

REPORTED

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

+ **RFA 177/2004**

MADAN LAL KAUSHIK Appellant
Through: Mr. Randhir Jain, Advocate

versus

SHREE YOG MAYAJI TEMPLE & ORS. Respondents
Through: Mr. Vijay K. Gupta, Advocate

% Date of Decision : March 03, 2011

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. By way of this appeal, the appellant seeks to impugn the judgment of the learned Additional District Judge dated 10th February, 2004 whereby Suit No.85/03 filed by Shree Yog Mayaji Temple was decreed and Suit No.03/04/93 filed by Madan Lal Kaushik was dismissed.

2. At the outset, it must be noted that the plaintiffs in Suit No.85/03, who are arrayed as respondents in the present appeal, namely, Shree Yog Mayaji Temple and Others had filed an application under Order XII Rule 6 CPC praying for the passing of a decree in the suit while certain preliminary issues had been framed in the case of Suit No.03/04/93 filed by the appellant herein, namely, Madan Lal Kaushik, to which I shall presently advert.

3. The facts may be recapitulated *in extenso* as it is these facts which are material for the purpose of deciding the present appeal. On 04.09.1993, Madan Lal Kaushik, the appellant herein, had filed a suit for declaration and permanent injunction against Shri Hari Narain and Others, being Suit No.03/04/93. It was the case of appellant in the said suit that he was in peaceful physical possession of property No.10/7, Yog Maya Mandir, Mehrauli, New Delhi since the year 1943, comprising of two rooms, one kitchen, one store, one bathroom and a partly demolished room on the ground floor and one room on the first floor. The site plan of the said premises was filed by the appellant with the plaint. It was further the case of the appellant that

the possession of the aforesaid property was inherited by him from his late father Pt. Badlu Ram, who had the exclusive possession of the same for the last more than 50 years and had died on 19.12.1991. According to the plaint, the defendants No.1 to 3, namely, Shri Hari Narain, Shri Inder Narain and Shri Surinder Narain, were *pandas* of Shree Yog Maya Mandir and had taken over the administration of the said Mandir.

4. It was asserted in the plaint by the appellant that he and his father had been performing ‘puja’ and ‘seva’ in the said Mandir on honorary basis for the last 50 years in the mornings and evenings. The possession of the premises in question was given to his late father by one Smt. Ram Pyari, widow of Shri Trikha, about 50 years ago “for performing ‘puja’ and ‘seva’.” After the death of his father, the defendants had been trying their best to dispossess him and his family members on one pretext or the other and wanted to take forcible and illegal possession of the premises in question. It was submitted by the appellant that the defendants in the suit had last threatened the

appellant on 29th August, 1993 with dire consequences if he did not vacate the premises within a week.

5. Alternatively, the appellant submitted that he was in legal and physical possession by virtue of adverse possession continuously for more than 12 years without any interruption and the defendants had no right, title or interest to throw him out of the said premises. Hence the suit filed by him (Madan Lal) praying for a decree of declaration that he be declared the owner of the property No.10/7, Yog Maya Mandir, Mehrauli, New Delhi, “*being in adverse possession for the last more than 12 years.*” He also prayed for a decree of permanent injunction restraining the defendants in the suit from dispossessing him from the aforesaid premises.

6. The aforesaid suit was contested by the defendants, who stated that the appellant was a teacher in St. Xaviers School and was in illegal and unauthorized occupation of the suit property since 1991, when his father Badlu Ram died, and, that prior to the year 1991, he was living with his father in the suit property. It was submitted by the defendants, on behalf of the Yog Maya Mandir and Others, that Shri

Badlu Ram was permitted to use the said accommodation as a paid employee of the Yog Maya Mandir, as Badlu Ram used to serve water to the worshippers and clean the Mandir. The said licence came to an end on the death of Shri Badlu Ram and from the date of the death of Shri Badlu Ram, the possession of the appellant became illegal. It was elaborated that Shri Badlu Ram was living in the said premises since 1949-50 and prior to that he was living with his family in the Mehrauli Village. He was permitted to occupy the suit premises in the interest of the Temple for providing better services to the worshippers and the Temple.

