

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

+ RSA 160/2013

% Date of decision: 10th November, 2014

INDER MOHAN SINGH & ORS. Appellants
Through Mr. Tarun Bedi, Adv.

versus

SUBE SINGH Respondent
Through Mr. Deepak Sharma,
Mr. Manish, Advs.
Mr. Kirti Uppal, Sr. Adv. as
amicus curiae

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellants have challenged the judgment dated 15th April, 2013 whereby their appeal against the decree for possession passed by the learned Civil Judge has been dismissed by the First Appellate Court. For the sake of convenience, the appellants have been referred to as “the defendants” and the respondent as “the plaintiff” as per their ranks before the Trial Court.

Factual Matrix

2. The plaintiff instituted a suit for recovery of possession and rent/mesne profits in respect of property bearing No.3347, Ranjit Nagar, New Delhi against the defendants. The plaintiff prayed for decree of possession of the plot of land underneath property

No.3347, Ranjit Nagar, New Delhi; mandatory injunction for directing the defendants to remove the superstructure over the plot of land; decree for Rs.196/- towards arrears of rent/damages for the period of 1st January, 2008 to 30th April, 2010; and future mesne profits/damages for use and occupation after an enquiry under Order XX Rule 12 CPC. The case set up by the plaintiff in the plaint is as under:-

2.1 The plaintiff is the owner of plot measuring 200 sq. yards underneath house bearing Municipal No.3347, Ranjit Nagar, South Patel Nagar, New Delhi-110008 (hereinafter referred to as “suit property”) and the defendants are the erstwhile joint tenants under the plaintiff at a monthly rent of Rs.7/- per month exclusive of taxes and charges.

2.2 Vide lease deed dated 5th October, 1950 registered on 30th November, 1950, late Ram Swaroop leased out 100 sq. yards land to late Chanan Singh, grandfather of the defendants for a period of 20 years w.e.f. 6th September, 1950 to 5th September, 1970 at a monthly rent of Rs.6/- per month whereupon late Chanan Singh raised construction over the said plot.

2.3 In the fourth week of March 1951, late Ram Swaroop leased out remaining 100 sq. yards of land to late Chanan Singh by an oral lease agreement and the rent of the entire property i.e. 100 sq. yards under the lease deed as well as the subsequent 100 sq. yards was raised to Rs.7/- per month. Late Chanan Singh raised construction on the remaining plot as well.

2.4 Ram Swaroop, father of the plaintiff died in 1957 whereupon

Chanan Singh, grandfather of the defendants started paying rent to the plaintiff as his landlord at the rate of Rs.7/- per month and obtained rent receipts from the plaintiff.

2.5 Chanan Singh, grandfather of the defendants, expired several years back whereupon father of the defendants, being the son and legal representative of late Chanan Singh, inherited the tenancy rights and started paying rent to the plaintiff. The last paid rent was Rs.84/- for the period 1st January 2007 to 31st December, 2007 calculated at the rate of Rs.7/- per month for which the rent receipt was issued.

2.6 Harbans Singh, father of the defendants died in the year 2009 whereupon the defendants inherited the lease hold rights by operation of law.

2.7 The defendants are in arrears of rent @ Rs.7/- per month w.e.f. 1st January, 2008.

2.8 The plaintiff terminated the defendants lease vide notice dated 9th March, 2010.

2.9 The plaintiff filed the following documents before the learned Trial Court :-

2.9.1 Original lease deed along with English translation of the same;

2.9.2 Copy of the notice of termination dated 9th March, 2010 along with postal receipts and acknowledgement cards;

2.9.3 Site plan; and

2.9.4 Photographs of the suit property.

3. The defendants contested the suit by filing the written

statement dated 28th September, 2010 in which they disputed the *locus standi* of the plaintiff as well as his father to be the owner/landlord of the suit property. The defendants pleaded that the plaintiff's father Late Ram Swaroop represented himself to be the owner of the suit property and promised to show the title documents to the defendant's grandfather but failed to do so. The defendants also raised the plea that the suit was barred by limitation and not valued properly. The defendants also raised the objection of having become owners by adverse possession. On merits, the defendants vaguely denied all the averments made in the plaint without giving any specific reply whatsoever.

