

(2010) 10 GUJ CK 0173

Gujarat High Court

Case No: Civil Revision Application No. 196 of 1993 and Civil Application No. 10830 of 2005
in Civil Revision Application No. 196 of 1993

Patel Kanjibhai
Ambalal and Others

APPELLANT

Vs

Modi Manjulaben
Babulal

RESPONDENT

Date of Decision: Oct. 22, 2010

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1), 39(2)
- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 227
- Income Tax Officer Act - Section 185(1)
- Saurashtra Rent Control Act, 1951 - Section 13(1)

Citation: (2011) 52 GLR 253 : (2011) 1 RCR(Rent) 279

Hon'ble Judges: K.A. Puj, J

Bench: Single Bench

Advocate: KV. Shelat and Suresh M Shah, for the Appellant; Jirga D Jhaveri, for the Respondent

Final Decision: Dismissed

Judgement

K.A. Puj, J.

The petitioners - original defendants have filed this Civil Revision Application u/s 29(2) of the Bombay Rent Control Act challenging the judgment and order dated 13.11.1992 passed by the learned Extra Assistant Judge, Mehsana Camp at Patan in Regular Civil Appeal No. 70 of 1989 dismissing the said appeal and confirming the judgment and order passed by the learned Trial Judge on 31.07.1989 in Regular Civil Suit No. 181 of 1983. The learned Trial Judge has directed all the defendants to hand over the vacant and peaceful possession of the suit shop to the respondents who

are the legal heirs of the original plaintiff.

2. This Civil Revision Application was admitted and rule was issued on 18.06.1993. At the time of admission of the Civil Revision Application, the Court has passed detailed order observing therein that the Trial Court's finding is that the partnership is sham and bogus and on that point, reliance was placed on Clause 19 in the Partnership Deed at Exh.76. On reading the Partnership Deed as a whole, it is clear that it is not a clear cut clause specifying that the original tenant i.e. defendant No. 3 has thrown the tenancy rights of the suit shop expressly in the assets of the firm. However, Clause 19 speaks about the cooperation to be given by the said defendant whenever the suit rent note is to be transferred in the name of the firm. There is also Clause 20 which says that if at all the landlord files a suit for the purpose of possession, partner No. 4 i.e. the tenant Ambalal Prabhudas will have to bear expenses. Therefore, that Clause has not been considered at all by the learned Appellate Judge. The Court was, therefore, of the view that the present Civil Revision Application requires some consideration by this Court. The Court has also prima facie found that if at all it was the asset of the partnership firm, then, it was not necessary to put this clause because when the partnership firm is getting benefits of tenancy rights, why partner No. 4 alone should bear the expenses. That indicates that still the tenancy rights are intact with the defendant No. 3. But that aspect requires consideration. The Court has also considered the point that the Appellate Court has confirmed the finding with regard to the bonafide and reasonable requirement of the plaintiff and the point of hardship is also answered in favour of the plaintiff under the inference on the point of subletting and bogus partnership. The Court, therefore, granted interim relief against eviction.

3. Civil Application No. 10830 of 2005 is filed by the applicants - original petitioners seeking permission to produce the documents referred to in the Civil Application and to consider the changed circumstances pleaded. Alternatively, it is prayed that the matter may be sent to the lower Court for re-trial and for consideration of the additional evidence in the interest of justice. The additional evidence sought to be produced are (1) an order passed by the Income Tax Officer u/s 185(1) of the Act on 05.09.1986 and (2) the Income Tax returns of Shri Laxmi Plywood Center for A.Y. 1991-92 along with statement of income. This application was strongly opposed by the learned advocate appearing for the respondents.

