

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

**Reserved on : 09.02.2016
Pronounced on : 29.02.2016**

+ **RFA (OS) 97/2015, C.M. APPL.22887/2015**

SMT. SEEMA THAKUR AND ANR.Appellants
Through: Sh. Viraj. R. Datar with Sh. Chetan Lokur and
Sh. Nitish Chaudhary, Advocates.

Versus

UNION OF INDIA AND ORS.Respondents
Through: Sh. Sanjay Poddar, Sr. Advocate with Sh.
Vibhor Baggar, Ms. Pavni Poddar and Sh. Shobhit
Bhatia, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. An unsuccessful plaintiff appeals the judgment of a learned Single Judge by which her suit was dismissed, by invoking Order XII Rule 6 of the Code of Civil Procedure (CPC) in a decree on admission.
2. The case urged in the suit was that the plaintiff had purchased the property, 18/50, East Patel Nagar Market, New Delhi (hereafter “the suit property”) through a registered Sale Deed dated 31.05.2004, from its previous owner, Shri Pran Nath Vig. She alleged that the third defendant, Gopi Chand, finalized the transaction and facilitated it. She claimed declaration of her ownership of the suit property and also a decree for possession, by evicting the third, fourth and sixth defendants. The declarations claimed were that Agreement to Sell, General Power of Attorney, Special Power of Attorney, Will, Receipts/Affidavits and all the other documents in favour of the third Defendant on 31.05.2004 with respect

to the Suit property were a nullity and were to be cancelled. A similar declaration was sought in regard to the Conveyance Deed dated 20.12.2004 executed by the first two defendants at the instance and in favour of the third defendant in relation to the suit property, a decree that the conversion of suit property into free hold by the said two defendants, was also illegal and void and cancellation of the conversion documents, etc.

3. The defendants were served and entered appearance; they denied that the transactions in respect of which reliefs were sought were vitiated or illegal. It was asserted that the plaintiff had willingly entered into documents such as the Agreement to sell, received consideration and was a party to all the transactions underlying the documents, which were validly executed for consideration. The principal defence was that the plaintiff had sold the suit property to the third defendant, who in turn sold it to the fourth defendant. The sixth defendant ultimately derived title to the property.

4. When the suit was pending, the sixth defendant filed an application seeking the court to issue an order under Order XII Rule 6 CPC dismissing the suit, on the basis of admissions by the plaintiff, which were sufficient to draw the decree of dismissal. The applicant (sixth defendant) relied firstly upon observations made by a court of Metropolitan Magistrate regarding the plaintiff's admission of selling the suit property to the third defendant. The observations by the Magistrate were in the course of an order in a criminal complaint, filed by the said third defendant against the plaintiff. The applicant secondly relied on judicial admissions made by the plaintiff through her attorney, Sh. Vijay Kapoor (who had filed the suit in question leading to the present appeal and who was also an attorney of the plaintiff in earlier civil suit proceedings and which judicial admissions were made in the

plaintiff's pleadings) whereby she admitted that the suit property was in fact sold by her to the third defendant.

5. The learned Single Judge, in the impugned judgment, was of the opinion that the averments in the previous proceedings, particularly in the suits, amounted to clear admissions, which could not have been resiled by the plaintiff. He also held that the suit averments were such that the plaintiff was aware of the execution of the documents in view of which the action was time barred. Therefore, the suit was dismissed.

6. It is urged that the plaintiff acquired the suit property, as she was the widowed daughter in law of the partner of a firm carrying on business known as "New Grand Bakery" in the premises. The firm had disputes with its landlord, the erstwhile owner, Sh. P.N. Vig; he agreed to sell the property to her. Consequently, she paid for the conversion of the property, and also the entire sale consideration, by two demand drafts dated 03.12.2004. These were pleaded expressly in the suit. The role of the third defendant was only as a broker, meant to facilitate the transactions; it was never intended by the plaintiff to sell the property to him.