4. On 26th May, 2011, the plaintiff filed an application for decree on admissions under Order XII Rule 6 of the Code of Civil Procedure on the ground that the defendants have admitted the registered lease deed between the plaintiff's father and defendant's grandfather and have not specifically denied any of the averments made in the plaint which shall be deemed to be admitted under Order VIII Rule 5 of the Code of Civil Procedure.

5. Vide order dated 22nd September, 2012, the learned Civil Judge allowed the plaintiff's application under Order 12 Rule 6 of the Code of Civil Procedure and passed the decree for possession of the suit property in favour of the plaintiff and against the defendants primarily on the ground that there was a vague denial of the plaintiff's averments in the plaint which amounted to admission. The learned Civil Judge also passed the decree for recovery of arrears of rent of Rs.196/- in favour of the plaintiff.

However, the suit was kept pending with respect to the plaintiff's claim for future mesne profits/damages for use and occupation of the suit property.

6. The defendants challenged the impugned order of the Civil Judge in appeal before the Additional District Judge on various grounds *inter alia* that the defendants made no admission before the learned Trial Court; the registered lease deed was only in respect of 100 sq. yards; the defendants specifically denied the plaintiff's title as well as landlordship; the suit was barred by Section 50 of Delhi Rent Control Act; the plaintiff has not shown how they inherited the title from Deep Chand and Ram Swaroop; and the suit was bad for non-joinder of all the legal heirs of late Ram Swaroop and late Chanan Singh.

7. Vide judgment dated 15th April, 2013, the learned Additional District Judge dismissed the appeal *inter alia* on the following grounds:-

7.1 The defendant's challenge to the plaintiff's title is barred by Section 116 of the Evidence Act.

7.2 The plea of non-joinder of the legal heirs of late Deep Chand, Ram Swaroop and Chanan Singh was not raised in the written statement and therefore, the defendant's cannot raise this plea in appeal.

7.3 The plea of the suit being barred by Section 50 of Delhi Rent Control Act was also not raised in the written statement before the learned Trial Court and therefore, the defendants cannot raise a new defence.

7.4 The defendants have not denied the execution of the lease deed in respect of the open piece of land and therefore, the bar of Section 50 of Delhi Rent Control Act is not made out.

7.5 The Defendants have not replied to the legal notice dated 9th March, 2010 and have not specifically denied the averments made in the plaint and therefore, the same are deemed to be admitted.

8. **Submissions of the plaintiff**

8.1 The defendants have not made any admission before the learned Trial Court.

8.2 The plaintiff is neither the owner nor the landlord of the defendants in respect of the suit property.

8.3 The plaintiff has no locus standi to file the suit against the defendants.

8.4 The plaintiff has neither pleaded the title nor filed the title documents in respect of the suit property before the Trial Court.

8.5 The suit property is “*Shamlat Thok*” as per the revenue record.

8.6 The defendants never paid any rent to the plaintiff and there is no admission with respect to payment of any rent to the plaintiff.

8.7 The plaintiff has not filed even a single rent receipt before the Trial Court or the appellate Courts.

8.8 The suit property was constructed long before the execution of the lease deed.

8.9 The registered lease deed relates to only 100 sq. yards of land. There is no pleading with respect to terms of oral lease relating to remaining 100 sq. yards of suit property.

8.10 The suit is barred by Section 50 of the Delhi Rent Control Act, 1950.

8.11 The suit is barred by limitation as the registered lease dated 5th October, 1950 expired as back as on 5th September, 1970.

8.12 The suit has not been properly valued for the purposes of Court fees and jurisdiction.

8.13 The suit is bad for non-joinder as all the legal representatives of late Ram Swaroop as well as late Chanan Singh have not been impleaded.

8.14 The appellants had become owner by adverse possession.

8.15 The defendants have denied the receipt of notice of termination dated 09th March, 2010.

9. **Submissions of the defendants**

9.1 The admissions of the defendants in the reply to the application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure and Order XII Rule 6 of the Code of Civil Procedure and in the suit No.209/1995 titled ***Vijay Kumar vs. Harbans Singh*** are sufficient to pass a decree.