7. On the basis of the pleadings of the parties, the following issues were framed by the Court in Suit No.03/04/93 filed by the appellant:

“1. Whether the plaintiff is entitled for a decree of declaration of the suit property i.e. no.10/7 Yog Maya Mandir, Mehrauli, New Delhi being in adverse possession? OPP.

2. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP.

3. Whether the suit is bad for want of necessary parties? OPD

4. Whether the suit is maintainable in its present form? OPP.

5. Relief.”

8. At the time of the framing of issues, Issue No.1 was ordered to be treated as a preliminary issue and subsequently Issue No.3, viz., “Whether the suit is bad for want of necessary parties?” was also treated as a preliminary issue.

9. It deserves to be noted at this juncture that the issues were struck in the aforesaid suit subsequent to the filing of suit No.85/03, which was filed by Shree Yog Mayaji Temple and Others, who were the defendants in suit No.03/04/93 filed by the appellant. This suit No.85/03 was filed on 21.05.2003 for possession and recovery of mesne profits from the appellant and his brother Shri Sant Lal Kaushik. It was submitted by the plaintiffs in the said suit that the subject matter of suit No.03/04/93 was the property of Shree Yog Mayaji Mandir and Yog Maya Mandir – DEITY and the other plaintiffs, viz., the plaintiffs No.2 to 17 were the co-owners of the said property bearing No.10/7, Yog Maya Mandir, Mehrauli, New Delhi and the property attached to it. It was further stated that the plaintiffs No.2 to 16 were the pujaris of the Temple, who, along with their family members, had been looking after the affairs of Yog Maya

Mandir as per their turn. It was asserted that the plaintiff/Temple is a very old Temple with religious and historical significance, which had come into existence at the time of the Mahabharata. The entire property built upon the land was now commonly known as 10/7, Yog Maya Mandir, New Delhi. As regards the nature of occupation of Shri Badlu Ram, it was stated in the plaint that the father of the defendants No.1 and 2, namely, Shri Badlu Ram was employed in the year 1949-50 at a salary of ₹ 5/- by the pujaris and ancestors of the plaintiff/Mandir for the purpose of doing various jobs, including cleaning, serving water and doing other incidental jobs in the Temple. During the course of such employment, Badlu Ram was permitted to use and occupy one room, one store room, one tin shed kitchen and one tin shed bathroom on the ground floor of the Mandir property. Thus, Shri Badlu Ram was employed to offer water to the devotees coming to the Temple for worship and for keeping the Mandir neat and clean in the year 1950 merely as a licensee, without, in any manner, creating any right or interest in his favour in respect of the suit property. The said Shri Badlu Ram died on 19.12.1991 and at

that time he was drawing a salary of ₹ 60/- per month together with the benefit of edibles/food, etc. and the benefit of living in the suit property. On his death, his license to use the said premises came to an end and stood automatically determined. Badlu Ram had two sons, namely, Shri Madan Lal Kaushik, the defendant No.1 and Shri Sant Lal Kaushik, the defendant No.2. On the death of Shri Badlu Ram, the defendant No.2 had left the suit premises along with his family and shifted to House No.579 in Ward No.3, Mehrauli, New Delhi-110030, but the defendant No.1, Madan Lal Kaushik continued to stay in the suit premises unauthorisedly along with the other family members despite the fact that he was repeatedly called upon to vacate the same. Finally, instead of vacating the suit premises, he (Madan Lal Kaushik) filed a suit for declaration wherein he allegedly claimed ownership by adverse possession and sought a decree for permanent injunction along with a decree for declaration in respect of the suit premises. The said suit was still pending, being Suit No.03/04/93, initially numbered as 325/93. Hence, this suit for recovery of possession from the defendants and also for mesne profits for the

unauthorized use and occupation of the suit premises by the defendant No.1 at the rate of ₹ 3,000/- per month.

