

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

Judgment Reserved on: March 21, 2014

Judgment Delivered on: March 28, 2014

+ **RFA(OS) 62/2014**

SH S B SHARMA Appellant

Represented by: Mr.Sandeep Sethi, Senior
Advocate instructed by
Mr.Gaurav Mitra and
Mr.Gaurav Mahajan,
Advocates

Versus

SHREE ADYA KATYAYANI SHAKTIPEETH
(MANDIR) TRUST & ORS

..... Respondent

Represented by: Mr.Neeraj Kishan Kaul, Senior
Advocate instructed by
Mr.Ashok Chhabra, Advocate

+ **RFA(OS) 63/2014**

DR R C JAIN (DECEASED) THR ITS LR
SHRI NIRMAL JAIN

..... Appellant

Represented by: Mr.Sandeep Sethi, Senior
Advocate instructed by
Mr.Gaurav Mitra and
Mr.Gaurav Mahajan,
Advocates

Versus

SHREE ADYA KATYAYANI SHAKTIPEETH
(MANDIR) TRUST & ORS

..... Respondents

Represented by: Mr.Neeraj Kishan Kaul, Senior
Advocate instructed by
Mr.Ashok Chhabra, Advocate

+

RFA(OS) 64/2014

SH P P SHRIVASTAV

..... Appellant

Represented by: Mr.Sandeep Sethi, Senior
Advocate instructed by
Mr.Gaurav Mitra and
Mr.Gaurav Mahajan,
Advocates

Versus

SHREE ADYA KATYAYANI SHAKTIPEETH
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Represented by: Mr.Neeraj Kishan Kaul, Senior
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Mr.Ashok Chhabra, Advocate

+

RFA(OS) 65/2014

SH V S GAUR

..... Appellant

Represented by: Mr.Sandeep Sethi, Senior
Advocate instructed by
Mr.Gaurav Mitra and
Mr.Gaurav Mahajan,
Advocates

Versus

SHREE ADYA KATYAYANI SHAKTIPEETH
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.... Respondents

Represented by: Mr.Neeraj Kishan Kaul, Senior
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CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. We are concerned in the above captioned batch of appeals with the provision of Order XII Rule 6 of the Code of Civil Procedure for the reason vide impugned judgment and order dated December 24, 2014 four identically worded suits against four defendants seeking a decree for recovery of possession and damages have been decreed in so far prayer made was for recovery of possession. The decree is on an admission.
2. The legislative provision, Order XII Rule 6 of the Code of Civil Procedure reads as under:-

“6.Judgment on Admission.-

- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, makes such order or gives such judgment as it may think fit, having regard to such admissions.*
- (2) Whenever a judgment is pronounced under sub-Rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”*

3. The word ‘otherwise’ after the expression ‘made either in the pleading or’ cannot be overlooked. To put it pithily, the Rule is expansive and would warrant its application if an admission is discernable, as long as it is unequivocal, unqualified and unambiguous, in any writing of a party; be it a letter, a communication, an internal document such a Statement of Account or a Balance Sheet etc. The purpose of the Rule is self-evident. To curtail the agony of parties and not subject them to the torture of a trial.

Even otherwise, an issue has to be settled, as is apparent from Order XIV Rule 1 of the Code of Civil Procedure, where a material proposition of fact or law is affirmed by one party and denied by the other. We cannot but overlook the use of the word '*material*' in sub-Rule (1) of Rule 1 of Order XIV of the Code which reads : '*Issues arise where a material proposition of law is affirmed by the one party and denied by the other.*'

4. It is trite that material propositions are those propositions of law or fact which a plaintiff must alleged in order to show a right to sue or a defendant must alleged in order to constitute his defence.