9.2 The defendants are estopped from challenging the plaintiff's title under Section 116 of the Indian Evidence Act.

9.3 The defendants' father admitted the plaintiff as their landlord in Suit No.209/1995.

9.4 The plaintiff has locus standi to maintain the suit of the defendants.

9.5 The notice of termination dated 09th March, 2010 was sent to the defendants by registered post. The copy of the notice along

with the original AD receipts have been placed on record of the trial Court which raise a presumption of service under Section 27 of the General Clauses Act, 1897 read with Section 114(f) of the Indian Evidence Act, 1872.

9.6 The plaintiff's suit is within limitation.

9.7 The suit has been properly valued for the purposes of Court fees and jurisdiction and the defendants' objection is vague and misconceived.

9.8 The plea of adverse possession is not maintainable as the tenant cannot claim adverse possession against the landlord.

9.9 All the legal representatives of late Ram Swaroop are not necessary parties in view of clear admission of the defendants' father in Suit No.209/1995 that the plaintiff was his landlord.

9.10 The oral lease in respect of 100 sq. yards of land was on the same terms and conditions that of registered lease deed and therefore, the suit is not barred by Section 50 of the Delhi Rent Control Act.

10. Before considering the rival contentions of the parties, this Court would like to discuss the scope of power under Order XII Rule 6 of the CPC, 1908.

Scope of Order XII Rule 6 of the Code of Civil Procedure

11. Order XII Rule 6(1) of the Code of Civil Procedure is reproduced hereunder:

***"ORDER XII
ADMISSIONS***

Rule 6. Judgment on admissions- (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, make such order or give such judgment as it may think fit, having regard to such admissions."*

12. Order XII Rule 6 of the Code of Civil Procedure confers wide powers on the Court to pass a decree on clear, unambiguous, unconditional and unequivocal admissions. A judgment on admission under Order XII Rule 6 is not a matter of right but a matter of discretion of the Court. No doubt such discretion has to be exercised judiciously. However, if a case involves questions which cannot be conveniently disposed of, the Court can refuse to exercise discretion. Where the defendants have objections which go to the root of the matter, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff.

13. The object of Order XII Rule 6 is to empower the Court to pass a decree when there is clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the plaintiff's claim. But the Rule is not intended to apply where serious questions of law have to be determined. The relevant judgments with respect to the scope of power under Order XII Rule 6 of the Code of Civil Procedure are as under:

13.1 In ***Balraj Taneja. v. Sunil Madan & Anr.***, (1999) 8 SCC 396, the Supreme Court discussed the scope of Order XII Rule 6 and Order VIII Rule 5 of the Code of Civil Procedure and held that

the power under Order XII Rule 6 is discretionary and Court may, require the plaintiff to prove the facts in spite of clear admissions.

Relevant portion of the said judgment is reproduced hereunder:

“23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.

24. In Razia Begum v. Sahebzadi Anwar Begum [AIR 1958 SC 886 : 1959 SCR 1111] it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.

25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

“58. Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be

proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit.

28. Having regard to the provisions of Order 12 Rule 6, Order 5 Rule 8, specially the proviso thereto, as also Section 58 of the Evidence Act, this Court in Razia Begum case [AIR 1958 SC 886 : 1959 SCR 1111] observed as under:

“In this connection, our attention was called to the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the Court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code with particular reference to the proviso which is in these terms:

‘Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.’

The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the Court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted.”

The Court further observed:

“Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the

terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers.”

