Supreme Court of India
Satyanarayan M. Sarkaria vs Vithaldas Shyamlal Jhaveri on 8 April, 1993
Equivalent citations: 1994 SCC, Supl. (1) 614
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
SATYANARAYAN M. SARKARIA

Vs.

RESPONDENT:
VITHALDAS SHYAMLAL JHAVERI

DATE OF JUDGMENT08/04/1993

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
BHARUCHA S.P. (J)

CITATION:
1994 SCC Supl. (1) 614

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.After hearing learned counsel, we allow application Nos. IA 1 and 2 for substitution, condoning the delay and setting aside the abatement. Let the legal representatives be served notice of the appeal. Mr Dogra on behalf of Parekh & Co. accepts notice on their behalf and has filed a Vakalatnama which is taken on record.

2. Application for amendment is dismissed as not pressed.

3. We have gone through the lengthy and well-reasoned order of the High Court passed under Article 227 of the Constitution. The only point urged against it is that the High Court should not have entered into the arena of facts so as to disturb the orders of the appellate court, which had denied eviction of the appellant. The appellant's claim was that he was a sub-tenant inducted into the premises in dispute in the year 1958 and had become entitled to the protection of a notification

of the year 1959 in his favour. The appellate court reversing the order of the trial court had held that the appellant was in possession of the premises in dispute in the year 1958 and his possession was that of a sub-tenant of that year entitling him to claim the benefit of the notification of 1959. The High Court went inter alia into the jurisdictional facts as to whether any rent was paid by the appellant in the year 1959 and also into other ancillary and attendant factors. Its finding was that even though the appellant was in possession in 1958, it was permissive in nature and not as a sub-tenant. As a statement of law it cannot be stated that the order of the High Court under Article 227 tends to be wrong as it is based on reappreciation of evidence. It is no doubt true that the High Court normally does not enter the arena of facts but when it finds the judgment impugned perverse, it cannot be stated that the High Court commits a legal error in upsetting it. In the instant case, we have carefully examined the judgment under appeal. We find that the view taken by the High Court was right in the facts and circumstances. Accordingly, we dismiss this appeal. No costs.