10. In the written statement filed by him to the aforesaid suit (Suit No.85/03), the brother of the appellant herein, namely, Shri Sant Lal Kaushik, who was arrayed as the defendant No.2 in the suit, admitted the case of the plaintiffs about his father having come into possession of the suit premises with the permission of the plaintiffs as he used to serve water to the pilgrims and the worshippers and clean the Temple. It was submitted by him that after the death of his father, Shri Badlu Ram, in 1991, his brother (Madan Lal Kaushik) declined the offer of the plaintiffs to perform the services which his father was performing, and hence the defendant No.2 had left the suit premises and shifted to Mehrauli. He also admitted that the defendant No.1 continued to occupy the suit premises with his family members unauthorisedly even after the death of his father, and had declined to honour the wishes of his father to hand over the suit premises to Shree Yog Mayaji Mandir. He admitted that the defendants had no right in the suit property.

11. Needless to state that the defendant No.1 (the appellant herein) contested the suit and filed his written statement wherein he stated that the defendant No.2 was in active collusion with the plaintiffs and reiterated the facts as mentioned by him in his earlier suit bearing No.03/04/93, filed by him against the Shree Yog Mayaji Mandir and others.

12. At this stage, the plaintiffs (Shree Yog Mayaji Mandir and others) filed an application under Order XII Rule 6 CPC, wherein it was stated that the contents of the written statement filed on behalf of the defendant No.1, and in particular paragraph 6 thereof, revealed that his only defence was that the suit property in his occupation was gifted to his father by Smt. Ram Pyari, wife of Shri Trikha way back in the year 1943 and after the death of his father Pt. Badlu, the said property was inherited by him from his father. It was further stated by the plaintiffs that in paragraph 15 of the written statement, the defendant No.1 had mildly raised the plea of adverse possession in the alternative. In other words, the case of the defendant No.1 in the pleadings was that he became the owner of the premises in question

by inheritance from his father, who was gifted the said property by Smt. Ram Pyari. Alternatively, the defendant No.1 claims that he is the owner of the property by way of adverse possession. *Ex facie*, the said pleas are self-contradictory, as, if it is a case of gift, the question of adverse possession would not arise and vice-versa. Moreover, the gift alleged by the defendant No.1 is without any document of title and as such is legally untenable and amounts to admission being an evasive and unspecific reply, and, at any rate it is a constructive admission to the claim of the plaintiffs in the plaint, entitling the plaintiffs in the plaint to a judgment and decree on the basis of the admissions in the pleadings of the defendant No.1.

13. It was on the aforesaid application under Order XII Rule 6 CPC filed by Shree Yog Mayaji Temple that the learned Additional District Judge passed the impugned order decreeing the suit filed by Shree Yog Mayaji Mandir for recovery of possession of the portion of the suit property in the possession of the defendant No.1 and dismissing the suit filed by Madan Lal Kaushik, the appellant herein. Aggrieved by the aforesaid judgment of the learned Additional

District Judge, the present appeal has been preferred by Shri Madan Lal Kaushik.

14. Mr. Randhir Jain, the learned counsel for the appellant seeks to assail the judgment of the learned Additional District Judge on a number of grounds. He contends that the suit filed by Shree Yog Mayaji Temple and decreed by the learned Additional District Judge was not maintainable since the suit was filed in the name of the Temple, and the Deity, which is a juristic person, was not impleaded as a party to the suit through the next friend of the Deity. To buttress this contention, he relied upon two decisions of the Allahabad High Court in *Bhagauti Prasad Khetan and etc. vs. Laxminathji Maharaj and etc.* reported in *AIR 1985 Allahabad 228* and *Pooranchand vs. The Idol, Shri Radhakrishnaji and Anr.* reported in *AIR 1979 M.P. 10*. He further contended that though there were 17 plaintiffs to the suit, the plaint bears 16 signatures, inasmuch as the signature of the plaintiff No.1 Shree Yog Mayaji Temple through the next friend is missing. Likewise, the verification to the plaint too bears only 16 signatures. Further, the plaintiffs No.2 to 16, who had signed the

plaint and verified the same, were not co-owners of the property as asserted by them, nor they were in control and management of the Mandir and the property attached to it, nor they had inherited any right as pujaris as asserted by them. Thus, the suit was not maintainable as laid.

