

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

Decided on: 17.09.2018

+ **FAO(OS) 266/2017**
SONNY SARNA

..... Appellant

Through : Sh. Jai Sahai Endlaw and Sh. Shivansh
Soni, Advocates.

versus

URMIL WADHAWAN & ANR

..... Respondents

Through : Ms. Aakanksha Kaul and Sh. Priyank
Mohan, Advocates, for Respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. This is a plaintiff's appeal challenging the order of a learned single judge rejecting his application for decree on admissions under Order XII rule 6 of the Code of Civil Procedure (hereafter called "CPC").

2. The brief facts of the case are that the plaintiff was sued for recovery of possession, damages and interest in respect of a portion of the suit property situated at No.211, Jor Bagh and also for mandatory injunction; the suit was filed on 24.05.2012 [CS(OS) 1642/2012]. The appellant-plaintiff had earlier preferred an application for decree on admission, which was granted by an order of the learned single judge on 21.11.2013. However, by an appeal on behalf of the aggrieved defendants, the Division Bench on 06.01.2014 set aside that order and remanded the matter back to the learned single judge for a fresh decision. Thereupon, the impugned order was made.

3. The plaintiff contends that the learned single judge did not give any credence or importance to a decision dated 01.08.1999 of the Additional Rent Controller, which clearly shows that the respondent- defendants had no cogent defence as to how they could legitimately claim and use the premises which were under the occupation. It was highlighted that the order of the Rent Controller noted that the defendant stated in the chief examination of the property that the suit property belonged to his friend and his sister was staying with her son in the said premises. It also admitted that the premises were 211, Jor Bagh. Other than that, learned counsel for the appellant also relied upon the examination and cross-examination of Kailash Berry – since deceased, the brother of the first defendant.

4. It was contended that in the light of these materials, there can be no doubt that the defendants admitted occupation of the suit premises and when given the opportunity of disclosing the basis of such occupation were unable to do so. This, according to the plaintiff constituted a clear admission entitling him to a decree.

5. The learned single judge noted that the application for decree on admission was premised upon the fact that the property was noted in the records in the plaintiffs' name along with that of other co-owners and that a Relinquishment Deed was in respect of fraction of the shares in the suit property and that the co-owners had released their shares in favour of the first plaintiff; the second plaintiff was co-owner to the extent of 1/48th share in the property. It was further noticed that the defence was that the late Kailash Berry had paid consideration on their behalf.

6. The learned single judge further noted that in the written statement of the defendants, averred that the Relinquishment Deed executed in favour of

the plaintiff was pursuant to consideration paid by late Kailash Berry. It was submitted that the late Kailash Berry's payments of the said amount to the plaintiff was to acquire 5/12th share in the suit property. The defendant also stated that the plaintiff's rights were limited to the extent of 21/48th share. In this regard, the defendant relied upon an affidavit affirmed by the plaintiff on 01.10.1993, stating that for release deeds in respect of 5/12th share of the property will be executed in his favour for an aggregate consideration of ₹15.50 lakhs. That affidavit also acknowledged that Kailash Berry had advanced that amount to the plaintiff.

7. This court has considered the submissions of the plaintiff and the respondent parties to this appeal. The learned single judge, in our opinion, correctly deduced that there was no unambiguous, clear and unequivocal admission on the part of the defendant that suit property occupied by them, belongs to the plaintiff and that they had no right to it. One of the defendants had stated that the property belongs to his friend. It was also a matter of record that Kailash Berry's sister was staying in the suit property. However, the learned single judge also held that the statements of fact did not constitute an admission for two reasons: one, that the statement of late Kailash Berry's statement could not be attributed to the defendant and secondly, that even if such statements could be attributed for arguments sake, they were not as unequivocal or clear as to entitle the plaintiff to a decree. This court fully concurs with this conclusion.

8. It is well settled that in order to pass a decree based upon an admission practically under Order XII Rule 6, CPC, the admission by the defendant or any party, for that matter has to be clear and unambiguous so as to require no

trial on further proceedings. In the absence of that the objective fact, a decree could obviously not have been drawn.

9. A long line of authorities- starting with *Uttam Singh Duggal & Co. Vs United Bank of India & Ors* 2000 (7) SCC 120 – a judgment of the Supreme Court, had enunciated the principle that for the grant of a decree on admissions under Order XII Rule 6 CPC, the admission has to be unequivocal or unambiguous and not one which is qualified. *Jeevan Diesel & Electricals Limited Vs. Jasbir Singh Chadha & Another*, (2010) 6 SCC 601 has affirmed that principle, as has the judgments in *Karam Kapahi v. Lal Chand Public Charitable Trust* (2010) 4 SCC 753. In *Karam Kapahi (supra)*, the Supreme Court held that decree under Order XII Rule 6 can be validly issued if there exists no controversy with regard to a particular claim. The provision is undoubtedly wide in its import and that admissions may be inferred from the facts and circumstances of the case; *Charanjit Lal Mehra and others v. Kamal Saroj Mahajan (Smt.) and Another* (2005) 11 SCC 279 is an authority for this proposition. *M/s Jeevan Diesels (supra)* held also, as follows:

“Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. This question, namely whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in KaramKapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of a totally different fact situation.”

10. In this case too, the court is of the opinion that there is no merit in the appeal, since the learned single judge’s findings are based on appreciation of

all relevant facts before concluding that a decree on admission could not be granted. The appeal is, therefore, dismissed but with no order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

SEPTEMBER 17, 2018