4. The brief facts giving rise to the present Civil Revision Application are that the suit property is suit shop situated in village Patan in Hinglachachar area, Tika No. 111/2, Survey No. 12, ground floor Municipal Census No. 1/6/12. As per the case of the plaintiff - landlord, the defendant No. 1 firm in the name of Patel Kanjibhai Ambalal and Company was doing the business at Patan and its partners, defendant Nos. 2 & 3, namely, Mulchandbhai Valabhai and Patel Ambalal Prabhudas had taken on rent the suit shop from the plaintiff on 03.12.1973 for 11 months and 29 days, with monthly rent of Rs. 100/-. The tenant had to pay rent regularly with municipal tax

and Govt. tax of the suit shop. The suit shop was taken on rent for running the business of grocery shop. There was a clear cut term that after expiration of the lease period, the tenant had to give possession back to the landlord and the tenant had not to sublet, assign or transfer the suit shop etc. The tenant had not handed over the possession of the suit shop as per the terms of the rent note and hence, the tenant became statutory tenant. The defendant Nos. 2 & 3 have thereafter closed the business of grocery and have sublet the suit shop to defendant No. 4 Laxmi Plywood Center and their Partners. The have handed over the absolute and exclusive possession of the suit shop to defendant No. 4 and its partners. The defendant Nos. 2 & 3, therefore, have lost the protection as tenant. The business of the suit shop was also changed from grocery to selling materials of construction. Thus, the plaintiffs have demanded possession of the suit shop u/s 13(1) (a) of the Rent Control Act. The plaintiffs have also demanded the possession of the suit shop u/s 13 (1) (g) for reasonable and bonafide requirement as plaintiff's son was major and he was not keeping good health and the plaintiff was also an aged person. The defendant Nos. 1 to 3 had paid rent upto 02.01.1983 and they were tenants in arrears of rent for more than six months. The tenancy was, therefore, terminated. The defendant Nos. 4 to 8 are not the tenants of the suit shop and they have no legal right. Since they were in physical possession of the suit shop, the defendants were served with notice dated 15.07.1983 and thereafter the plaintiffs have filed the suit to recover vacant and peaceful possession of the suit shop from all the defendants and Rs. 1,000/- for arrears of rent from the defendant Nos. 1 to 3 and demanded mesne profits upto the date of receiving possession.

5. It appears from the record that the defendant Nos. 1 & 2, though were duly served, remained absent and hence, ex-parte decree was passed against them. The defendant Nos. 3 to 8 had filed their written statement at Exh.12 and have raised several disputes. As per the defence raised by the defendants, the defendant No. 3 was the subject tenant and he had not sublet the suit property to the defendants. The defendant No. 3 was in physical possession of the suit property and he was doing the business in the name of defendant No. 4 firm, namely, Laxmi Plywood Center. The defendant Nos. 5 to 8 are partners with defendant No. 3 in the partnership firm of defendant No. 4. They have also raised a defence that the plaintiffs have fixed the rent at Rs. 100/- per month which is exclusive and previously the rent of the suit was less. Hence, they have also made the request to fix the standard rent. It is also their defence that the original partnership had come to an end on 06.09.1980 and thereafter, the defendant No. 3 became sole owner of the firm. The defendant No. 3 alone continued the business in the suit shop and since he was not successful in the business and suffered financial loss, he had started the business in partnership from 11.02.1983 in the name of M/s. Laxmi Plywood Center and started business of hardware, plywood, glassware etc. The defendant Nos. 5,6 & 7 were partners along with defendant No. 3 and the defendant No. 8 was minor at that time. Hence, he was admitted to the benefits of the partnership. The defendant

No. 8 after he became major, was made the partner in the partnership firm. It is also their defence that the defendant No. 3 was continued even after expiration of the period of rent note and under the consent of the plaintiff. The defendant No. 3 had not sublet, transferred or assigned the possession of the suit shop as alleged by the plaintiff. They have also raised the defence that the plaintiff was not physically weak and he was in service in the Ganj Bazaar with Dalal Nagardas Firm. They have sufficient income to maintain their family and they are not required the possession of the suit shop for business for himself or his son. The plaintiffs wanted more rent and the defendants had refused to increase the rent and it is only because of that, a false suit was filed against them.

