

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

Reserved on: 04.09.2013

Pronounced on: 24.09.2013

+ IA No.2258/2009 in CS(OS)1025/2008

ASSOCIATION FOR VOLUNTARY ACTION.....Plaintiff

Through Mr.H.S.Phoolka, Sr. Adv. with
Ms.Anupama Gupta, Mr.Ashok
Kashyap, Mr.Bhuwan and
Mr.Gursimranjit Singh, Advs.

Versus

THE CHILD TRUST & ANOTHER Defendants

Through Mr.R.K.Saxena, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

IA No.2258/2009 (Order 12 Rule 6 CPC)

1. This is an application under Order 12 Rule 6 CPC filed by the plaintiff seeking a decree on admissions. The suit is filed seeking a relief of mandatory injunction against the defendants for vacating the suit premises bearing Khasra No.353 measuring 2 bighas and 5 biswas in Village Garhi Khusro near Ibrahimpur, Delhi and a decree of permanent injunction against the defendant permanently restraining them from causing disturbance, hindrance or nuisance in the peaceful possession of the plaintiff in the suit property.

2. It is the contention of the plaintiff that the plaintiff organisation entered into an agreement with the owner of the suit property on 10.09.1977 granting permission to the plaintiff to use the suit property. The period of agreement is stated to be for 20 years and the premises is to be used for charitable and social purposes. In terms of the said Agreement the plaintiff has also constructed two storey buildings at the suit premises by investing a huge amount for carrying on its activities.
3. It is further stated that on a representation by defendants, plaintiffs and defendant no.1 entered into a Memorandum of Understanding on 28.12.2006 on terms and conditions effective from 1.1.2007 for a period of six months only. The MOU provided that the parties will carry out certain joint projects/social activities in the suit premises. It is stated that the MOU expired on 30.6.2007 and it was further renewed by letter dated 29.6.2007 for another period of six months. Subsequently on expiry of the renewed period, the plaintiff issued a letter dated 21.12.2007 asking the defendants to vacate the premises by 7.1.2008. A notice dated 24.12.2007 was also issued. Another communication/notice was sent on 11.2.2008.
4. It is further stated that despite expiry of the MOU and despite receipt of notice the defendants refused to vacate or leave the suit premises and continued to remain in unauthorised and illegal occupation. In 2008, the defendant no.2 started obstructing entry of the staff of the

plaintiff in the suit premises. Hence, the present suit has been filed.

5. The defendants have filed written statement and claimed that the plaintiff is neither the owner nor the lessor of the land in question and hence is incompetent to file the present suit. It is further averred that the Agreement dated 10.09.1997 that has been placed on record by the plaintiff to show its rights to the suit property shows the signatures of witnesses as that of defendant no.2. It is stated that the defendant no.2 never signed the said document and hence agreement dated 10.09.1997 is forged and fabricated. It is further stated that in 1997-98 defendant no.2 became the chief functionary of the plaintiff society and defendant no.2 was operating bank accounts in Bank of India, Branch Bakhtavarpur of the plaintiff's society. In the year 2004 it was decided to have separate organisations registered for the purposes of getting aid from foreign donors. One of the organisation that was registered was Child Trust i.e. defendant no.1 whose managing trustee was defendant no.2. It is stated that defendant no.1 started getting funds from foreign donors and the plaintiff insisted that the money be diverted to the plaintiff society. As defendant no.2 was not agreeable she was removed from the post of Chief Functionary of the plaintiff society in the year 2007. The defendant no.2 admits her signatures on the MOU dated 28.12.2006. She also admits that the Ashram is being run since 1997. It is further stated that the plaintiff society had told defendants No.1 and 2 and had made them to understand that a MOU needs to be created/executed in order to satisfy the requirements of foreign donor agencies and that the said MOU will not in any manner

affect the exclusive control of defendant no.1 and 2 upon the Balika Ashram i.e. the suit property. Believing the said assurances of the plaintiff society, it is stated that the defendant no.2 signed the MOU.