5. It is settled law that pleadings of parties have to be read meaningfully and not pedantically. Pleadings of parties have to be clear and not blurred, slurred or contrived. As was observed by the Supreme Court in the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi vs. Nirmal Devi (para 52) the pleadings are the foundation of a claim by a party and it is the bounden duty of the parties to lay their claim precisely and it is the duty of the Court to carefully scrutinize the pleadings as also the documents on which the pleadings are predicated. In the decision reported as AIR 1999 SC 1464 D.M.Deshpande vs. Janardhan Kashinath Kadam the Supreme Court highlighted the relevance of pleading material facts to constitute a claim or a defence thereto with reference to the decision of the Bombay High Court reported as AIR 1982 Bom.491 Nilesh Construction Co.vs. Gangu Bai, where, with reference to a plea of tenancy the Bombay High Court highlighted that the pleadings must disclose the details with reference to the day when the tenancy was created and the exact nature thereof; holding that it would be an insufficient pleading to constitute a defence for the defendant to simply plead that he was a tenant under the plaintiff. In the

decision reported as AIR 2006 SC 1828 Mayar (H.K.) Ltd. & Ors. vs. Owners & Parties Vessel MV Fortune Express the Supreme Court highlighted requirement to read pleadings meaningfully keeping in view the relied upon documents and see whether the pleading is meaningful; not illusory or vexatious. Illusory or vexatious pleadings would be no pleadings to challenge a material proposition of fact or law affirmed by one party.

6. Pertaining to a defence premised on the plea of a license, in 1903, the US Supreme Court, in the decision reported as 191 U.S. 84 United States vs. Denver & Rio Grande Railroad Company, observed :

“Upon principle as well as upon authority, a party who has been shown to be prima facie guilty of a trespass, and relies upon a license, must exhibit his license, and prove that his acts were justified by it. The practical injustice of a different rule is manifest.

It is a general rule of evidence, noticed by the elementary writers upon that subject (1 Greenl. Ev. §79) that ‘where the subject-matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.’ When a negative is averred in pleading, or plaintiff’s case depends upon the establishment of a negative, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative; but when the opposite party must, from the nature of the case, himself be in possession of full and plenary proof to disprove the negative averment, and the other party is not in possession of such proof, then it is manifestly just and reasonable that the party which is in possession of the proof should be required to adduce it; or, upon his failure to do so, we must pre-sume it does not exist, which of itself establishes a negative.

Familiar instances of this are where persons are prosecuted for

doing a business, such, for instance, as selling liquor without a license. It might be extremely difficult for the prosecution in this class of cases to show that the defendant had not the license required, whereas the latter may prove it without the slightest difficulty. In such cases the law casts upon the defendant not only the burden of producing his license, but of showing that it was broad enough to authorize the acts complained of.

As the license (the statute in this case) authorized the timber to be cut only for a specific purpose, and the means of proof as to the purpose for which the timber was cut were peculiarly within the knowledge and control of the defendant, we think the burden of producing evidence to that effect devolved upon it.”

7. In the decision reported as AIR 1917 PC 6 Murugesam Pillai vs. Gnana Sambandha Pandara Sannadhi, it was held as under:-

“A practice has grown up in Indian Procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough – they have no responsibility for the conduct of the suit, but with regard to the parties to the suit it is, in their Lordships’ opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition.”

8. In the aforesaid backdrop of the law on the subject of settlement of issues only if material propositions of fact or law affirmed by one party is denied by the other and what would constitute a proper pleading concerning a material proposition of fact, immigrating from the cornucopia of the case law and emigrating into the factual territory, we note that the first