*29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. **Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression “the court may, in its discretion, require any such fact to be proved” used in sub-rule (2) of Rule 5 of Order 8, or the expression “may make such order in relation to the suit as it thinks fit” used in Rule 10 of Order 8.”***

(Emphasis supplied)

13.2 In *Parivar Seva Sansthan v. Dr.(Mrs.) Veena Kalra & Ors.*, (2000) 86 DLT 817, the Division Bench of this Court discussed the

scope of power under Order XII Rule 6 of the Code of Civil Procedure and held that any plea raised against the contents of the documents barred by Sections 91 and 92 of the Evidence Act or against statutory provisions can be ignored while applying Order XII Rule 6 of the Code of Civil Procedure. Relevant portion of the said judgment is reproduced hereunder:

*“Bare perusal of the above rule shows, that it confers very wide powers on the Court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The Court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis. **Any plea raised against the contents of the documents only for delaying trial being barred by the Sections 91 and 92 of Evidence Act or other statutory provisions, can be ignored.** These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in *Dudh Nath Pandey (dead by L.R.'s) v. Suresh Chandra Bhattasali (dead by L.R's)*, AIR 1986 SC 1509; *Atma Ram Properties Pvt. Ltd. v. Air India*, 65 (1997) DLT 533; *Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd.*, 1997 II AD (Delhi) 518; *Abdul Hamid v. Charanjit Lal & Ors.*, 72 1998 DLT 476 and *Lakshmikant Shreekant v. M. N Dastur & Co.*, 71 1998 DLT 564.”*

(Emphasis supplied)

13.3 In ***Raj Kumar Chawla v. Lucas Indian Services***, (2006) 129 DLT 755, the Division Bench of this Court held that the decree on admission should be passed only in case of specific admissions and should be avoided in the cases of vague denial of the averments made in the plaint. Relevant portion of the said judgment is reproduced hereunder:

*“6. The powers under Order XII rule 6 of the Code has to be exercised judicially on the facts and circumstances of each case. The admission on the basis of which the Court wishes to pass a decree has to be unambiguous, clear and unconditional. There is no doubt that in a suit there can be more than one decree passed at different stages and each decree being separate and independent is enforceable in accordance with law, was the principle stated by AIR1971 SC 1081 Chanchal v. Jalaluddin. Admission understood in its common parlance still must be a specific admission. **There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the later category.**”*

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“8. It is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather is a matter of discretion of a Court. Where the defendant has raised objection which will go to the very root of the case, it would not be appropriate to exercise this discretion. The use of the words ‘May’ and ‘make such orders’ or ‘give such judgment’ spells out that power under these rules are discretionary and use of discretion would have to be controlled in

accordance with the known judicial canons. The cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions. In the case of Pari war Sewa Sansthan v. Dr. (Mrs) Veena Kalra & Ors. AIR 2000 Delhi 349 the Court examined at length the provisions and the need for an admission to be unequivocal and positive. The admission would obviously have the consequences of arriving at that conclusion without determination of any question and evidence. The Court while relying upon the case of Balraj Taneja & Another v. Sunil Madan & Another AIR 1999 SC 3381 and Dudh Nath Pandey v. Suresh Chandra Bhattasali AIR 1986 SC 1509 held as under:

“In Razia Begum v. Sahebzadi Anwar Begum it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the Court may still require the plaintiff to prove the facts pleaded by him in the plaint.

Thus, in spite of admission of a fact having been made by a party to the suit, the Court may still require the plaintiff to prove the fact which has been admitted by the defendant.”

(Emphasis supplied)

13.4 In ***Manisha Commercial Ltd v. Shri N.R. Dongre & Anr.***, (2000) 52 DRJ 578, this Court held that the decree on admissions should not be passed where the case involves intricate questions of law. Relevant portion of the said judgment is reproduced hereunder:

“...This Rule however, predictably invests discretion with the Court - that is - even if there is an unequivocal admission by a party but the passing of a judgment

would work injustice on it, judgment could be declined. In the case at hand, even though counsels for the Defendants have not denied that there is no controversy concerning the factual matrix, there is a serious dispute regarding the interpretation to be given to the legal regime (found in the Indian Trusts Act). A conjoint reading of this Rule with Order XV Rule 1 renders the position free from doubt. Could it be reasonably argued that the parties are not at issue with each other in the present case. I think not. **Even on the admitted facts it is highly debatable whether the judgment should be delivered as pleaded of in the plaint.** The only option for the Court is to frame issues, and since facts are not in contest, possibly dispense with the 'Trial' and proceed directly to the stage of 'Final Arguments'. **But it would be wholly inappropriate to permit any party to employ Order XII Rule 6 in those instances where vexed and complicated questions or issues of law have arisen.** A perusal of the provisions of Order XIV Rule 1 clarifies that issues are of two kinds-issues of fact and issues of law and the following Order XV contains guide-lines on how the issues are to be decided. Rule 3 thereof is yet another provisions that emphasises that no injustice should be caused to any party by "proceeding with the suit forth with". **Justice hurried may be justice buried."**