15. Next, Mr. Randhir Jain, the learned counsel for the appellant contended that it was the case of the appellant that property No.10/7 was gifted to the father of the appellant by Smt. Ram Pyari and the appellant had inherited the same from his father. Alternatively, the appellant claimed adverse possession (vide paragraphs 6 and 15 of the written statement filed by the appellant to suit No.85/03). Thus, rather than there being any admission alleged to have been made by the appellant, it was clear from the record that it was a case of contest. Mr. Jain contended that even otherwise, the appellant had positively asserted ownership of the suit property (vide paragraph 17 of the written statement filed by the appellant to suit No.85/03) and an admission cannot be read into the positive assertion of ownership by the appellant, howsoever unfounded his assertion may be or

howsoever tenuous his title may be. Even otherwise, assuming that the appellant failed in his suit, it does not follow therefrom that the suit of the Mandir has to be decreed. It is settled law that an admission in order to form the foundation of a decree must be clear, categorical, unambiguous and unequivocal. In this factual scenario, it would be in the interest of justice to set aside the judgment of the learned Additional District Judge and remand both the suits to the learned trial court for trial.

16. Mr. Vijay K. Gupta, the learned counsel for the respondents herein, on the other hand, sought to rebut the aforesaid contentions raised on behalf of the appellant by urging that the Yog Maya Mandir was a juristic person and could own property. In paragraphs 1 and 8 of the plaint, there were clear assertions that the suit property situate in Khasra No.1801, Village Mehrauli, New Delhi is owned by Shree Yog Mayaji Mandir and the said Temple is being shown as the owner in revenue records including the Khasra Girdwari; that the plaintiffs No.2 to 16 are the co-owners of the said property and are in overall control and management of the Mandir and the properties attached to

it, and that the plaintiffs No.2 to 16 are the pujaris, who along with their family members have been looking after the affairs relating to the Mandir, performing 'Puja – Arti' and 'Seva' in the said Temple for the last five centuries as per their turn, having inherited the said right as pujaris from their ancestors. The suit in the name of the Temple was competent as the Deity was competent to bring the suit within the meaning of the word 'person'. He relied upon the decision of the Punjab and Haryana High Court in *Shri Guru Granth Sahib Khoje Majra vs. Nagar Panchayat Khoje Majra, Vol. LXXI – 1969 P.L.R. 844*.

17. Mr. Gupta, the learned counsel for the respondents further contended that the pleas put forward by the appellant were irreconcilable, mutually destructive and inconsistent with one another. Thus, the plea of adverse possession and the plea of gift could not go together. Further, the case of the appellant is not that his father became owner by adverse possession, but that he has become the owner by adverse possession. The father of the appellant Badlu Ram died in 1991. The suit was preferred by the appellant in 1993, i.e.,

two years after the death of his father. It is settled law that a party who claims title by adverse possession to a property belonging to someone else should have been in occupation of the disputed property for more than 12 years without interruption. It was not the case of the appellant that his father was in adverse possession, and thus the plea of adverse possession was clearly not maintainable.