6. The Trial Court after framing issues at Exh.14 and after appreciating the oral as well as documentary evidence on record had come to the conclusion that the defendant Nos. 1 to 3 are tenants of suit property and the plaintiffs have proved that defendant Nos. 2 & 3 have sublet, transferred and assigned the suit premises to defendant Nos. 4 to 8. The Trial Court has further held that the plaintiffs have proved that the possession of the suit shop is required by them reasonably and bonafide for business. The Trial Court further held that the defendant No. 3 had failed to prove that defendant Nos. 5 to 8 are partners and doing business in partnership firm with him. Thus, the Trial Court had granted possession decree in favour of the plaintiffs - landlord.

7. This judgment and decree was confirmed by the learned Extra Assistant Judge, Mehsana in Regular Civil Appeal No. 70 of 1989 and the defendants were directed to hand over the vacant and peaceful possession of the suit shop to the plaintiffs.

8. It is this order which is under challenge in the present Civil Revision Application.

9. Mr. Suresh M. Shah, learned advocate appearing with Mr. K.V. Shelat for the petitioners has submitted that the plaintiff - landlord has got other premises where he was actually residing and there was no existing bonafide need of the landlord to occupy the suit premises and the landlord has not led any evidence worth its name. The lower Appellate Court has misread and misunderstood the documentary evidence consisting of the books of accounts of defendant No. 1 firm which clearly shows that the defendant No. 3 is a genuine partner of defendant No. 4 and the legal possession of the suit premises have not been parted with at all. He has further submitted that the lower Appellate Court has given undue weightage to the evidence of the plaintiff and has drawn illegal presumptions inferences which are in the nature of conjectures. The lower Appellate Court has considered the question of bonafide and reasonable personal requirement and hardship from a wrong angle and applied a wrong test to decide the said question. There is nothing on record to show that alternative accommodation is available to the defendants. There is no bonafide and reasonable personal requirement on the part of the plaintiffs to occupy the suit premises. The concept of legal possession and parting with possession as contemplated u/s 13 (1) (e) of Rent Control Act has not been correctly

appreciated by the lower Appellate Court. The defendant No. 1 firm was a registered partnership firm paying income tax and the sale tax and also taken huge loan from the Banks and in all departments, the defendant No. 3 is shown and has acted as the legal partner of the firm. He has, therefore, submitted that the judgment and decree passed by the lower Courts are absolutely erroneous, improper and unjust and, therefore, require to be set aside.

10. In support of Civil Application filed for production of additional evidence, Mr. Shah relied on the decision of the Apex Court in the case of [ADIL Jamshed Frenchman \(D\) by LRs. Vs. Sardar Dastur Schools Trust and Others](#), wherein it is held that while considering the bonafide requirement of landlord, subsequent events are required to be taken into consideration. Production of additional evidence before the Appellate Court is permissible. Eviction suit based on bonafide need of landlord and decree was passed on that ground. Tenant in appeal seeking to adduce two documents which came into existence after passing of said decree, and third document relating to correspondence of landlord with third parties, it is held that document sought to be produced by tenant were material and if substantiated, would have a material effect on the case of the landlord of their bonafide need of the suit premises. One document relating to sale of suit premises by landlords, second to a change in construction plans from those placed before Trial Court to establish bonafide need, the change being the decision not to demolish superstructure raised by tenant, and third document indicating lack of funds for said construction on the part of landlord. Correspondence entered into by landlord with a third party could not have been within knowledge of tenant and the other two documents having come into existence after decree of trial court, tenant's statement that said documents could not have been produced before trial court, inspite of exercise of due diligence, is accepted as credible. In such circumstances, the High Court u/s 115 of CPC was not justified in interfering with the discretion exercised by the first Appellate Court, permitting production of additional evidence.

11. In the case of [Wadi Vs. Amilal and Others](#), it is held that Rule 27 deals with production of additional evidence in the appellate Court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). If the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate Court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort

to it when on a consideration of material on record, it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.

12. In support of his submission that creating of partnership and use of the suit premises by the firm and other partners along with the petitioner, would not amount to subletting, Mr. Shelat relied on the following decisions:

In the case of [Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others](#), wherein it is held that the tenant becoming a partner of the partnership firm and allowing the firm to carry on business in the demised premises while himself retaining the legal possession thereof, does not amount to subletting.