6. Learned senior counsel appearing for the plaintiff submits that as far as the relief of possession is concerned that relief has become infructuous as the defendants have voluntarily out of their own free will more than 2 ½ or 3 year ago vacated the suit property and left on their own. He relies on an order dated 26.05.2011 where a statement was made by learned counsel for the plaintiff that the plaintiff is in possession of the suit property. He further submits that on 8.11.2012 the said statement of the plaintiff was reiterated but the same was refuted by defendants No.1 and 2. A Local Commissioner was then directed to visit the suit property to ascertain the possession of the suit property. He submits that the Local Commissioner has vide his report dated 19.11.2012 submitted that the plaintiff is in exclusive possession of the suit property. Hence, he submits that to that extent the suit has become infructuous. He, however, seeks to press for a decree of permanent injunction to restrain the defendants from causing any disturbance, hindrance or any nuisance in the peaceful possession of the plaintiff in the suit property.
7. Learned senior counsel appearing for the plaintiff further submits that the defendant in paragraphs 3 and 9 of the written statement have categorically admitted her signatures on the MOU. He submits that in view thereof the status of defendant no.1 was that of a mere licensee.

The licence period has expired. Hence, it is contended that in view of the said admission, the plaintiff is straightaway entitled to a decree in his favour. He relies upon judgment of the Full Bench of this Court in the case of *Chandu Lal Versus Municipal Corporation Of Delhi, AIR 1978 DELHI 174* which held that after termination of the license the licensor is entitled to deal with the property as he likes. He also relies on judgment of a Division Bench of this Court in *Vijaya Myne Versus Satya Bhushan Kaura, 142 (2007) DLT 483 (DB)* where this Court held that under Order 12 Rule 6 CPC the Court can pronounce judgment on admissions when the admissions are sufficient to entitle the plaintiff to get a decree. The admissions can be constructive admissions and need not be specific or expressive which can also be inferred from vague and evasive denial.

8. Learned counsel appearing for the defendant has, however, submitted that there are no admissions made by the defendant which would entitle any decree to be passed on alleged admissions. He does not deny that defendants are not in possession of the suit property. He submits that defendant no.2 only admitted her signatures on the MOU dated 28.12.2006 but has not admitted the execution of the said MOU. He relies upon judgment in the case of *Brij Mohan Bakshi Versus Amar Nath Bakshi And Others, AIR 1980 Jammu And Kashmir 54;* which states that where a party merely admits the thumb impression or signatures on a document but does not admit that they executed a document in the sense that they subscribed to the contents thereof, it cannot be said that the party has admitted the execution. He also

relies upon *Puran Chand Packaging Industrial P.Ltd. Versus Sona Devi & Anr, 154(2008) DLT 111 (DB)* to submit that a decree cannot be passed under Order 12 Rule 6 CPC unless admission is unequivocal and unambiguous.

9. Learned counsel for the defendant also submitted that the plaintiff has failed to prove title of the suit property. He submits that in view of the said failure, the plaintiff cannot file the present Suit. He states that the reliance of the plaintiff on the Agreement with the owner dated 10.09.1997 is misplaced inasmuch the said document is fraudulent. Hence, he submits that the present application is liable to be dismissed.

10. In rebuttal, learned senior counsel appearing for the plaintiff relies on Section 116 of the Evidence Act to state that no person who came upon any immovable property by the license of the person in possession shall be permitted to deny that such person had a title to such possession at the time when such license was given. He also relies upon judgments of the Hon'ble Supreme Court in the case of *Sri S.K. Sarma versus Mahesh Kumar Verma, AIR 2002 SC 3294* and *Bansraj Lalitaparsad Mishra versus Stanley Parker Jones, AIR 2006 SC 3569* to contend that in terms of Section 116 of the Evidence Act the defendant cannot deny the title of the plaintiffs.