18. Mr. Gupta next contended that whereas a glance at the suit filed by the appellant (Suit No. 03/04/93) shows that the plaint focuses on possession alone and that gift is not even remotely suggested, in the written statement filed by the appellant to the subsequent suit filed by the respondents herein (Suit No. 85/03), the appellant asserts that the disputed property was gifted to his father by Smt. Ram Pyari. However, no gift deed is pleaded, and as a matter of fact, significantly the suit of the appellant continued for 10 years before the respondents chose to file a suit in the year 2003 and during all this period, there was not even a whisper of any gift or gift deed in favour of Badlu Ram. Mr. Gupta submitted that the father of the appellant was admittedly in permissive occupation, and, therefore, the

question of adverse possession could not arise. Once a person is in permissive occupation, he can never claim adverse possession. The complete somersault is taken by the appellant in the written statement filed by him, by asserting that the property had been gifted to his father by one Ram Pyari, ought not to be countenanced by this Court.

19. The learned counsel for the respondents contended that the appellant had never set up title hostile to that of the Mandir. For the first time on 04.09.1993, he claimed adverse possession by filing a suit. In the said suit, it is not his case that he was occupying the premises independently of his father, and the undisputed position is that he was occupying the premises for less than two years. The plea of adverse possession is thus not made out. At best, the possession of the appellant was permissive in nature and, as already stated, a permissive occupant cannot claim adverse possession.

20. In the above context, reliance was placed by the learned counsel for the respondents on the following judgments:

- (i) ***Gaya Parshad Dikshit vs. Dr. Nirmal Chander and Anr., AIR 1984 SC 930***, wherein it was held that mere

termination of the license of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a title hostile to that of the licensor after termination of his license. It is not merely unauthorized possession on termination of his license that enables the licensee to claim title by adverse possession, but there must be some overt act on the part of the licensee to show that he is claiming adverse possession. Mere continuance of unauthorized possession even for a period of more than 12 years is not enough.

- (ii) ***Sheodhari Rai and Ors. vs. Suraj Prasad Singh and Ors., AIR 1954 SC 758***, wherein it was laid down that permissive possession cannot be treated as adverse possession till the defendant asserts an adverse possession.
- (iii) ***Annasaheb Bapusaheb Patil and Ors. vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs & heirs etc., AIR 1995 SC 895***, wherein the Supreme Court

enunciated the law to be that adverse possession means a hostile assertion, i.e., a possession which is expressly or impliedly in denial of the title of the true owner and held that under Article 65 of the Limitation Act, 1963, the burden is on the defendants to prove affirmatively.

- (iv) ***Harbans Kaur & Ors. vs. Bhola Nath & Anr, 57 (1994) DLT 101***, wherein it was laid down by this Court that the burden of proving adverse possession was a heavy one. Adverse possession implied a hostile possession whereby the title of the true owner is denied. A person who claims adverse possession must show on what date he came into possession and that he had been in continuous possession for more than 12 years, without a break and without interruption; his possession was to the exclusion of all other persons; his possession was of such a nature that it involved the exercise of rights so irreconcilable with that of the true owner as to afford him an opportunity to dispute that possession during that

12 years when he was in the process of perfecting his title. Adverse possession must have commenced in wrong and must be maintained against right. It must be open and hostile to the true owner. Possession must be *nec vi, nec clam, nec precario*, i.e., for the perfection of title it must be adequate in continuity, in publicity and extent.

- (v) ***Thakur Kishan Singh (dead) vs. Arvind Kumar, AIR 1995 SC 73***, wherein it was laid down that where the possession was initially permissive, the burden was heavy on the appellant to establish that it became adverse. Mere possession for howsoever length of time does not result in converting permissive possession into adverse possession.
- (vi) ***Padmawati and Ors. vs. Harijan Sewak Sangh, 154 (2008) DLT 411***. In this case, the facts were somewhat similar to the present case. The record showed that the petitioners' father was in service of the respondent and

the respondent had allotted suit premises to the father of the petitioners. After the death of the petitioners' father, the petitioners remained in unauthorized occupation of the said premises for a period of 24 years and 4 months. This Court in the aforesaid circumstances dismissed the petition with costs of ₹ 15,10,000/- to be recovered from the petitioners jointly and severally, holding the petitioners liable to pay user charges at the rate of ₹ 10,000/- per month if the premises were not vacated within 30 days.