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"Obviously these are intricate questions of law which cannot and ought not to be decided prior even to the framing of issues. **Where facts are not in dispute, and the legal contentions can easily be decided, a judgment under Order XII can be appropriately delivered.** None of the sections relied upon by the Plaintiff are unequivocal in their language and lead to the undisputed conclusion of non-suiting the Defendant. Since the case is at the interlocutory stage I think it inexpedient and unfair to the Defendant to arrive at a final conclusion about the statutory provisions relied upon."

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“... After considering the rival contentions raised in that application I had arrived at the conclusion that it would not be appropriate, and in the interest of justice, that a judgment should be passed forthwith, even though there was no disputes in respect of the factual matrix of the case. Since, in my opinion, complicated and vexed questions of law had arisen and were in issue between the parties, the passing of a judgment in a summary manner, as envisaged in Order XII, was not in the interest of justice....”

(Emphasis supplied)

Discussion on the contentions raised by the appellants

14. Admissions of the defendants

14.1 *Admissions of the defendants in reply to plaintiff's application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.*

The plaintiff filed an application dated 27th November, 2010 under Order XXXIX Rules 1 and 2 for restraining the defendants from making any structural changes in the suit property to which the defendants filed the reply in which they submitted that the defendant's father took the land in question from Deep Chand and constructed the structure with his own funds. The defendants admitted the lease dated 5th October, 1950 but pleaded that the plaintiff's father promised to show the documents of ownership but failed to do so. The defendants further admitted that the lease deed expired in 1970. The defendants pleaded that the suit was barred by limitation as the plaintiffs neither demanded the rent nor renewed the alleged tenancy. The defendants also claimed to have become the owner of the suit property in their own rights. Paras 3

and 4 of the reply to the plaintiff's application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure are reproduced hereunder:-

*“3. That the contents of para no.3 of the application are absolutely wrong and denied. **It is submitted that the Plaintiff is not the owner of the property in question. However, it is submitted that one Shri Deep Chand gave one piece of land. Thereafter the father of the defendants constructed the structure with his own funds.** It is stated that Shri Ram Swaroop never owned or was ever in possession of the land in question. It is submitted that Sh. Deep Chand died intestate and the Plaintiff or any of his forefather had no claim or right over the said plot of land. It is further submitted that Shri Ram Swaroop brought some Villagers to press upon the grand father of the defendants to sign the lease deed alleging himself to be the legal heir of said Deep Chand. Moreover, the alleged oral partition by the Plaintiffs carries no value as no one out of them have produced any single document of ownership. Further no oral agreement is admissible in law. It is submitted that the grand father of the Plaintiffs promised to show the documents of ownership of the said property in question but they neither showed any documents of ownership nor any other documents showing himself to be the owner of the property. It is further denied that the father of the defendant defaulted in making the payment of arrears of rent as the Plaintiffs are neither the owner nor have any right or claim to recover the rent from the Defendants as they have no locus standi to file the present suit nor they have any locus standi to recover the amount. It is submitted that the plaintiffs have no locus standi to terminate the lease of the Defendants as **the lease deed expired in 1970.** The present suit as well as the application is barred by time as the alleged tenancy expired in 1970 thereafter the Plaintiffs neither*

demanded the rent nor they renewed the alleged tenancy.

4. That the contents of para no.4 of the application are wrong and denied. It is wrong to say that the Defendants are not entitled to stay in the property in question and further wrong to say that the Defendants are liable to handover the vacant peaceful possession to the Plaintiffs. It is submitted that the defendants have become owner of the property in question in their own rights. It is further submitted that the defendants are paying House Tax of the property to the MCD since the year 1970.”