respondent – Shree Adya Katyayani Shaktipeeth (Mandir) Trust and the other respondents being 2 to 10, who are the Trustees of the respondent No.1 filed four suits for recovery of different portions of a building called '*Matangi Bhavan Complex*'. It was pleaded that the first respondent Trust was constituted in terms of a declaration of Trust dated March 16, 1990 by Shree Durga Charananuragi Baba Sant Nagpal Ji which was duly registered with the Sub-Registrar, New Delhi vide Registration No.1501 at pages 77-86 in Volume No.IV – 1681. It was pleaded that respondents 2 to 10 were the current Trustees. It was pleaded that Sant Baba Nagpal Ji, the author of the Trust had dedicated his life to the cause of spiritual, moral and material welfare of humanity and had been receiving voluntary donations from his followers which he utilized for public charitable and religious purpose. He had constructed a temple in village Chattarpur dedicated to Maa Katyayani. It was pleaded that during the period 1975 to 1989 Sant Baba Nagpal Ji had built a complex on lands in village Chattarpur consisting of Temples, Dharmshala, Satsang Bhavan, Vanaprastha Ashram, Lunger Bhavan, Nature Cure Centre and Parking Place facilities etc. It was pleaded that in March 1987 Sant Baba Nagpal Ji, under four registered sale deeds purchased 8 bigha and 15 biswa land in village Chattarpur and the said land formed part of '*Maatangi Bhavan Complex*'. It was pleaded that construction in the Complex was completed during the year 1994 and 1995 and housed the staff quarters. It was pleaded that the defendant of the four suits were associated with Sant Baba Nagpal

Ji and in connection with the performance of the activities of the Trust since they were rendering help to the Trust, were permitted to occupy different flats/portions of the Maatangi Bhavan Complex as licences free of any licence fee. It was pleaded that the defendant Sh.P.P.Shrivastav was the Honorary Advisor of the Trust and had since ceased to be involved in any activity of the Trust. Pleading that the licence was gratuitous and so was the help rendered to the Trust by Sh.P.P.Shrivastav, recovery of possession of the portion in possession of Sh.P.P.Shrivastav was prayed for upon the averment that the license/permission was revoked by a notice dated February 22, 2007. In the suit filed against Shashi Bhushan Sharma, it was pleaded that likewise even he was associated with Sant Baba Nagpal Ji. It was additionally pleaded qua him that he had been functioning from some time as Secretary of the Trust and that in the year 2000 he ceased to be the Secretary of the Trust. In the suit filed against Sh.V.S.Gaur it was pleaded that he was associated in the activities of the Trust by Sant Baba Nagpal Ji and had since ceased to be engaged in the activities of the Trust. In the suit filed against Dr.R.C.Jain it was pleaded that he was associated in the activities of the Trust by Sant Baba Nagpal Ji and had since ceased to be engaged in the activities of the Trust. It was pleaded that all defendants, without any lawful basis, claimed a right to remain in possession of the portions of Maatangi Bhavan Complex in their possession till they were alive because Sant Baba Nagpal Ji had by a oral declaration permitted them to live as owners and occupy

the portions in their possession till they were alive. Asserting that being a Trust property no such rights could be created, recovery of possession of the portion in occupation of the four defendants was prayed for.

9. The defence taken by the four defendants was that the Maatangi Bhavan Complex was the property of Sant Baba Nagpal Ji who had blessed the defendants to serve the cause of the nation and that they were permitted to reside in the portions of Maatangi Bhavan Complex in their possession by Sant Baba Nagpal Ji till they were alive, not for any service they rendered to the temple. They claimed that Sant Baba Nagpal Ji, as owner of the property, had an absolute power to deal with it as he liked and that it was his natural love and affection for them which led him to permit the defendants exclusive enjoyment of the portion occupied by them in Maatangi Bhavan Complex.

10. Documents were filed and parties proceeded for admission/denial of the documents filed.

11. The deed of declaration dated March 16, 1990 pleaded in the plaint was admitted by all four defendants and we find the same being exhibited as Ex.P-1. The second recital is relevant to be noted and it reads :

“And Whereas Baba Ji has on inspiration, early in the 1970s, built up a organization for the advancement of philanthropic causes at village Chattarpur, then an insignificant village in the Mehrauli Tehsil in the Union Territory of Delhi’

12. The fifth recital is also relevant and it reads :

“And Whereas with the blessing of MAA KATYAYANI, Baba Ji was able to build up over the period 1975 to 1989 a large complex at village Chattarpur consisting of Temples, Dharmshalas, Satsang Bhavan , Vanaprashta Ashram, Lunger Bhavan , Nature Cure Centre and Parking Place facilities etc.’