13. In the case of [Mohammedkasam Haji Gulambhai Vs. Bakerali Fatehali \(D\) By Lrs.](#), it is held that on the question of subletting etc. law is now very explicit. There is prohibition in absolute terms on the tenant from subletting, assignment or disposition of his interest in the tenanted premises. Clause (e) of Section 13(1) of the Act is couched in widest terms. There is absolute prohibition on the tenant from subletting, assigning or transferring in any other manner his interest in the tenanted premises. There appears to be no way around this subject of course if there is any contract to the contrary between the landlord and the tenant. In partnership where tenant is a partner, he retains legal possession of the premises as partnership is a compendium of names of all the partners. In partnership the tenant does not divest himself of his right in the premises.

14. In the case of [Shah Chatrabhuj Narshi and Another Vs. Nensibhai Shavanijibhai Gohil and Another](#), the Division Bench of this Court has held that the real crux of the problem u/s 13 (1) (e) of the Rent Act, is whether the tenancy rights are thrown into partnership assets or for that matter any interest is created therein in favour of the incoming partners. The question has to be decided in accordance with the Transfer of Property Act and the Bombay Rent Act. The Court further held that the real test is the intention of the parties, and if the document creates an interest in the property, it is a lease, and the factum of exclusive possession of a property by a person, prima facie, indicates that he is a tenant. The test of exclusive possession, therefore, cannot be conclusive. Ultimately, it is the intention of the parties, whether they intend to create an interest in the property and that would be determined along with the other circumstances when a question arises whether a lease or sub-lease is created or not.

15. In the case of [Madras Bangalore Transport Co. \(West\) Vs. Inder Singh and Others](#), it is held that there was no subletting, assignment or parting with possession of the premises by the firm to the Limited Company so as to attract Section 14 (1) (b). The firm continued to be in occupation of the premises even after the private limited company came in. The firm never effaced themselves. The firm allowed the private limited company to function from the same premises but the private limited company, though a separate legal entity, was in fact a creature of the

partners of the firm and was the very image of the firm. The limited company and the partnership firm were two only in name but one for practical purposes. There was substantial identity between the limited company and the partnership firm. As such even though the firm and company were distinct legal entities there was no subletting or assignment etc.

16. In the case of *Mehta Jagjivan Vanechand v. Doshi Vanechand Harakhchand and others* 1971 (2) GLR 487, wherein this Court has held that merely because the tenant continues to carry on the business in the same shop as hitherto, but takes in two partners, the legal possession of the shop does not change hands. Legal possession is a concept which must be distinguished from the concept of physical occupation or user. One who occupies or uses a premises is not necessarily in legal possession of the premises. Even if the partners of the firm attend the shop and do business along with the tenant, it cannot be said that they are in legal possession of the shop. Therefore, taking in a partner in a business does not amount to subletting the premises. Subletting postulates two distinct persons - the head tenant and the sub-tenant. Their rights and obligations are different. One cannot be one's own sub-tenant. If the transaction of taking in partners constitutes subletting, the tenant will be head-tenant and he himself along with his two partners will be the sub-tenants. The Court took the view that there had been no assignment or subletting in favour of the partners of the firm by the tenant so as to attract the bar of Section 13 (1) (e) of the Saurashtra Rent Control Act.

17. In support of his submission that grant of relief dehorse the pleadings in the plaint is impermissible, Mr. Shelat relied on the following decisions:

In the case of [Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jumayath Palli Dharas Committee and Others](#), wherein it is held that when the plaintiff came forward specifically pleading that he was entitled to declaration of title and for recovery of possession of the plaint schedule property based on the agreement deed, it could succeed only on the basis of validity of that document and the validity of transfer of mutawalliship in its favour. Since all the Courts have concurrently found that mutawalliship could not be validly transferred in favour of the plaintiff Committee under the said document, the suit filed by the plaintiff ought to have been dismissed. The plaintiff could only succeed on the strength of its case and not on the weakness found in the case of the defendant, if any. Even otherwise, the finding of the High Court on question 3 cannot be sustained when such a case did not arise for consideration in the absence of necessary pleading in the plaint in that regard.