(Emphasis supplied)

14.2 Admissions of the defendants in reply to application under Order XII Rule 6 of the Code of Civil Procedure.

In the reply to the application under Order XII Rule 6 of the Code of Civil Procedure, the defendants specifically admitted that the land underneath the suit property was leased out to the defendant's grandfather, Chanan Singh vide registered lease deed for a period of 20 years from 6th September, 1950 to 5th September, 1970 but the defendant's grandfather neither paid any rent nor obtained any rent receipt from the plaintiff as the said lease deed was signed on a misrepresentation of ownership and the plaintiff's grandfather did not show the ownership documents promised by him. The relevant portion of the reply is reproduced hereunder:-

“1. That the contents of para no.1 of the application are admitted to the extent that the land underneath the property No.3347, Ranjit Nagar, Delhi was leased out to Sh. Chanan Singh, the grand father of the defendants through registered leased deed dated 30.11.1950 by Sh. Ram Saroop for a period of 20 years commencing from 6.9.1950. ...

defendant. Photocopy of the lease-deed is annexed with the written statement which will clearly conclude the right and title of the defendant no.1 over the said street (Gali).

2. ... *It is submitted that the replying defendant has every right and title to use the alleged gallery (Street, gali) as is clear from the lease-deed and the defendant no.1 is the actual user as well as the exclusive owner of the 5' wide Street, alleged by the plaintiff to be a 'gallery' of 2½ feet width."*

(Emphasis supplied)

14.3.3 In reply dated 4th July, 1995 to an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, the defendant's father referred to and relied upon the lease deed and placed on record a copy of the lease deed along with two site plans.

14.3.4 On 14th July, 1995, the defendant's father filed a copy of the letter dated 12th/13th June, 1995 addressed to Deputy Commissioner of Police (West District), Rajouri Garden, New Delhi in which he admitted the plaintiff, Sube Singh to be his landlord. The relevant portion of the said letter is reproduced hereunder:-

"I am an old man, running in the 68th year of age. I live in house No.3347 (shown in green colour) in Ranjit Nagar, under Patel Nagar Police Station. My land lord, at present, is Sh. Sube Singh. While leasing this piece of land to my father, the predecessor of Sh. Sube Singh, Sh. Ram Sarup left a street of 5' width behind my house. On the other side of the street is house No.3348 which belongs to S. Darshan Singh (deceased) and its present land lord is other than Sh. Sube Singh. Sh. Vijay Kumar and Sh. Kishan Lal live in this house as tenants. They do not have any right to make addition or

alteration in the house. In proof of my version, a photocopy of the lease deed of my house is submitted for your kind perusal.”

(Emphasis supplied)

14.3.5 On 17th January, 1997, the defendant's father again filed the photocopy of the lease deed along with the site plan in the aforesaid suit.

14.3.6 The original lease deed and site plan filed in the suit in this case and the copy of the lease deed and site plan filed by defendant's father in Suit No.209/1995 are same. As such, there is no dispute with respect to the identity of the suit property in possession of the defendants.

Estoppel under Section 116 of the Indian Evidence Act, 1872

15. Section 116 of the Indian Evidence Act estops a lessee from denying the title of the landlord. Section 116 of the Indian Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord, meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. Howsoever, defective the title of the landlord may be, a tenant is not permitted to dispute the same unless he has surrendered the possession of his landlord. The Defendants' challenge to the plaintiff's title appears to be barred by Section 116 of the Indian Evidence Act which estops the lessee from denying the title of the landlord.

16. In *Payal Vision Ltd. v. Radhika Choudhary*, (2012) 11 SCC

405, the Supreme Court held that the tenant's objection to the landlord's title to be barred under Section 116 of the Indian Evidence Act. Relevant portion of the judgment is reproduced hereunder:

“15. In reply, the defendant has not denied the service of a notice upon the defendant. Instead Para 6 is entirely dedicated to the defendant's claim that the whole structure standing on the site today has been constructed by her out of her own money. The defendant has not chosen to deny even impliedly leave alone specifically that notice dated 17-3-2003 was not served upon her. In Para 6 of the preliminary objections raised in the written statement she has simply disputed the validity of the notice on the ground that that the same is not in accordance with Section 106 of the Transfer of Property Act. Para 6, reads as under:

“That the alleged notice dated 17-3-2003 is not as per the provisions of Section 106 of the Transfer of Property Act. It is settled law that notice for termination of lease has to be in mandatory terms so specified in Section 106 of the Transfer of Property Act.”