11. I will first deal with the objection of the defendants regarding the title of the plaintiff to the suit property. The plaintiff has stated in his plaint that he has a 20 year Agreement with the owner dated

10.09.1997. He has also stated that defendants No.1 was inducted as a licensee in terms of MOU dated 28.12.2006. On a pointed question by the Court to the learned counsel for the defendant as to his status in the suit property he confirmed that the defendant is a licensee. Though learned counsel for the defendant has denied execution of the MOU dated 28.12.2006, however, there is nothing in the written statement to state as to how the plaintiff has come into possession of the suit property. Relevant portion of paragraph 9 of the Written Statement is reproduced as under:-

“9..... It is submitted that the plaintiff society told the defendant no.1 and 2 and made them to understand that a MOU needs to be created/executed in order to satisfy the requirements of foreign donor agencies and that the said MOU will not in any manner affect the exclusive control of defendant No.1 and 2 upon the Balika Ashram i.e. the Suit property. Believing in such assertions of the plaintiff's society the defendant no.2 signed a MOU.”

12. A reading of the said paragraph shows that the defendant accepts that the parties were *ad idem* that there was a need to execute an MOU. It is admitted that defendant no.2 signed the MOU based on certain representations made to her by the plaintiff society. In view of this categorical averment it clearly would follow that the possession of the defendant is as a licensee of the plaintiff. As already pointed out in the course of arguments a pointed question was raised to the learned counsel for the defendant about his status and he confirmed that the defendant was a licensee.

13. In view of the above facts that the defendant is a licensee of the

plaintiff Section 116 of the Evidence Act would come into play.
Section 116 of the Evidence Act reads as follows:-

“116. Estoppel of tenant; and of license of person in possession

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given.”

14. In *Bansraj Lalitaparsad Mishra (supra)* the Hon’ble Supreme Court in paragraphs 14 and 15 held as under:-

“14. The “possession” in the instant case relates to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any immoveable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.

15. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppels has been incorporated by the legislature in the said section.”

15. Similar is the view taken by the Hon’ble Supreme Court in the case

of *Sri S.K. Sarma vs. Mahesh Kumar Verma (supra)*.

16. In view of the above legal position and Section 116 of the Evidence Act the defendant cannot be permitted to deny that the plaintiff has a title to the possession at the time the license was given. Hence, there is no merit in the said submission of the defendant.

17. The next issue arises as to whether there is an admission on behalf of the defendant which will entitle the plaintiff to a decree under Order 12 Rule 6 CPC based on the said admission.

18. Paragraph 9 of the Plaint reads as follows :-

“9. That in furtherance to the agreement to work jointly under a joint management, the plaintiff and the defendant No.1 entered into a Memorandum of Understanding on 28.12.2006 on certain terms and conditions. The MOU was to be effective from 1st January, 2007 to 30th June, 2007 i.e. for a period of six months only and its further renewal was solely at the discretion of the Plaintiff.”

19. The relevant portion of the written statement reads as follow:-

“9..... It is submitted that the plaintiff society told the defendant no.1 and 2 and made them to understand that a MOU needs to be created/executed in order to satisfy the requirements of foreign donor agencies and that the said MOU will not in any manner affect the exclusive control of defendant No.1 and 2 upon the Balika Ashram i.e. the Suit property. Believing in such assertions of the plaintiff's society the defendant no.2 signed a MOU.”

20. Clearly denial of the defendant to the MOU is vague and evasive. On a specific averment that an MOU was executed by the parties which expired on 30.06.2007 the defendant does not deny execution of the MOU but merely gives an explanation that this was done as a requirement for foreign donors and that this would not affect the exclusive control of defendants on the suit property. In my opinion, mere denial of the contents without any proper elaboration amounts to evasive denial. It is obvious that the defendant has executed the MOU. The nature of possession of the defendant No.1 as per the MOU was as a licensee. In fact learned counsel for the defendant has accepted that his client is a licensee.