7. The appellant urges that the impugned judgment is in error of law. It is averred that the plaint contained allusions to the fact that after the impugned documents were allegedly executed, the third defendant, a property broker, duped the plaintiff without telling her the true purport and nature of the said documents. When the plaintiff realized this, she confronted the said defendant. Consequently he executed a document, which nullified the so called conveyances executed by her. In this regard, reliance is placed on the deed of Declaration dated 11.08.2004 said to have been executed by the third defendant which is, *inter alia*, to the following effect:

“I, Gopi Chand, son of Sh. Dalpee do hereby declare that I never purchase the property No. 18/50, East Patel Nagar Market, New Delhi and never made any payment to Smt. Seema Thakur, in fact Sh. P.N.Vij has sold this property No. 18/50, East Patel Nagar Market, New Delhi to Smt. Seema Thakur and my services has been taken for completion of documents for which I took Rs. 3000/- (Rupees Three Thousand) only for my service charges.

While preparing the documents, by mistake I also got signed some documents from Smt. Seema Thakur showing that Smt. Seema Thakur agreed to sell the said property to me. Whereas Smt. Seema Thakur did not sold me the said property. I am returning all original documents today i.e. 11.08.2004 to Smt. Seema Thakur which I got registered on 31.05.2004 in my favour. I also assure that in future I will not misuse any copies of these documents for claiming the ownership of the said shop. The contents of this Declaration has been explained to me in Hindi.

Dated: 11/08/2004

Sd/-”

Counsel for the appellant argued that on the issue of the averments relating to the existence and execution of the document dated 11.08.2004 by the third defendant conspicuously, there was complete silence with regard to this fact in the pleadings/Written Statements filed by the defendants. It is submitted that the plaintiff filed the original copy of the said Declaration. Counsel also sought to urge that the said document was forged during pendency of the suit.

8. Learned counsel submitted that W.P.(C) 1642/2008 was disposed off by an order dated 28.10.2009 while directing Defendant Nos. 1 and 2 to treat the Conveyance Deed as disputed and thereby giving liberty to the appellant to institute the suit pursuant to which the instant C.S. (OS) 100/2010 was instituted in time on 07.01.2010 as per the liberty given by order dated

28.10.2009. It was clearly recorded in the order dated 28.10.2009 that the Defendant No. 3 had forged the documents to obtain the Conveyance Deed dated 20.12.2004.

9. Sh. Viraj. R. Datar, learned counsel further highlighted that the previous suit, i.e. Suit No. 141/2004 in which a written statement was filed by the appellant, containing alleged admissions, was unilaterally withdrawn on 06.03.2006. It was submitted that these alleged admissions were sought to be used in a previous writ petition, by the third defendant, in his Counter Affidavit dated 07.08.2009 filed by him in W.P (C)1642/2008 but despite that the said alleged admissions were negated by the Court while giving liberty to the appellant to institute suit by order dated 28.10.2009. The effect of this order, submitted counsel, consequently, is that the said alleged admissions could not have been decided in a summary manner and hence they could not have been treated as admissions under Order XII Rule 6, CPC to result in a judgment.

10. It was submitted that Shri. K.P. Mavi, the counsel who represented the appellant, had colluded and manipulated the documents, including pleadings, which was apparent from the face of the record. The pleadings in the previous cases, therefore, could not have been construed as admissions because not only were they contentious, but were also based on disputed documents executed in favour of the third defendant by the first Appellant which did not even show the payment details of the sale consideration in absence of which, no amount of admission can be held to be sufficient to prove the alleged sale by the appellant to third defendant. As far as the pleadings of the said defendant are concerned, it is submitted that he claimed that he paid ₹6.25 lakhs in cash in his written statement whereas in the

document filed by the first two Respondents (which must have been supplied to them by him) the said payments have been allegedly shown to be paid by demand drafts for ₹6.25 lakhs. The fact remains that the appellants received no such payment.

11. Learned counsel argued that in these circumstances, when clearly the so-called admissions were not unequivocal, but subject to controversy, the learned Single Judge could not have invoked the discretion of drawing a decree in the summary manner that he did. The suit had to be tried on merits, after permitting the parties to lead evidence. For this submission, counsel relied on *Jeevan Diesel & Electricals Limited v. Jasbir Singh Chadha & Another*, (2010) 6 SCC 601 to urge that for the grant of a decree on admissions under Order XII Rule 6 CPC, the admission would have to be unequivocal or unambiguous and not one which is qualified. To the same effect, *Uttam Singh Duggal & Co. v. United Bank of India & Ors* 2000 (7) SCC 120 was relied upon. Reliance was also placed on the decision in *Charanjit Lal Mehra and others v. Kamal Saroj Mahajan (Smt.) and Another* (2005) 11 SCC 279.