13. The ninth recital records the declaration of Baba Ji to formally declare the vesting of the properties to a Trust by the name of Shree Adya Katyayani Shaktipeeth (Mandir) Trust. Clause (2) of the Declaration of Trust records that the properties of the Trust, as of date, listed and valued shall vest in the Trust. But we find no list of properties appended or annexed to the Declaration of Trust.

14. The Declaration of Trust, vide Clause 5 thereof, refers to its Memorandum of Association and we find that as per Article 3(v) of the Memorandum of Association, maintenance and upkeep of the existing temple and other properties of the Trust and making additions thereto for the furtherance of the objects of the Trust stands adumbrated.

15. Four sale-deeds, as pleaded in the plaint, pertaining to 8 bigha and 15 biswa land purchased by Sant Baba Nagpal Ji on March 30, 1987 in village Chattarpur on which Maatangi Bhavan Complex was later on built up have been admitted by the defendants during admission/denial and hence the same have been exhibited as Ex.P-2 to Ex.P-5.

16. The record of rights i.e. jamabandi has been admitted by the defendants and hence exhibited as Ex.P-6 which records the ownership of the 8 bigha and 15 biswa land in the following words: *‘His holiness Baba Sant Nagpal Ji Peethadhish Aam Katyani Shaktipeeth Chattarpur Mandir, Mehrauli.’* The Khasra Girdawari from the year 2003 to 2008 showing

possession with the owner has been admitted by the defendants and hence has been exhibited as Ex.P-7. A letter dated January 30, 2001 jointly addressed by the defendants of the four suits i.e. P.P.Shrivastava, S.B.Sharma, V.S.Gaur and Dr.R.C.Jain to the Trust has been admitted by all the defendants and has been exhibited as Ex.P-11. Being relevant, we need to note the same. It reads as under:-

“Sub: Arrears of Electricity Bill (K No.140159) for ₹2,19,230/- before 24.01.2001 and ₹2,22,340/- thereafter, from unspecified date to 31.12.2000.

Ref: Your letter No. nil dated 27.01.2001 jointly addressed to the present residents of Maatangi Bhavan.

We wish to emphatically say in the above context that each of us is prepared to pay for the electricity actually consumed by us. However, the three inescapable prime pre-requisites of initiating such an arrangement would be:

- (a) to install separate meters for each resident;*
- (b) to ensure that the electricity consumed by those who hire out Shiv-Gauri Kalyan Mandapam Halls, the three flats on the second floor, and/or the grounds in front, is fully and reliably segregated in fact also and not on mere paper; and*
- (c) to make a rational assessment of individual liability in the context of the policy of Pujaniya Baba.*

No thought at all appears to have been given to these significant aspect till date.

2. What we have seen and experienced is that supply to our flats is invariably interfered with and frequent breaks-down occur whenever a function is organized by those who hire the Mandapam. Electric cables are seen to have been connected to

the guard-room at the main gate where the main DVB meter is located. Mobile diesel generator of the contractor generally serves the standby function and our supply invariably gets adversely affected. Unless this is effectively stopped and our lines are totally segregated one could never be sure that this load is not passed on to the existing single DVB meter for the entire complex. This should be done in the first instance.

3. *Another important point is that the period since when the arrears have been included is not indicated in the photocopy of the bill or in your letter. Here it would be relevant to point out that the first block of Maatangi Bhavan was constructed a long time back. Many have occupied this block for varying periods of time before the two present occupants were invited by Pujaniya Babaji to move in here. In fact, it served to accommodate short-term and long-term guests and invitees for a number of years in the past. Has someone taken pains to ascertain if this arrears bill covers that period also?*

4. *Besides, the policy adopted by Pujaniya Babaji ever since these premises were constructed, cannot be thrown over board arbitrarily and without serious thought and careful collective consideration. Incidentally, all the present occupants were living in Government houses (or in own house) when Pujaniya Babaji invited/persuaded/directed them to come over and live here to be near Him and be able to contribute their mite to the Shaktipeeth (as per His wishes and directions) in a still better manner while continuing to follow their own respective service/vocation. His wishes were commands for us and we moved in. He took pains even to see that all services (including electricity) were provided and maintenance/repairs works etc. done without ever hinting at any liability in our part for any payment on any account. It is well known that he used to take pride in the fact that in His Shaktipeeth nothing at all was charged or levied from anyone for any service; all services are free. It was in pursuit of this inviolable principle of His that Electricity bills of the entire complex were paid by the Shaktipeeth without any resident being made aware of the bills*

and payments. This is true not only for Maatangi Bhavan, but also for the all the residential complexes belonging to the Shaktipeeth.

