims of the partnership.

It is ordered that the following accounts be taken by the Commissioner for Taking Accounts:

An account of the credits, property and effects now belonging to the said partnership.

An account of the debts and liabilities of the said partnership.

An account of all dealings and transactions of partnership firm.

It is hereby ordered that the Commissioner for Taking Accounts shall, after taking accounts as stated above, submit his report to this Court within six months from today.

The matter is now adjourned to 29/12/2008 for passing final decree after receipt of the report from the Commissioner for Taking Accounts.

The appellant herein has brought under challenge the said preliminary decree and the aforesaid directions to the limited extent so far as the learned Trial Court has appointed the Commissioner for Taking Accounts as receiver of Shop No.19, Rangwala Market, Ahmedabad. After making submissions to some extent by both the sides, a consensus has been arrived at. Thus, on the basis of the consensus, following order is passed:

The directions issued by the learned Trial Court by virtue of the preliminary decree dated 17/6/2008 shall be carried out and the Commissioner for Taking Accounts appointed by the learned Trial Court as receiver shall proceed to complete the exercise of Taking Accounts in accordance with the directions. Since, in view of the directions the appellant herein shall have to hand over the possession of the premises in question it is suggested by the appellant that the appellant may, in view of the fact that the appellant is carrying-on its business activities from the said premises, hand over the possession, symbolically but may continue to carry on its business activities. The opponent has, therefore and without prejudice to their rights and contentions, accepted the suggestion. Hence it is ordered that the appellant shall hand over the symbolic possession of the premises in question to the Commissioner for Taking Accounts as a receiver. The Commissioner will take the symbolic possession after giving notice to both the sides and shall obtain acknowledgment on the record taking symbolic possession. Thereafter, the learned Commissioner shall proceed to complete the exercise of Taking Accounts and submit the report to the learned Trial Court as per the directions contained in the preliminary decree dated 17/6/2008.

The appellant shall continue to discharge the obligation and liability towards payment of rent and all taxes until the final decree is passed and the payments towards rent and taxes made subsequent to the date of preliminary decree will be subject to the directions that may be issued in the final decree.

It is clarified that the order permitting the appellant to continue to be in occupation of the premises in question (viz. Shop No.19, Rangwala Market, Ahmedabad) and/or the direction to continue to pay the rent and taxes shall not give rise to any right or claim or equity in favour of the appellant and on the basis of this order or agreement/consensus by the opponent the appellant shall not claim contrary to preliminary decree any right or equity in any manner whatsoever and it is understood that it is only by way of ad interim arrangement and by consensus that the appellant is permitted to continue in occupation of the premises in question and the Commissioner is asked to take only symbolic possession at this stage.

If the final judgment and decree is rendered against the present appellant, then the appellant shall hand over the vacant possession formally and in accordance with the directions in the final decree. However, it would not prejudice, in any manner, the appellant's right to carry out further proceedings including proceedings by way of appeal against the final judgment and decree and/or

seek any interim relief during the pendency of appeal if entertained by the Court. The possession which shall be handed over formally after the final decree will, i.e. after the appeal is presented and any order of interim relief is passed, be subject to the order that may be passed by the appellate Court.

In view of the aforesaid direction and clarification in light of the consensus between the parties, any further order is not required. Hence the First Appeal stands disposed of as per the order in terms of the consensus. The parties will act as per the aforesaid directions and observations.

The appellant shall file an undertaking to the aforesaid effect i.e. it will give symbolic possession to the Commissioner and that if the final decree is passed against it, the appellant shall formally hand over the actual possession of the premises in question which shall be subject to its right to file appeal and also the undertaking shall be filed subject to the order if any, that may be passed by appellate court within two weeks before the learned Trial Court. The undertaking shall be signed and executed by all the appellants/interested persons stating clearly that they are in exclusive possession of the suit premises in question (i.e. they have not inducted any one in the premises).

Learned advocate Ms. Jani appearing for the appellant has submitted that the appellant may hand over the symbolic possession of the premises in question by way of addressing a communication to the effect that the symbolic possession is being handed over. It would be open to the appellant to address a communication to the said effect with the copy to the opponents. A copy of said communication, supported by affidavit, will be placed on record before the Trial Court also. When such communication is received by the learned Commissioner, he shall pass necessary formal order taking the symbolic possession and then shall report to the learned Trial Court.

Learned Senior Counsel Mr. Nayak for the opponent has submitted that the Civil Suit is almost 19 years old and now that the preliminary decree is passed the Civil Court may expedite the hearing of the special suit.

It is hoped that subject to its cause list, the learned Trial Court shall endeavor to the Court complete the final hearing of the suit within six months after receipt of this order.

The First Appeal stands disposed of accordingly.

(K.M.THAKER, J.) (ila) Top