12. It is next argued that the issue of limitation is a mixed question of fact and law. Learned counsel highlighted in this context that the appellant became aware of the fraud played by her counsel on 06.03.2006 when Suit No.141/2004 was listed but was withdrawn unilaterally following which representations were made by her to the Land and Development Office (L&DO), Central Government leading to the filing of W.P.(C) 1642/2008, which was disposed of on 28.10.2009. That order granted leave to the appellant to file a suit and also kept in abeyance the mutation and conversion deed to the suit property. Thus, the question of limitation could not have

been conclusively decided in a summary fashion by the learned Single Judge by invoking his power to decree the suit under Order XII Rule 6 CPC. Learned counsel relied upon the decision of the Supreme Court reported as *Khatari Hotels Pvt. Ltd. v. UOI* AIR 2011 SC 3590 in this context.

13. Counsel for the defendants, particularly the sixth defendant, submitted that the transactions impugned were genuine. The sixth defendant submits that he is the *bona fide* purchaser of the suit property, without notice of any defect and he paid valuable consideration for the property, the title to which cannot be undermined today, after this length of time. It is submitted that the plaintiff and her alleged Power of Attorney holder are dubious as is evident from the criminal proceedings and first information report lodged against the said power of attorney holder, i.e Sh. Vijay Kapoor. It is submitted that the plaintiff was not resident of the places mentioned by her in the Power of Attorney document relied upon in the suit.

14. It is submitted that all the explanation sought to be given in these proceedings, in respect of the admissions are clearly shady and after thoughts which cannot be given credence. The newspaper publication of December, 2004, the admissions in the pleadings and a trail of documents were clearly within the knowledge of the plaintiff, who executed them all, because they were genuine. She is now seeking to distance herself, by alleging fraud and collusion against everyone, i.e the third defendant and her own counsel. It is not known whether she took any action against the said acts of collusion. On the other hand, there were clear admissions, which were not resiled during the pendency of proceedings. They had the effect of enabling the court to dismiss the claim for declaration and cancellation, sought by the plaintiff.

Analysis & Conclusions

15. It would first be essential to consider the scope of Order XII Rule 6 CPC which reads as follows:-

"Order XII 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 if 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.

(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."

16. The Court- a facial reading of the above provision show - has discretion depending upon the facts of a case whether or not to decree the suit under Order XII Rule 6 CPC. If the admissions render a trial unnecessary, a Court is entitled to pass a decree without requiring further trial. The Supreme Court in *Uttam Singh Duggal & Co. Ltd. (supra)* said that:

"12. As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to

succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

xxxxx xxxxx

15. Even without referring to the expression 'otherwise' in Rule 6 of Order XII CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression 'otherwise' becomes unnecessary.

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17. The learned Single Judge noticed that the sixth defendant had relied on the judicial admissions made by the present plaintiff in the earlier civil suit proceedings. The civil suit proceedings were a suit (Suit No. 141/2004 titled as *Smt. Panchi Devi v. Smt. Seema Thakur & Others*). The plaintiff there was the present appellant's mother-in-law. She had filed the suit with respect to the suit property. In the suit, the present appellant, through her attorney, Sh.Vijay Kapoor filed her written statement. Para 16 of this written statement was as follows:-

"16. That in reply to para 16 of the plaint, it is submitted that no cause of action has arose in favour of the plaintiff and against the defendants. As the mutation in respect of property No.18/50 had taken place on 16.4.1985 and on the basis of the revenue record and mutation, the defendant No.1 purchased the same from defendant No.3 paying due consideration and defendant No.1 finding herself unable to manage the property, sold the same to defendant No.2. The defendant No.2 purchased the property, mutation of property was done by the L&DO in the revenue record, which was authentic. There is no reason to disbelieve the record when the original owner categorically stated that he was owner and in possession of the property

No.18/50. On the other hand, the record projects the transaction was bonafide between the defendant No.1 and the defendant No.2 in respect of property in question. The defendant No.1 Smt. Seema Thakur and the defendant No.2 Gopi Chand are the bonafide purchaser in the light of the mutation of the property done by the L&DO. L&DO was the necessary party in the suit. The plaintiff has not made the L&DO a party in the array of defendant in the present suit."