18. In the case of [State Bank of India and Others Vs. S.N. Goyal](#), wherein it is held that in absence of appropriate pleading on a particular issue, there can be no adjudication of such issue. Adjudication of a dispute by a Civil Court is significantly different from exercise of power of judicial review in writ proceedings by the High Court. In writ proceedings, the High Court can call for record of the order

challenged, examine the same and pass appropriate orders after giving an opportunity to the State or the statutory authority to explain any particular act or omission. In a civil suit, parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings. The Court further held that the CPC contains appropriate provisions relating to interrogatories, discovery and inspection (Order 11, Rules 1, 12 and 15) to gain access to relevant material available with the other party. A party to a suit should avail those provisions and if any new ground becomes available on the basis of information secured by discovery a party can amend its pleadings and introduce new facts and grounds which were not known earlier. The difficulty in securing relevant material or ignorance of existence of relevant material will not justify introduction of such material at the stage of evidence in the absence of pleadings relating to a particular aspect to which the material relates. If a party should be permitted to rely on evidence led on an issue / aspect not covered by pleadings, the other side will be put to a disadvantage.

19. In the case of Vasudev Dhanji Varu - Decd. Through heirs and representative and Ors. v. Bhogilal Manohardas Vaishnav 1998 (1) GLH 728 wherein it is held that no evidence can be looked into for establishing a fact not pleaded. The Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet with.

20. In the case of [Abdula Samad Makhadum Baksh Sheikh and etc. Vs. Sudha Anant Parakhe](#), wherein it is held that it is elementary in civil cases that no party should be taken by surprise and whatever case he has, has to be made out in the pleadings so that the defendant or the adversary has an adequate and reasonable opportunity to meet that case. In the absence of any such pleading, the adversary would not be in a position to meet such a case. No case, which is not pleaded in civil cases, is or can be allowed to be made out by any amount of evidence. Such evidence has really to be ignored.

21. In the case of Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Ors. (2009) 16 SCC 517, the appellant - plaintiff filed a suit for permanent injunction to declare him as the lawful owner and occupier in respect of the suit land. The appellant though was in forcible possession of the suit land since 1960 till the decision of the Trial Court in 1986, neither pleaded adverse possession nor did the trial court frame an issue of adverse possession. The appellant - plaintiff also failed to prove his title over the suit land before the first appellate court and the High Court in Second appeal. The Apex Court while dismissing the appeal held that a person who basis his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The ordinary classical requirement of adverse possession is that it should be established that the possession required

must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

22. Ms. Jirgha D. Jhaveri, learned advocate appearing for the respondents - landlord submitted that there are concurrent findings in favour of the plaintiffs. The plaintiffs require the suit premises for personal occupation. The rented premises where the original plaintiffs and family reside are not sufficient to accommodate them. While the tenant is not using the suit premises personally and has sublet the same to a firm dealing in Plywood. She has, therefore, submitted that no such indulgence be given to the petitioners, particularly in view of the fact that they have not deposited any rent since 12.01.1993 and have committed breach of the general condition of payment of rents every month. She has further submitted that in view of the fact that they have committed default in not depositing the rents since January 1993, they are deemed to have lost protection of stay and execution and hence, the Civil Revision Application deserves to be rejected. Apart from the bonafide personal requirement, the decree is passed for eviction for unlawful and subletting and hence, the Civil Revision Application ought not to be entertained and allowed. As regards occupation for personal requirement, the material facts are that the original plaintiffs required the suit premises to carry on business in the front part and reside in the back part of the house. At present, the respondent No. 1 is serving whereby he is not able to meet the needs of the family and he also requires to carry on business in the shop. The same requirement continues and, therefore, the Civil Revision Application should not be entertained or allowed by this Court. She has further submitted that there is no substance in the plea of challenging the findings in this Civil Revision Application as there are concurrent findings of facts. No person should suffer due to delay caused in Court proceedings and the petitioner - tenant should not be allowed to take advantage from the fact of inability of the Court to decide the same suit. The respondent No. 1 being the grandson of the original plaintiff, is not in any established job to enable him to match with the needs and requirements of the family. She has, therefore, submitted that the requirement to have his own business is paramount consideration and he should not be compelled to carry on service. The Courts below have decided the subletting issue after considering the evidence taken on record. The personal bonafide requirement means it is for himself, family members and his HUF. The respondent No. 1 is not much educated. The shop is situated in prime location at Patan where he can start small business and on the back side, his family can stay. At present, he is not having any suitable accommodation and he has to stay in rented premises. She has, therefore, submitted that the Civil Revision Application should not be entertained. The suit premises remained closed for three years initially and thereafter, it was sublet to a new partnership firm. The original tenant - Ambalal Patel and Mulchandbhai Patel are residing at Rubi village and never come to the suit shop. Even on this ground, the Civil Revision Application deserves to be rejected.