16. Far from constituting a denial of the receipt of the notice the above is an admission of the fact that the notice was received by her but the same was not in accordance with Section 106 of the Transfer of Property Act. In fairness to the counsel for the respondent tenant in this appeal, we must record that the order [Radhika Choudhary v. Payal Visions (P) Ltd., Regular First Appeal No. 81 of 2009, order dated 14-3-2011 (Del)] passed by the High Court was not supported on the plea of the notice being illegal for any reason. A copy of the notice in question is on the record and the same does not, in our opinion, suffer from any illegality so as to make it non est in the eye of the law.”

17. In *Sky Land International Pvt. Ltd. v. Kavita P. Lalwani*, (2012) 191 DLT 594, this Court discussed the scope of Section 116 of the Indian Evidence Act in detail. Relevant portion of the said judgment is reproduced hereunder:

“17. Estoppel of the tenant under Section 116 of the Indian Evidence Act, 1872

17.1 Under Section 116 of the Indian Evidence Act, the Lessee is estopped from denying the title of the transferee landlord. Section 116 of the Indian Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. Howsoever, defective the title of the landlord may be, a tenant is not permitted to dispute the same unless he has surrendered the possession of his landlord. It is based upon the salutary principle of law and justice that a tenant who could not have got the possession but for his contract of tenancy admitting the right of the landlord, cannot be allowed to dispute the title of his landlord after taking undue advantage of the possession that he got from the landlord. Of course, he can deny his title after he gives up the possession having thus restored the status quo ante.

17.2 Section 116 of the Indian Evidence Act is reproduced hereinunder:-

“Section 116. Estoppel of tenant; and of licensee 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 licence of the person in possession thereof shall be

permitted to deny that such person had a title to such possession at the time when such licence was given.”

17.3 In *Shri Ram Pasricha v. Jagannath*, AIR 1976 SC 2335, the Supreme Court held that in a suit for eviction, the tenant is estopped from questioning the title of landlord. The Supreme Court held as under:-

“15. ...The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.”

17.4 In *D. Satyanarayana v. P. Jagadish*, AIR 1987 SC 2192, the Supreme Court held as under:-

“3. ...Section 116 of the Evidence Act provides that no tenant of immovable property 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. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words ‘during the continuance of the tenancy’ have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy...”

“4. The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord’s title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord...”

(Emphasis supplied)

17.5 In Vashu Deo v. Balkishan, (2002) 1 SCR 171, the Supreme Court summed up the law as to estoppel of tenant as under:

“6. ...Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that 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. The rule of estoppel so enacted has three main features : (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case... the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord’s title having been extinguished by a paramount title-holder...”

17.6 In *MEC India Pvt. Ltd. v. Lt. Col. Inder Maira*, 80 (1999) DLT 679, this Court held as under:-

“41. ...the doctrine of tenant estoppel, which continues to operate even after the termination of the tenancy, debars a tenant who had been let into possession by a landlord, from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord.”

Locus standi of the plaintiff

18. The defendants have raised an objection as to the *locus standi* of the plaintiff as well as his father as the landlord of the suit property on the ground that the plaintiff has not shown how he inherited the suit property from late Ram Swaroop. However, there is a clear admission of the defendants father in Suit No.209/1995 titled *Vijay Kumar v. Harbans Singh* that the plaintiff was his landlord and, therefore, the plaintiff has locus to file the suit. The admission of the defendants' father is reproduced in para 14.3.4 above. That apart, the defendants have not disputed that the plaintiff is the son of late Ram Swaroop who executed the lease deed in favour of the defendants.

Denial of notice of termination by the defendants

19. The defendants have denied the receipt of notice of termination dated 9th March, 2010 sent by the plaintiff to the defendants by Regd. AD Post in respect of which the plaintiff has placed on record the copy of the notice along with the original postal receipts and AD cards signed by the defendants.