18. The second civil proceeding was a suit filed by the appellant, CS (OS) No. 2211/2003. There, the plaintiff/appellant moved an application seeking amendment, under Order VI Rule 17 CPC read with Section 151 CPC for amending of the plaint and sought an addition of the following paragraph 15D in the plaint:-

"15D. That it is submitted that the plaintiffs purchased Shop No.18/50, East Patel Nagar, from Sh. P.N.Vij, who was the original owner and in possession of the said property No. 18/50, East Patel Nagar, New Delhi, and the said property was substituted by L&DO vide letter No. L&DO/PS/II 892 dated 16th April, 1965 and the Conveyance Deed registered as documents NO. 3989 on 16th April, 1965. The plaintiff being satisfied to the ownership and possession of Shri P.N.Vij on the basis of record available in L&DO and the revenue records purchased the Shop No. 18/50, East Patel Nagar, New Delhi, on 31st May, 2004 after paying the due consideration. The fact that Shri P.N.Vij was the original allottee and owner in possession and sold the Shop No. 18/50, East Patel Nagar, to the plaintiff as has been admitted by him in his written statement filed in Suit No. 141/2004 pending before the Civil shop (sic), the plaintiff has sold the Shop No. 18/50 to Shri Gopi Chand, who has been made defendant No.2 in Suit No. 141/2004 by the defendants in the present suit."

19. Other admissions were relied upon by the applicant/Defendant No.6 for decreeing of the suit. They were references to judicial orders passed by

the Metropolitan Magistrate showing that it was the plaintiff's case in those criminal proceedings that she had sold the property to Sh. Gopi Chand. The learned Single Judge, however, did not rely upon them or treat them as admissions because the appellant had applied for expunging the observations made in the judicial order. However, the learned Single Judge did consider the question of alleged collusion between the appellant's lawyer and the third defendant. It was held as follows, in the impugned judgment:

“14. Learned counsel for the plaintiff/non-applicant has argued that the application does not deserve to be allowed because the plaintiff in the present suit has explained the circumstances in which admissions were made in the judicial proceedings in the two suits being suit no. 141/2004 and CS(OS) No. 2211/2003 stated above, and which is that there was collusion between the Advocate, Sh. K.P. Mavi who represented the plaintiff, Smt. Seema Thakur through her attorney, Sh. Vijay Kapoor in that case and Sh. Gopi Chand. It is argued that plaintiff has already filed a complaint in the Bar Council of India against Sh. K.P. Mavi, Advocate and therefore, judicial admissions made in the two suits should not be read against the plaintiff. It is argued that Sh. K.P. Mavi, Advocate was the advocate of Sh. Gopi Chand is shown from the documents filed by the plaintiff alongwith the list of documents dated 6.1.2010 being an application filed by the plaintiff in CS(OS) No. 970/2004 in this Court showing that Sh. K.P. Mavi, Advocate was the advocate of Sh. Gopi Chand, and therefore, Sh. K.P. Mavi, Advocate should be taken as representative of the interest of Sh. Gopi Chand and not the plaintiff because Sh. Gopi Chand and plaintiff Smt. Seema Thakur have conflicting interest. It is argued that FIR bearing no. 522/2007 has been lodged by the complainant Sh. Gopi Chand against Smt. Seema Thakur and thus there are disputes between Sh. Gopi Chand and Smt. Seema Thakur. It is also argued that Smt. Seema Thakur herself has lodged an FIR bearing no. 33/12 against Sh. Gopi Chand. It is accordingly argued that once there is conflicting interest between Sh. Gopi Chand and Smt. Seema Thakur, alleged admissions made by Smt.

Seema Thakur in terms of the pleadings which are signed no doubt by Sh. Vijay Kapoor, but filed through Sh. K.P. Mavi, Advocate, the same cannot be used against the plaintiff.

15. In my opinion, the application in question deserves to be allowed and the suit is liable to be dismissed. The reasons are given hereunder.

