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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 83/2009**

ASHOK KUMAR SINGHAL Appellant
Through: Mr. Rama Shankar, Adv. with
Mr. Sundeep Vyas, Adv.

versus

BIMLA DEVI Respondent
Through: Mr. S.P. Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

% **ORDER**
08.09.2009

RSA 83/2009 and CM APPL. 9273/2009 (stay)

1. Impugning the judgment and decree of the Appellate Court dated 28.5.2009 whereby the decree for possession passed by the trial court vide order dated 15.04.2009 under Order 12 Rule 6 CPC was upheld, the present appeal has been filed.
2. Bimla Devi respondent filed a suit bearing Suit No.649/2006 against the appellant seeking mandatory injunction and damages. Appellant happens to be her son. She claimed that

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she is the owner of the suit property and she had permitted the appellant to occupy and use the ground floor of the suit property bearing No.E-45-46, Arya Samaj Road, Uttam Nagar, Delhi as a licensee without any licence fee because of relationship of mother and son. She asked the appellant to vacate the premises and when appellant failed to vacate the premises, she filed the abovesaid suit. In the said case, respondent filed an application under Order 12 Rule 6 read with Section 11 CPC seeking decree for mandatory injunction on the basis of the admission made by the appellant in another suit No.242/2003 titled as 'Ashok Kumar vs. Vimla Devi & Ors.' filed by him during his cross-examination dated 18.8.2004 admitting Bimla Devi as the owner of the property and his own status as a licensee. In view of this admission, the learned trial court allowed the application and passed a decree for mandatory injunction directing the defendants to vacate the suit premises vide his order dated 15.4.2009.

3. The Appellate Court upheld the order of the trial court

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vide his detailed order dated 28.5.2009 on the basis of his admission made by the appellant in the suit filed by him against his mother.

4. Since the decree for mandatory injunction has been passed in favour of the respondent and against the appellant under Order 12 Rule 6 CPC on the basis of the clear admission made by the appellant in his own suit filed by him against his mother, no substantial question of law arises in this appeal.

5. Learned counsel for the appellant has argued that he had filed an application under Order 41 Rule 27 CPC for production of additional evidence which was wrongly dismissed by the Appellate Court. The appellate court dismissed this application holding that the documents sought to be placed on record by way of the application do not find any mention in the written statement nor have been relied upon by the appellant before the trial court. The Appellate Court also observed that the grounds of appeal made by the appellant were not based on the written statement filed by him in the trial court. The documents sought to be produced by the appellant were in the nature of

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photocopies of number of documents and copies of some other suits with a view to dispute the title of the respondent qua the suit property. The fact remains, even if the title of the respondent presumably is defective, in view of the clear admission of the appellant where he accepted the respondent as the owner and himself as a licensee in the suit property, the trial court was not required to look into the question of clear title of the respondent in respect of the suit property. Respondent, if not the owner of the property remained the licensor of the property qua the appellant and a relationship of licensor and licensee existed between the two. Therefore, the appellate court rightly upheld the order of the trial court directing the appellant to handover the vacant possession of the suit property to the respondent.

6. Since no substantial question of law is involved in this case, the appeal is not sustainable. Hence, the same is accordingly dismissed.


ARUNA SURESH, J.

SEPTEMBER 08, 2009

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