21. For the purpose of application of Order XII Rule 6 CPC, I may refer to the judgment of the Division Bench of this Court in the case of *Vijay Mayne vs. Satya Bhushan Kumar (supra)* where in paragraph 12 this Court held as under:-

“12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6 CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely, in documents, correspondence etc.

These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.”

22. Reference may also be had to judgment of this Court in the case of *Usha Rani Jain vs Nirulas Corner House Pvt.Ltd.*, ILR (2005) II DELHI 349 where in paragraph 18 the Court held as follows:-

“18. The object of Order XII Rule 6 CPC is to enable a party to obtain a speedy judgment, at least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a Court can act under Order 12 Rule 6, the admission must be clear, unambiguous, unconditional and unequivocal. Admissions in pleadings are either actual or constructive. Actual admissions consist of facts expressly admitted either in pleadings or in answer to interrogatories. In a suit for ejectment, the factors which deserves to be taken into consideration in order to enable the Court to pass a decree of possession in favour of the plaintiff primarily are:-

A. 1) Existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as tenant;

B 2) Determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act.”

23. In view of the above legal position, an admission can be inferred on vague and evasive denials in the written statement while answering specific pleas raised by the plaintiff. Admissions can even be inferred from facts and circumstances of the case. Clearly, the denial of execution of the MOU by the defendant is evasive. The defendant does not set up any alternate plea of having received possession of the suit property in some manner other than as a licensee in terms of the MOU. The existence of relationship of licensor and licensee is not denied by the defendant. Determination of the said relationship is denied but the denial is extremely evasive and vague. In fact it is on record that the defendant has abandoned the possession. In my view there is a clear admission in terms of Order 12 Rule 6 CPC.

24. The rights of a licensee have been dealt by the Division Bench of this High Court in the case of ***Chandu Lal vs. Municipal Corporation of Delhi (supra)***. Relevant portion of paragraph 26 of which is reproduced as under:-

“26..... A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his

property. He need not secure a decree of the Court to obtain the right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser.....”

25. Reference may also be had to the judgment in the case of *Sant Lal Jain versus Avtar Singh (1985) 2 SCC 332* where the Hon’ble Supreme held as follows:-

“6. In *Milkha Singh v. Diana*, it has been observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee’s possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed:

“After the termination of licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.”

26. The right to use the suit property has come to an end. There is no explanation as to on what basis defendant can continue to claim possession of the suit property. In fact, factual situation is that defendant is no longer in possession of the suit property. These facts and circumstances show that the defendant admits to be licensee and

the terms of the licensee has come to an end.

27. Reliance of learned counsel for the defendant in the case of *Brij Mohan Bakshi vs Amar Nath Bakshi (supra)* is misplaced. That was a case relating to an application filed under Order 14 Rule 5 CPC. In the background of whether a Memo of Partition was executed between the parties therein the Court observed that though party only admits signatures but explains his circumstances which led to his signing the document without knowing its contents it may be possible to say that the party has not admitted the execution. The crucial issue was that an explanation has to be given to show as to why the party so making a claim is not aware of the contents of the document. In the present case, there is no such explanation forthcoming. Hence, the said judgment has no application to the facts of the present case.

28. In view of my findings above, the defendant has made admissions which warrant passing of a decree against the defendant. The application is hence allowed.

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In view of the above, the suit is decreed. A decree is passed in favour of the plaintiff and against the defendants restraining the defendants, their agents, associates etc. from causing any disturbance, hindrance or creating any nuisance in peaceful possession of the plaintiff in property bearing Khasra No.353 measuring 2 bighas and 5 biswas in Village Garhi Khusro near Ibrahimpur, Delhi. Decreesheet

be drawn up accordingly. The plaintiff shall also be entitled to costs of the Suit.

JAYANT NATH, J

SEPTEMBER 24, 2013

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