16. One thing is clear that Sh. Vijay Kapoor is indubitably the attorney of the plaintiff, Smt. Seema Thakur. He is the attorney of the plaintiff not only in this suit but he has consistently been acting as attorney of Smt. Seema Thakur in all other civil proceedings. Therefore, judicial admissions made in earlier civil proceedings in litigations for and against Smt. Seema Thakur, and which judicial admissions show that Smt. Seema Thakur has sold the suit property to Sh. Gopi Chand, in my opinion, can be the basis of creation of rights in favour of Sh. Gopi Chand and hence the present applicant/defendant no.6. As stated in the case of Nagindas (supra), judicial admissions constitute waiver of proof and such admissions can be made the foundation of rights of the parties inasmuch as, they are different from evidentiary admissions/evidence which are not conclusive and can be shown to be wrong. Putting it differently, evidentiary admissions can be explained away but judicial admissions cannot be explained away as argued by the counsel for the plaintiff by alleging collusion between Sh. Gopi Chand and Sh. K.P. Mavi, Advocate. In fact on facts, I am unable to agree that there can at all have been any collusion between Sh. K.P. Mavi, Advocate and Sh. Gopi Chand inasmuch no doubt Sh. K.P. Mavi, Advocate represented Sh. Gopi Chand but during the relevant period of the years 2003-2004 interest of Sh. Gopi Chand and Smt. Seema Thakur were common i.e it was the admitted position at that stage that Smt. Seema Thakur had sold the suit property to Sh. Gopi Chand by means of documentation dated 31.5.2004. At this stage, therefore, Sh. K.P. Mavi, Advocate would have represented both Sh. Gopi Chand and Smt. Seema Thakur because there was commonality of interest between Smt. Seema Thakur and Sh. Gopi Chand. I therefore fail to understand as to

how reckless allegations can be made by the plaintiff against Sh. K.P. Mavi Advocate, merely because the plaintiff has conveniently stated that the plaintiff has filed a complaint with the Bar Council of India, however, no copy of the complaint of the Bar Council of India has been filed before this Court. Making of the complaint against Sh. K.P. Mavi, Advocate in the Bar Council of India is stated to be of the year 2010, but till date in August, 2015, the alleged complaint made to the Bar Council of India has not seen light of the day. Of course, in my opinion, filing of complaint in the Bar Council of India against Sh. K.P. Mavi, Advocate would not have made any difference because a self-serving complaint made against an Advocate to the Bar Council exists because a dishonest person such as Smt. Seema Thakur/plaintiff wants to back out of the admitted case of the property being sold by her to Sh. Gopi Chand, and such stand of Smt. Seema Thakur hence deserves complete rejection by this Court. It is relevant and repeated at the cost of repetition that judicial admissions being relied upon by this Court are those which were made before disputes had arisen between Smt. Seema Thakur and Sh. Gopi Chand much later in the year 2007 when Sh. Gopi Chand filed a criminal complaint against the plaintiff, Smt. Seema Thakur. In my opinion, therefore, nothing will turn upon subsequent criminal proceedings initiated either by Sh. Gopi Chand against Smt. Seema Thakur (in 2007) or Smt. Seema Thakur against Sh. Gopi Chand (in 2012). However, the water was calm and clear with respect to the ownership rights transferred by Smt. Seema Thakur to Sh. Gopi Chand in the year 2004 when the judicial admissions were made that Smt. Seema Thakur had indeed sold the suit property to Sh. Gopi Chand.

17. I may note that today a new counsel Mr. Viraj R. Datar appears for the plaintiff although plaintiff on the last date of hearing when the matter was argued on behalf of the defendants was represented by Mr. Abinash K. Mishra, Advocate. During the course of hearing on the last date, a legal issue on behalf of defendant no.6 had been urged and put to the counsel for the plaintiff with respect to dismissal of the suit as being barred by limitation under Articles 58 and 59 of the Limitation Act, 1963 in