23. Ms. Jhaveri in support of her submission that the original tenant has sublet the suit premises, relied on the decision of the Apex Court in the case of [Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others](#), it is held that the legal position that emerges from case law can be summarised thus

In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (1) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (2) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

24. Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the Court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

25. The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

26. If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

27. Initial burden of proving subletting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

28. In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of subletting may then be raised and would amount to proof unless rebutted.

29. Ms. Jhaveri in support of her submission on bonafide requirement of the landlord, relied on the following decisions:

In the case of [Ramkubai \(Smt\) Deceased by Lrs. and Others Vs. Hajarimal Dhokalchand Chandak and Others](#), it is held while considering the question of bonafide need of the landlord that the right of individual members of landlord's family to set up any independent business can certainly fall within the scope of bonafide need of landlord. The bonafide need of setting up business of anybody as son in suit premises cannot be negated on grounds that such person, has since

the litigation begin, taken up other employment or work, or that another son already has a business or that landlord is a partner in another business. The Court held that the High Court has wrongly confirmed the judgment of First Appellate Court setting aside the decree of eviction awarded by the Trial Court.

30. In the case of *Deep Chandra Juneja v. Lajwanti Kathuria (Smt.) Dead through Lrs.* (2008) 8 SCC 497, it is held that while deciding the bonafide requirement of landlord, the landlord is the best judge of his requirement. The Courts have no concern to dictate how and in what manner he should live. It is further held by the Court that the bonafide need of landlord asserted by prescribed authority, Appellate Authority and High Court in writ petition does not call for an interference. There is no illegality, infirmity or error of jurisdiction. Hence, it is required to be confirmed. It is further held that the bonafide requirement of landlord is a question of fact which cannot be gone into by the High Court.

31. In the case of [Ashok Kumar Vs. Ved Prakash and Others](#), the appeal is filed by the appellant - tenant and in this context, the Court held that it is not in dispute that the original landlord died during the pendency of the Civil Revision Application in the High Court. There is a faint argument of the learned Counsel for the appellant that on such date, the requirement of the landlord had perished. The Court held that there is no merit in this submission of the learned Counsel for the appellant. Looking at the averments made in the eviction petition, where the original landlord has categorically pleaded that the requirement was for his son who presently is the landlord because of the death of the original plaintiff, the question of abatement of the eviction proceeding cannot arise at all. That apart, the submission so made by the learned Counsel for the appellant was not even raised by the appellant before the High Court where the original landlord died and the respondents have been substituted in his place. The Court, therefore, did not find any substance in the said submission of the learned Counsel for the appellant - tenant and dismissed the appeal.

32. In the case of [Seshambal \(dead\) through L.Rs. Vs. Chelur Corporation Chelur Building and Others](#), the question before the Apex Court was whether the proceedings instituted by the deceased owners of the demise property could be continued by the legal heirs left by them. The Court observed that it is not disputed that in the eviction petition, the owners had pleaded their own requirements for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the petitioner owners left alone any member of their family who was dependent upon them. That being so, the parties went to trial before the Rent Controller on the basis of the case pleaded in the petition and limited to the requirement of the owners for their personal occupation. The Court further observed that neither before the Rent Controller nor before the Appellate Authority was requirement in question was not only the requirement of the petitioner owners

of the premises, but also the requirement of any other member of their family were dependent upon them or otherwise. Not only that, even in the petition filed before this Court, the requirement pleaded was that for the deceased widow owner of the demised premises and not of any member of her family. Such being the position, the Court found it difficult to see how the legal representatives of the deceased can be allowed to set up a case which was never set up before the Courts below so as to bring forth a requirement that was never pleaded at any stage of the proceedings. The Court further held that allowing the legal heirs to do so would amount permitting them to introduce a case which is totally different from the one set up before the Rent Controller, the Appellate Authority or even the High Court. The Court, however, made a distinction and observed that the position may indeed have been differentiated if in the original petition the petitioner owners had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case, the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bonafide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement.