5. After His untimely and unfortunate departure, it is well within the collective rights of the Trust to erode or change His policy, but that has to be done in a rational and acceptable manner (as suggested in Paras 1, 2 and 3 above) and not arbitrarily, irrationally and retrospectively on the spur of the moment without making the necessary preparations. The Trust may like to take a well considered collective policy decision on this issue at least now.

6. We have been asked to clear this bill withi the DVB ourselves. Would you really like the residents to deal with DVB on their own or obtain separate meters from DVB in their own names? Firstly, we have no locus standi to deal with DVB in respect of meters not in our names. Secondly, we feel that in its own larger interests, the Shaktipeeth Management alone should deal with DVB. If others start dealing with DVB/MCD directly in respect of Shaktipeeth property, that might turn into the proverbial thin end of the wedge.

7. Non-payment of electricity bills for long periods of time should in itself have been a cause of serious concern for the Trust Management. Any possible disconnection as a consequence of non-payment of arrears, would be a matter of shame for the Shaktipeeth, all devotees of Pujaniya babaji and the blame would lie squarely on the decision-makers. This bill was received well before the 24th January (the last date of payment without levy of penalty). The relevant issues ought to have been considered immediately and resolved (or at least flagged to be resolved subsequently), but the bill should have been paid off without inviting penalty. It is not merely a question of saving a few rupees, but that of keeping up the image and reputation of this Shaktipeeth which is inextricably linked with the exalted name of our beloved Pujaniya Babaji.

8. *We trust that you would seriously consider taking action in this matter without any further loss of time*

Sd/- Sd/- Sd/- Sd/-
(PP Shrivastav) (SB Sharma) (V S Gaur) (Dr.R.C.Jain)”

17. In addition to aforesaid admitted documents, Shashi Bhushan Sharma the defendant in CS(OS) No.1799/2008 has admitted a minutes of the meeting of the Trustees held on March 19, 1995. He is a signatory to the minutes in his capacity as Secretary of the Trust. The minutes records that apart from other structures, Maatangi Bhavan Complex has been completed and would be available for use by the Trust. The same has been exhibited as Ex.P-14 in the suit filed against Shashi Bhushan Sharma.

18. It is in the aforesaid backdrop of the admitted documents i.e. the deed of trust Ex.P-1, the four sale deed dated March 30, 1987, Ex.P-2 to Ex.P-5 and the letter Ex.P-11 as also the minutes of the meeting dated March 19, 1995 signed by Shashi Bhushan Sharma, the then Secretary of the Trust and exhibited as Ex.P-14 in the suit filed against him, that the learned Single Judge has found a case made out for decree on admission, notwithstanding that in the pleadings the defendants of the four suits denied ownership of the Trust qua the land purchased by Sant Baba Nagpal Ji on March 30, 1987 vide sale-deed Ex.P-2 to Ex.P-5.

19. Succinctly stated the reasoning of the learned Single Judge is that the Trust deed clearly vested all properties acquired by Sant Baba Nagpal Ji in the Trust set up by him and that buildings made on the land purchased by Sant Baba Nagpal Ji on March 30, 1987 after he had vested the same in the Trust would be properties of the Trust. The learned Single Judge has noted that no written licence deeds were executed; none were claimed to be

executed in writing. The plea of defence was one of an oral licence. The learned Single Judge has noted that as per Clause 2 of the Trust Deed all properties as on date standing in the name of Sant Baba Nagpal Ji were vested in the Trust. Referring to Clause 3(5) of the Memorandum of Association to the Deed of Trust the learned Single Judge has highlighted that making additions to the existing properties of the Trust was one of the various objects of the Trust. The learned Single Judge has held that the Trust Deed is comprehensive and robust enough to take within the fold of the Trust or such properties as may be acquired by the Trust.