view of Section 3 of the Limitation Act which allows the court to suo moto dismiss a time barred suit. This legal issue is that admittedly the plaintiff has known since May, 2004 that she did execute the impugned documents in favour of Sh. Gopi Chand. Plaintiff no doubt claims that these documents were got illegally executed from her, but it is not disputed before this Court by the counsel for the plaintiff that existence of documents of May, 2004 was known to the plaintiff, Smt. Seema Thakur in 2004 itself. In law, as per Articles 58 and 59 of the Limitation Act, plaintiff can seek cancellation of the documents or declaration that they are illegal only if the suit is filed within three years of arising of cause of action. Cause of action arises from the date of knowledge of existence of the documents and once the documents are known to the plaintiff admittedly since the year 2004, this suit had to be filed by the year 2007 for questioning the documents, but, the present suit is filed in the year 2010. I may note that the Supreme Court in the judgment in the case of Prem Singh & Ors. Vs. Birbal & Ors. (2006) 5 SCC 353 has held that there are two types of documents viz void documents and voidable documents. The Supreme Court in Prem Singh's case (supra) has held that there is no period of limitation with respect to void documents but where the documents are pleaded to be voidable then the suit under Section 31 of the Specific Relief Act, 1963 read with Article 59 of the Limitation Act has to be filed within three years of the fact on the basis of which plaintiff seeks to cancel the documents comes to the knowledge of the plaintiff. Since the admitted position in the present case is that knowledge of the documents which are impugned by the plaintiff in May, 2004 in favour of the defendant no.3, Sh. Gopi Chand were to the knowledge of the plaintiff, Smt. Seema Thakur since May, 2004 itself, and which documents are claimed to be voidable, the ratio in the judgment in the case of Prem Singh (supra) will squarely apply and the suit will also be clearly barred by limitation being filed beyond three years as required by Articles 58 and 59 of the Limitation Act.”

20. The question which the Court has to decide in short is whether the learned Single Judge could have exercised his discretion and decreed the suit

as he did in the impugned judgment and order. The suit sought various declarations and consequential decree for cancellation of certain documents. Principally, these pertained to the transactions embodied in the agreement to sell, power of attorney and various sale documents dated 31.05.2004. These documents created rights in respect of the suit property in favor of the third defendant. Her claim was that the original owner of the property, Sh. P.N. Vig who had succeeded to the title after the death of his father, the owner sold it to her the same day for valuable consideration. Her suit alleged that over ₹2 lakhs was paid to the original owner in cash and that the balance consideration was paid later on through demand drafts on 03.12.2004. The documents relied upon by the third defendant: subsequently disputed by the plaintiff, according to her, were never executed by her. The defendants, especially the subsequent purchasers (fourth defendant being the first purchaser of the suit property from the third defendant and the sixth defendant being the last purchaser from the previous owner, i.e. fourth defendant), however, assert that the plaintiff has made certain admissions which are fatal to the suit claim for declaration and cancellation. These are in the form of pleadings in a written statement (dated 14.03.2005 in Suit No. 141/2004). That suit was instituted by Panchi Devi against the plaintiff; the relief claimed was for declaration and cancellation. In the written statement to the suit, the third defendant Gopi Chand was impleaded by Panchi Devi as the second defendant. The appellant/plaintiff Seema Thakur in her written statement clearly stated that he (Gopi Chand, the second defendant) had *“purchased the property, mutation of the property was done by the L&DO in the revenue records which was authentic. There is no reason to disbelieve the record when the original owner categorically stated that he was owner*

and in possession of property 18/50.” This clearly showed both awareness and acknowledgement of the sale transaction in favour of the third defendant. The second admission was in the course of an application for amendment of an earlier instituted suit, CS(OS) 2211/2003 on the file of this Court. In that suit, the plaintiff appellant had sought permanent injunction against her mother-in-law, Smt. Panchi Devi from dispossessing her, obstructing or interfering with her business as proprietor of M/s. New Grand Bakery. The amendment sought was in the form of paras 15A to 15G. The appellant/plaintiff stated in para 15D that she purchased the property from Sh. P.N. Vig and that, “*after purchasing the said shop, the plaintiff has sold the shop no.18/50 to Sh. Gopi Chand who has been made Defendant No.2 in Suit No.141/2004 by the defendants in the present suit.*”

21. In the opinion of this Court, the above averments as well as the averments in the written statement to Suit 141/2004 clearly show that they are not only inconsistent to the plaintiff’s claim (that she is now entitled to declaration and cancellation) but also that they constitute clear admissions. Her reliance upon a deed declaration dated 11.08.2004 – said to have been executed by Gopi Chand, i.e. 3rd defendant is controversial and in any case of no effect. This is for the reason that the said declaration has surfaced for the first time in the course of the suit and more importantly it is an unregistered document, which cannot be looked into.