20. In *Sky Land International P. Ltd. v. Kavita P. Lalwani* (supra), this Court discussed the entire law on this issue and held that the denial of the notice of termination is not sufficient to deny the decree of possession to the plaintiff.

Limitation

21. The defendants raised a preliminary objection in their written statement that the suit was barred by limitation without giving any particulars as to how the suit was barred by limitation. Even before this Court, the defendants could not substantiate as to how the suit was barred by limitation.

Valuation

22. The defendants raised a preliminary objection in their written statement that the suit was not valued properly for the purposes of Court-fees and jurisdiction. However, the defendants could not point out any infirmity in the valuation of the suit for the purposes of Court-fees or jurisdiction at the time of hearing.

Plea of adverse possession

23. The defendants have raised a vague plea of having become owners by adverse possession without specifying as to how they became owners by adverse possession.

Non-joinder of parties

24. The defendants' plea that all the legal representatives of late Ram Swaroop have not been impleaded does not hold good in view of clear admission of the defendant's father in Suit No.209/1995 that Sube Singh was his landlord (see para 14.3.4 above).

Rent receipts not filed by the plaintiff

25. According to the plaintiff, the rent was paid upto 2008 against receipts. The plaintiff claims that the rent of the suit property was originally paid by Chanan Singh up to 31st December, 2006 and, after the death of Chanan Singh, by the defendant from 19th January, 2007 to 31st December, 2007 against receipts. The defendants have nowhere admitted that they paid any rent to the plaintiff. It was, therefore, incumbent upon the plaintiff to have placed the rent receipts on record. However, not even a single receipt has been filed by the plaintiff either before the learned Trial Court or before both the appellate Courts. The plaintiff could not explain why the receipts have not been placed on record.

Nature and terms of the oral lease in respect of 100 sq. yards of the suit property not placed on record

26. The registered lease deed is in respect of only 100 sq.yards and the remaining 100 sq.yards was given by an oral lease. However, there is no pleading with respect to the nature and terms of the oral lease of 100 sq.yrds. of the suit property and there is no corresponding admission of the defendants.

Findings

27. On consideration of totality of facts and circumstances of this case and applying the principles laid down in the aforesaid judgments, this Court is of the view that this case involves questions which cannot be conveniently disposed of without recording of evidence and therefore, inspite of the admissions of the defendants discussed above, the plaintiff should prove his case

during trial. The decree on admissions under Order XII Rule 6 of the Code of Civil Procedure is not warranted for the reasons given hereunder: -

27.1 The plaintiff has not filed even a single receipt either before the learned Trial Court or before both the appellate Courts. The plaintiff could not explain why the receipts have not been placed on record.

27.2 There is no pleading with respect to the nature and terms of the oral lease of 100 sq.yrds. of the suit property.

27.3 The plaintiff has not filed the site plan to show which 100 sq.yrds. of the suit property was given under the registered lease deed and which portion of the suit property was given under the oral lease.

27.4 According to the plaintiff, the lease expired in 1970. The suit has been filed after more than 40 years of the expiry of the lease for which there is no explanation whatsoever.

27.5 If the plaintiff can voluntarily wait for a period of 40 years to initiate the legal action, no prejudice would be caused by the time consumed in the completion of trial.

27.6 Evidence would be required to pass an appropriate order in respect of the built up structure under Section 108(h) of the Transfer of Property Act with respect of lease of the land.

Conclusion

28. For the reasons detailed above, the appeal is allowed, the impugned judgments are set aside and the suit is remanded back for trial to the learned Civil Judge.

29. Both the parties shall appear before the learned Civil Judge on 1st December, 2014 when the Court shall fix the case for framing of issues.

30. Considering the delay which has occasioned in the matter, the learned Trial Court shall expedite the trial and endeavour to complete the same within a period of six months from the date of framing of issues.

31. The records of the Trial Court as well as the First Appellate Court be returned back forthwith.

32. It is made clear that nothing stated herein shall affect the merits of the main case which shall be decided after allowing both the parties to lead the evidence.

33. This Court appreciates the assistance rendered by the learned amicus curiae.

J.R. MIDHA, J.

NOVEMBER 10, 2014

aj/dk