20. The question thus would be, whether in view of documents admitted by the defendants the learned Single Judge has correctly opined that a case is made out to pass a decree for possession on an admission.

21. As we have noted above law recognizes an admission by a party to be made even in documents.

22. The admission which the learned Single Judge has found is, notwithstanding the plea taken in the written statement that the land on which Maatangi Bhavan Complex was constructed belonged to Sant Baba Nagpal Ji and not in the Trust, that the defendants admit the land the building comprising Maatangi Bhavan Complex is the property of the Trust.

23. Now, the Trust Deed Ex.P-1, which all four defendants admit, was executed on March 16, 1990 by Sant Baba Nagpal Ji with other co-signatories; as per the second recital whereof it is recorded that Sant Baba Nagpal Ji had built up an organization for the advancement of philanthropic causes in village Mehrauli Tehsil. The fifth recital records that with the blessing of Maa Katyayani, Sant Baba Nagpal Ji has been able to build up

over the period 1975 to 1989 a large complex at village Chattarpur consisting of Temples, Dharmshalas, Satsang Bhavan, Vanaprashta Ashram, Lunger Bhavan , Nature Cure Centre and Parking Place facilities etc.

24. The word ‘etc.’ cannot be overlooked in the recital for the reason the reference to the existing construction in the Complex by designation in the recital is obviously not intended to be exhaustive. The ninth recital records the declaration by Baba Ji to vests the properties in the Trust by the name of Adya Katyayani Shaktipeeth (Mandir) Trust. It may be true that Clause 2 of the Declaration of Trust records that the properties of the Trust are vested in the Trust are as per a list and that there is no list forming part of the Declaration of Trust, and to that extent the executants of the document has left a vital part of the document vague. But that does not mean that vagueness in a document is not capable of being made clear.

25. The clarity emerges from the fact that the Declaration of Trust clearly evinces the intention of Sant Baba Nagpal Ji to divest all personal holding in his name in Chattarpur and settle them in a Trust for the reason, as recorded in Ex.P-1, the property was accumulated from donations made by the followers of Sant Baba Nagpal Ji. The same is apparent from the third recital to the declaration of Trust where it is recorded : -

“And Whereas Baba Ji was able to inspire the general public with the spiritual value of his teachings and his mission of service to humanity, the members of the public voluntarily made generous donations for the construction of the temple of Maa Katyayani.”

26. The purchase of the land on which Maatangi Bhavan Complex was constructed is by four sale deed dated March 30, 1987 which precedes the

date of Declaration of the Trust which is March 16, 1990.

27. We agree with the view taken by the learned Single Judge that since defendants admitted the Declaration of Trust dated March 16, 1990 which was exhibited as Ex.P-1, they clearly admitted that the land on which Maatangi Bhavan Complex was constructed later on belonged to the Trust and that the properties of the Trust were not only those which were existing in the name of the settler on March 16, 1990 but even accretions made thereto. Thus, the bald denial in the written statement to the title of the Trust was to be overlooked in view of the clear admission made when Ex.P-1 was admitted.

28. We need not waste much time on discussing the effect of the defendants admitting various documents filed by the plaintiff, save and except to highlight Ex.P-11, the letter dated January 30, 2001 jointly addressed by the defendants of four suits i.e. the four appellants. The said letter has been admitted by the defendants. Its contents have been noted by us in paragraph 16 above. The letter is addressed by the four appellants to the Administrator of the Trust and the subject thereof is arrears of electricity bill. The letter makes a reference to a letter written by the Trust on January 27, 2001 to the present residents of Maatangi Bhavan. The four executants of the letter dated January 30, 2001 have, in paragraph 1 of the letter, unequivocally agreed to pay for the electricity consumed by them and for which they have prayed that separate meters be installed for each resident. They have prayed that separate electricity meters be installed for measuring the electricity consumed at Shiv-Gauri Kalyan Mandapan Halls and the other flats. They have admitted in paragraph 3 that the Maatangi Bhavan Complex had various buildings which had come up from time to time. In