22. The decisions in *Uttam Singh (supra)*, *Charanjit Lal (supra)* and *Jeevan Diesel (supra)* are clear authorities which say that unless the Court is satisfied that the admission made by a party is clear, unequivocal and incapable of explanation, a decree ought not to be drawn. In the present case, the Court has proceeded to decree suit on the pleadings both on the issue of

admission – in the plaint as well as on the question of limitation. The record shows that the parties have embroiled each other in various criminal proceedings; the appellant Seema Thakur was arrayed as an accused in FIR No.522/2007. Apparently, at some stage, the plaintiff was declared a Proclaimed Offender and her power of attorney holder was accused of conspiracy. The FIR was lodged by the third defendant. Besides, there is nothing on the record to show that the plaintiff in fact paid the consideration that she alleged to the original owner – apart from the mention of Demand Drafts of a much later date, there is nothing in support of her claim. If these two features, i.e. reliance upon an unregistered document deed of Declaration dated 11.08.2004 and the lack of any material to show that the plaintiff had acquired the property for valuable consideration are kept in mind it is quite apparent that the admissions made contemporaneously at the time of transactions in respect of which declaration and cancellations were sought were well within the knowledge of the plaintiff.

23. In the present case, the suit also avers as follows:

“22. That thereafter the Plaintiff was shocked to find out one public notice in the Newspaper dated 20.12.2004 wherein it was informed that the Defendant No.3 had lost his original lease deed pertaining to the Suit property in question because this notice ought to have come either from P.N. Vig or from plaintiff. True and correct copy of the News paper publication dated 20.12.2004 is being annexed hereto and marked, alongwith the list of documents filed with this plaint, as Annexure-P-18.”

24. The averments pertaining accrual of cause of action *inter alia* stated as follows:

“42. That the cause of action for the instituting the present Suit arose when the Defendant No.3 had concealed the fact that

he had malafidely and mischievously got the signatures of the Plaintiff herein on the alleged documents for allegedly transferring the property in his favour and then the cause of action further arose when the aforesaid facts came into the knowledge of the plaintiff on or after 20.12.2004 and then it again arose when the plaintiff had given the representation to the Defendant Nos. 1 and 2 and then it continued to arose on day to day basis when the Defendant Nos. 1 and 2 did not even dispose of the representations/complaints given by the plaintiff, which were stated to be under investigation before vigilance, and then it continued to arose when the Defendant No.3 and other legal heirs of Late Shri Kanshi Ram and Sh. K.P. Mavi had colluded amongst each other to obtain the orders of the Courts to fraudulently and falsely show the settlement of the all the issues between all the parties and also to show the possession with the Defendant No.3 which was never ever given by the plaintiff or the original owner of Mr. P.N. Vig.....”

25. It is thus clear that the plaintiff/appellant made averments which amounted to categorical admissions of the third defendant's title based upon all the documents duly executed by her on 31.05.2004. The plaintiff's subsequent change of intention led to disputes; apparently, the third defendant had to file two other cases. The third defendant even initiated criminal proceedings and lodged an FIR on 12.09.2007. The plaintiff's attorney sought bail; the order of the Magistrate in those proceedings dated 15.09.2007 is on record. The criminal proceedings did not lead to any positive results so far as the plaintiff's Power of Attorney holder is concerned. However, she was even proclaimed an absconder. In none of the intervening proceedings did the plaintiff allege collusion on the part of the Sh. K.P. Mavi, Advocate. Significantly, the plaintiff did not also initiate any criminal proceedings alleging forgery and fabrication of documents. In the light of all these circumstances, the arguments on her behalf that the

admissions were not unequivocal but could be explained and that the trial had to proceed on merits are not worthy of acceptance.

26. On the question of limitation too, this Court is of the opinion that the findings of the learned Single Judge are consistent with the record and justified. As noticed earlier, the suit contains clear and unequivocal admissions that the plaintiff became aware of the title inuring in favour of the third defendant on 20.12.2004 upon noticing the advertisement published in that regard. Furthermore, it was alleged that the collusion of the plaintiff's lawyer in the withdrawal of Suit 141/2004 came to her knowledge on 06.03.2006. Yet, no steps were taken by her to have the matter investigated and take remedial action. These facts reveal that the plaintiff became aware of the facts that constituted a cause of action for filing the suit that she did in December 2004; yet she chose to approach the Court only in 2010. It cannot be, therefore, said that the suit was filed within the period of limitation after the disposal of her writ petition which merely dealt with the issue of improper mutation and not the title to the property.

27. In view of the above findings, the impugned judgment and order does not call for interference. The appeal fails and is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 29, 2016