21. Having perused the aforesaid precedents cited at the bar and gone through the records, the following position clearly emerges. The dispute between the parties arose on 29.08.1993. The appellant himself has alleged in paragraph 5 of the plaint, in Suit No.03/04/93 filed by him, that the defendants had asked him to vacate the premises on the said date and he had filed the suit immediately thereafter. A perusal of the plaint in Suit No.03/04/93 also shows that there is not a whisper in the plaint of ownership and the entire plaint focuses on the

possession of the appellant alone. In paragraph 1 of the plaint, it is stated that the plaintiff is in **peaceful physical possession** and is also employed in St. Xaviers School, Civil Lines, Delhi. In paragraph 2 of the plaint, it is asserted that the **possession** of the abovesaid property was inherited by the appellant from his late father Badlu Ram, who had the exclusive **possession** of the same for the last more than 50 years and had died on 19.12.1991. In paragraph 3 of the plaint, it is admitted that Badlu Ram was performing ‘Puja and Seva’ in the Mandir on honorary basis for the last 50 years in the morning and evening. In paragraph 4 of the plaint, it is stated that the **possession** of the abovesaid premises was given to the late father of the plaintiff by one Smt. Ram Pyari, widow of Shri Trikha “about 50 years before (sic.) **for performing the abovesaid puja and seva.**” In paragraph 5 of the plaint, it is alleged that after the death of the father of the plaintiff, the defendants had been trying their best to **dispossess** the plaintiff and his family members on one pretext or the other. In paragraph 6 of the plaint, it is asserted that the appellant is at present “in **legal and physical possession** by virtue of adverse possession

continuously for more than 12 years without any interruption” and the defendants have no right to throw him out. In paragraph 7 of the plaint, it is alleged that the cause of action arose in the year 1991-92 when a complaint was lodged by the appellant against the defendant No.1 with the DCP, South District and again on 28–29.08.1993 when the defendants with ulterior motive had tried to dispossess the appellant. It is only in the prayer clause that a decree of declaration is sought that “the plaintiff be declared the owner of the property 10/7, Yog Maya Mandir, Mehrauli, New Delhi, being in adverse possession for last more than 12 years.”

22. In the written statement filed to Civil Suit No.85/03 filed by Shree Yog Mayaji Temple, however, the appellant took a complete somersault by categorically denying that his father was employed in the Temple (though admitting that he was one of the pujaris of the Temple) and claiming that the property was **gifted** to his father by Smt. Ram Pyari, widow of Shri Trikha way back in the year 1943 and had now been inherited by him from his father (paragraph 7 of the written statement in suit No.85/03). In paragraph 9, it is again

asserted that the defendants' father was the **owner** of the suit property and has given this property to the appellant. In paragraph 11, again the claim of ownership is asserted as also in paragraph 16, paragraph 17, paragraph 18 and paragraph 23.

23. From the aforesaid, it is clear that while in the suit instituted by him the appellant in the plaint had asserted that his father was in possession of the property since the year 1950 and he had inherited the said possession, in the written statement to the suit filed by the respondents, the appellant for the first time asserted ownership of the property by his father through a gift from Smt. Ram Pyari. However, no gift deed is pleaded nor any other document is placed on record to show that a gift of the disputed property had been made by Smt. Ram Pyari to the father of the appellant. It also stands out like a sore thumb that while the appellant in his suit impleaded three defendants, namely, Shri Hari Narain, Shri Inder Narain and Shri Surinder Narain, the names of the legal representatives of Shri Hari Narain appear as plaintiffs No.2 and 3 in Suit No.85/03, Shri Inder Narain appears as plaintiff No.9 in the said suit and Shri Surinder Narain as plaintiff

No.8 in the said suit. In other words, the appellant had impleaded as defendants the very same persons who are arrayed as plaintiffs in the suit filed by the Temple. It is also crystal clear that the suit is filed by the Deity as Shree Yog Maya ji Temple, and the plaintiffs No.2 to 16 merely claim to be 'pandas' of the temple and responsible for the administration of the same. Thus, the suit evidently has been filed by the Deity and there can be no question of the suit being thrown out on the ground of improper institution.