33. Ms. Jhaveri, lastly, in support of her submission that in view of the concurrent findings given by both the Courts below, the petitioner - tenant is not entitled to any relief from this Court, relied on the following decisions:

In the case of [S.P. Deshmukh Vs. Shah Nihal Chand Waghajibai Gujarati](#), wherein it is held that the High Court should not under Article 227 of the Constitution of India interfere with the concurrent findings of fact of the Rent Controller and the Collector. It is further held that normally, monthly tenant is under an obligation to pay the rent from month to month but this obligation is subject to a contract to the contrary. Such a contract need not be reflected in a formal document and can be spelt out from the conduct of the parties, spread over a fairly long period of time.

34. In [Patel Valmik Himatlal and Others Vs. Patel Mohanlal Muljibhai \(Dead\) Through L.Rs.](#), it is held that the powers u/s 29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappraise the evidence. The mere fact that a different view is possible on reappraisal of evidence cannot be a ground for exercise of the revisional jurisdiction. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the Courts below on reappraisal of evidence.

35. Having heard the learned Counsels appearing for the parties and having considered their rival submissions in the background of the orders and judgments passed by the Courts below, as well as the relevant statutory provisions contained in the Bombay Rent Control Act and the decided case law on the subject, the Court is of the view that the concurrent findings of facts given by the Courts below both on

the invocation and applicability of Sections 13 (1) (e) as well as 13 (1) (g) of the Act, does not call for any interference by this Court while exercising its revisional jurisdiction u/s 29 (2) of the Act and hence, the Civil Revision Application deserves to be dismissed and it is accordingly dismissed.

36. From the perusal of the issues framed by the Trial Court at Exh.14, it appears that the Trial Court, in all, framed 13 issues. However, for the purpose of this revision petition, the relevant issues are Issue Nos. 3,5,6 & 9. Issue Nos. 3 and 9 are in relation to applicability of Section 13 (1) (e) whereas, issue Nos. 5 and 6 are in relation to applicability of Section 13 (1) (g) of the Rent Act.

37. The lower Appellate Court, after appreciating the evidence - oral as well as documentary on record and after considering the issues framed in relation to Section 13 (1) (e) of the Act, came to the conclusion that the defendant No. 3 - Patel Ambalal Prabhudas has not proved that he is occupant - partner and the partnership deed is genuine and not sham or bogus. The Court further found that the defendant No. 3, the sole tenant, remained with the legal possession of the suit premises and he has never parted with the possession. The Court has taken into consideration the evidence of defendant No. 3, one more partner of defendant No. 4 firm - Shri Chimanlal Balubhai, partnership deed etc. The very fact that the partnership deed, nowhere clearly states that the defendant No. 3 - original tenant has thrown the tenancy rights of the suit premises in the assets of the firm. Clause 19 of the Deed merely states that the defendant No. 3 - original tenant - partner shall give the cooperation whenever the suit rent note is to be transferred in the name of the firm. Clause 20 of the Deed says that if at all the landlord files a suit for the purpose of possession, the partner No. 4 i.e. the tenant, Shri Ambalal Prabhudas Patel will have to bear expenses. If the suit premises were transferred to the partnership firm and the firm was enjoying the benefits of tenancy rights, there was no need to bear the expenses by the original tenant. There is nothing in the partnership deed which indicates that after dissolution of the firm, the possession of the suit premises will remain with the defendant No. 3 - the original tenant. It has also come on record that the defendant No. 3 is an agriculturist and he is residing at his village Runi. The lower Appellate Court, while confirming the decree of eviction passed by the Trial Court u/s 13 (1) (e) of the Act, clearly held that no oral or documentary evidence reliable is produced by the defendants to prove that the firm is genuine and the defendant No. 3 has not sublet, transferred or assigned his legal possession or his interest of suit premises to the firm.