paragraph 4 the admission is that the entire complex was owned by the Shaktipeeth, and the Shaktipeeth referred to obviously has to be the plaintiff No.1 Trust. Further, as regards Shashi Bhushan Sharma he having admitted Ex.P-14, the contents whereof would reveal that Maatangi Bhavan Complex was the property of the Trust, would be his further admission to the ownership of the complex.

29. Having held that there are ample admissions made by the appellants that the Trust owned Maatangi Bhavan Complex, we deal with the plea of an oral declaration by Sant Baba Nagpal Ji as the source of right of the appellants to occupy portions of Maatangi Bhavan Complex till they were alive.

30. The Maatangi Bhavan Complex was admittedly completed by the year 1994-95. The Declaration of Trust of Sant Baba Nagpal Ji is dated March 16, 1990. Thus, Sant Baba Nagpal Ji could have made any oral declaration as claimed by the respondent. We simply highlight that a plea in respect whereof no legally admissible evidence can be led would have to be ignored and the effect thereof would be that while considering whether parties were at variance on a material proposition of fact or law asserted by one party, it would be a case of no variance.

31. The plea in the written statement is that in the year 1994-95, overwhelmed by the selfless dedication and devotion of the defendants Sant Baba Nagpal Ji out of natural love and affection orally gave ownership (and we understand it to mean possession) for life to the defendants of such portion of Maatangi Bhavan Complex which is in their possession. When i.e. on what date was this done by Sant Baba Nagpal Ji? Nothing has been stated. The decision of the Supreme Court in D.M.Deshpandey's case

(supra) which affirmed the view taken by the Bombay High Court in Nilesh Consturction Co.'s case (supra) would be clearly attracted : as in Nilesh Construction Co's case a plea of tenancy without disclosing the day when the tenancy was created and the exact nature thereof was held to be an insufficient pleading to constitute a defence to protect the possession as a tenant, similar would be the position in the instant case. Further, as was observed by the U.S.Supreme Court in Denver & Rio Grande's case (supra) a plea of licence must exhibit the licence, and the defendants not being able to do so would be an additional factor to support the impugned decision.

32. Before bringing the curtains down we would note that in CM No 5241/2014 in RFA(OS) 62/2014, CM No.5243/2014 in RFA(OS) 63/2014, CM No.5246/2014 in RFA(OS) 64/2014 and CM No.5248/2014 in RFA(OS) 65/2014 filed under Order 41 Rule 27 of the Code of Civil Procedure the appellants had prayed to lead additional evidence; being sale-deed stated to have been executed by Sant Baba Nagpal Ji on March 15, 1996 in favour of one Pyara Singh pertaining to 1 bigha and 9 biswa land in village Kilokari Tehsil Mehrauli to urge that if proved, the sale-deed would evidence that Sant Baba Nagpal Ji did not vests all his properties in the Trust.

33. Learned counsel for the respondents submitted that proceeds from the sale of land referred to above was credited to the account of the Trust and the Trust had passed a resolution authorizing Sant Baba Nagpal Ji to sell the said land notwithstanding there being no recital in the sale deed to said effect.

34. We are of the opinion that no useful purpose would be served for parties to be allowed to lead evidence with respect to the sale deed in

question for the reason we find that in the Declaration of Trust there is enough evidence that properties at village Chattarpur, Tehsil Mehrauli hitherto owned by Sant Baba Nagpal Ji were settled in the Trust, and that the Maatanga Bhavan Complex is on lands in village Chattarpur. Further, in the teeth of the admission of the respondents contained in Ex.P-11 and the additional admission of Shashi Bhushan Sharma in Ex.P-14, decree on admission has to be passed.

35. The appeals are dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 28, 2014
skb