24. Adverting next to the root of the matter, namely, as to whether the discretion exercised by the Trial Court to enter the judgment under Order XII Rule 6 CPC was properly exercised, in my considered opinion, the answer to this must be in the affirmative. This Court finds no merit in the contention of the learned counsel for the appellant that the exercise of jurisdiction by the learned Additional District Judge in decreeing the suit on the basis of admissions in the pleadings was altogether unjustified, for, to warrant the passing of a decree on admissions, the admissions must be unambiguous and unequivocal.

25. The ambit and scope of Order XII Rule 6 CPC is such that it confers almost sweeping powers on the Court to render speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. As laid down in a catena of judgments of the Supreme Court and of various High Courts, the only pre-requisite is that there must be admissions of fact arising in the suit, either in the pleadings or otherwise, whether orally or in writing, and such admissions of fact must be clear, unequivocal and unambiguous. There is, however, no requirement for such admissions of facts to be specific or express and even constructive admissions have been deemed sufficient to pronounce judgment thereon. Furthermore, such admissions, it is well settled, may be culled out from the pleadings of the parties '*or otherwise*' either by the Court or by any of the parties who may thereupon of its own motion move an application for pronouncement of judgment on the basis thereof. A duty is then cast on the Court to ascertain the admission of facts and to render judgment thereon, either in respect of the whole or a part of the claim made in the suit, after ascertaining whether the defence set up is such

that it requires evidence for the determination of the issues or whether the defence is an irreconcilable one, rendering it well nigh impossible for the defendant to succeed even if the same is entertained. For the aforesaid purpose, it would be open to the Court to look into the admissions gathered even constructively for the purpose of rendering a speedy judgment, subject of course to the stipulation that the objections raised by the opposite party against rendering the judgment are such which do not go to the root of the matter and are inconsequential in nature, making it impossible for the objecting party to succeed even if entertained.

26. It deserves to be noted at this juncture that Order XII Rule 6 CPC was amended by the Amendment Act of 1976. Prior to the amendment, the rule enabled any party, at any stage of a suit, where admissions of fact had been made to apply to the Court for a judgment or order upon such admissions as he may be entitled to, without waiting for the determination of any other question between the parties. In the 54th Law Commission Report amendment was suggested to enable the Court to give a judgment not only on the

application of a party but on its own motion. Clearly, the amendment was brought about to further the ends of justice and to give the provisions of Order XII Rule 6 CPC a wider sweep.

27. In the case of *Uttam Singh Dugal & Co. Ltd. vs. Union Bank of India & Ors.*, (2000) 7 SCC 120, a contention was raised on behalf of the appellant, Uttam Singh Dugal that admissions under Order XII Rule 6 CPC should be only those which are made in the pleadings, and, in any event the expression “either in pleadings or otherwise” should be interpreted *ejusdem generis*. Rejecting the aforesaid contention, the Supreme Court held that the Court should not unduly narrow down the application of the provisions of Order XII Rule 6 CPC as the object is to enable a party to obtain speedy judgment.

28. Relying upon the observations made in the case of *Uttam Singh Dugal & Co. Ltd. (supra)*, the Supreme Court in the case of *Charanjit Lal Mehra and Ors. vs. Kamal Saroj Mahajan (Smt.) and Anr.*, (2005) 11 SCC 279 construed the provisions of Order XII Rule 6 CPC to include admissions that could be “*inferred*” from the facts and circumstances of the case, and opined that Order XII Rule 6 CPC

is enacted for the purpose of and in order to expedite the trials. The Court observed:

*“If there is any admission on part of the defendants or an admission that can be **inferred from the facts and circumstances of the case (emphasis added)** without any dispute then, in such a case in order to expedite and dispose of the matter such admission can be acted upon.”*