38. It is true that merely because the tenant continues to carry on the business in the same shop as hitherto, but takes in other partners, the legal possession of the shop does not change hands. It is equally true that taking in a partner in a business does not amount to subletting the premises so as to attract the bar of Section 13 (1) (e) of the Act. However, the intention of the parties and purpose behind creation of partnership firm is an important factor to be taken into consideration by the Court.

The Apex Court, after considering the entire case law, summarized the correct legal position on this subject in the case of Celina Coelho Pereira (Ms.) and Ors. v. Ulhas Mahabaleshwar Kholkar and Ors. (Supra) and, inter alia, held that if the purpose of partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of subletting, the Court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant. Both the Courts below have found that the plaintiff - landlord succeeded in bringing on record material and circumstances, by adducing evidence and by means of cross-examination, and in making out a case of subletting or parting with possession in tenancy premises by the tenant in favour of other partners. This Court, therefore, does not find any convincing reason to disturb the said findings recorded by the Courts below and upturn their decisions. The petition, therefore, fails on this ground.

39. The Courts below have passed and/or confirmed the decree of eviction on the ground of bonafide requirement of the landlord u/s 13 (1) (g) of the Act. The suit was filed by late Shri Chunibhai Ujambhai. He was of 65 years age at the time of filing of the suit. He expired during the pendency of the suit. His elder son, Babulal Chunilal was brought on record and he continued the suit. The suit premises came to his possession under the partition. Even otherwise, it was given to him under the Will. On appreciation of evidence, the Courts below found that the defendant No. 3, the sole tenant is an agriculturist and he has no interest in keeping possession as he handed over the possession of suit premises to the defendant No. 4 firm. The Courts have also considered that Shri Subodhbhai, son of Babulal and Grandson of the original plaintiff was unemployed and he himself was residing in rented premises. The Court, therefore, came to the conclusion that the element of requirement of plaintiff is continued and that the plaintiff is in dire need of the suit premises. It is settled position in law and the Courts have taken the view that while considering the question of bonafide need of the landlord, that the right of individual members of landlord's family to set up any independent business can certainly fall within the scope of bonafide need of landlord. The Courts have also held that while deciding the bonafide requirement of landlord, the landlord is the best judge of his requirement. The Courts have no concern to dictate how and in what manner he should live. From the record, it becomes clear that, during the pendency of this petition before this Court, Shri Babulal Chunilal expired. His legal heirs are brought on record of this petition. The respondent No. 1/2 Shri Subodhbhai is the son of the deceased. Before the Courts below, it was specific case of the plaintiff that his son is unemployed and suit premises is required for his business purpose. In view of the law laid down by the Apex Court in the case of Ashok Kumar v. Ved Prakash and Ors. (Supra), the Court does not accept the submissions of Mr. Shelat that because of the death of the plaintiff, the requirement of the landlord had perished. Considering the entire facts and circumstances of the case and legal position, the Court is of the view that the decree of eviction passed by the Trial Court and confirmed by the lower Appellate Court u/s 13 (1) (g) of the Act, does not call for any interference by this

Court.

40. In view of the above decision, the Court does not think it necessary to deal with the judgments cited by Mr. Shelat in relation to pleadings etc. as they are not applicable to the facts of the present case. The Civil Application filed by the petitioner - tenants for production of additional evidence also deserves to be rejected in view of the fact that the partnership firm itself is held to be not genuine and sham and hence, its return of income, assessment etc. would not make any difference for arriving at the conclusion by the Court.

41. In the above view of the matter, both these Civil Revision Application as well as Civil Application are rejected with cost. The cost shall be borne by the present petitioner No. 3 - original defendant No. 3. The present petitioners - original defendants are directed to evict the suit premises and hand over the possession to the present respondents within two months from the date of receipt of certified copy of this judgment or from the date of receipt of writ from the Court, whichever is earlier.