29. In a recent judgment rendered by the Supreme Court in ***Karam Kapahi and Ors. vs. Lal Chand Public Charitable Trust and Anr., (2010) 4 SCC 753***, another Bench of the Supreme Court, after discussing the entire gamut of case law on this aspect, compared the provisions of Order XII Rule 1 CPC and Order XII Rule 6 CPC, and held that on such comparison it becomes clear that the provisions of Order XII Rule 6 CPC are wider, inasmuch as the provisions of Order XII Rule 1 CPC are limited to admission by “pleading or otherwise in writing”, but in Order XII Rule 6 CPC the expression “*or otherwise*” is much wider in view of the words used therein, namely, “admission of fact either in the pleading or otherwise, whether orally or in writing.” It was further observed that as held in the case of

Charanjit Lal Mehra and Ors. (supra) admissions can be inferred from the facts and circumstances of the case.

30. The above being the position of law, it is proposed to revert back to the case in hand. There can be no manner of doubt that in the suit filed by the appellant, it was the case of the appellant that his father was in possession of the suit property as a pujari in the Temple. He has himself admitted that possession of the property was given to his father by one Smt. Ram Pyari, who was the widow of one of the pujaris of the Temple and it was given while his father was doing puja and seva in the Temple. The said occupation was thus a permissive user. No doubt, in the written statement in Suit No.85/03, the appellant has raised the plea of ownership by virtue of gift of the suit property to his father by Smt. Ram Pyari, but the same is clearly an afterthought, and that too a belated one, inasmuch as the said position has been taken by the appellant ten years after the filing of his own suit. Even otherwise, the gift of immovable property cannot be proved by oral evidence without a written and registered gift deed. There is not even a whisper that such gift deed was executed or

registered by Smt. Ram Pyari in favour of Badlu Ram or the appellant herein.

31. The other stand adopted by the appellant, viz., of ownership of the suit property by adverse possession for more than 12 years in hostility of its true owner, is also clearly unsustainable. To recapitulate, it is not the case of the appellant that his father Badlu Ram was in adverse possession. Badlu Ram died on 19.12.1991 and the appellant filed a suit for declaration in the year 1993. The question of the appellant being in adverse possession for more than 12 years, therefore, does not arise. Apart from this, as noted above, the mere fact that the appellant has come forward with a plea of adverse possession means that he admits the plaintiff to be the true owner. For a plea of ownership on the basis of adverse possession, the first and foremost condition is that the property must belong to a person other than the person pleading his title on the basis of adverse possession. The appellant who admits permissive possession/occupation in the same breath cannot be allowed to plead adverse possession in the other, and that too without any hostile

assertion made by him in denial of the title of the true owner. In the instant case, it may be noted that the appellant himself had impleaded the parties arrayed as plaintiffs in the suit of Yog Mayaji Temple as defendants in his suit. Thus, no question of hostile assertion arises or can be countenanced. At the risk of repetition, it is also noted that the defendant No.2 Sant Lal Kaushik, who is the brother of the appellant, has admitted the case of plaintiff *in toto*. The appellant seeks to brush this aside by asserting active collusion between the respondents and his brother. In the face of the admissions made by the appellant himself which have been culled out from his pleadings and inferred therefrom, in my view, this assertion must fall to the ground. Consequently, looking at the matter from any angle, the judgment of the trial court deserves to be affirmed.

32. In the above view of the matter, it is deemed unnecessary to go into the question raised by the respondents that the appellant could have only taken the plea of adverse possession as a defence and that no declaration of the said right could be given in the suit to the

plaintiff and as such even the consequential relief of injunction could also not have been given to the appellant.

33. The appeal is accordingly dismissed with the direction to send back the records to the trial court for adjudication on the aspect of mesne profits.

**REVA KHETRAPAL
(JUDGE)**

March 03, 2011
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